

UNITED STATES
ATOMIC ENERGY COMMISSION
WASHINGTON, D.C. 20545

July 24, 1970

Chairman Seaborg
Commissioner Ramey
Commissioner Johnson
Commissioner Thompson
Commissioner Larson

RESPONSE TO LETTER FROM MR. EARL EWALD, CHAIRMAN OF THE BOARD,
NORTHERN STATES POWER COMPANY

My memorandum of July 13, 1970, transmitted to the Commission a draft reply to the letter to Chairman Seaborg of June 19, 1970, from Mr. Earl Ewald, Chairman of the Board of Northern States Power Company. The Commission considered the proposed reply at the Information Meeting held on Friday, July 17, and requested certain changes. Attached is a revised draft of the reply to Mr. Ewald which incorporates the changes requested by the Commission.

For the Commission's convenience, I am also attaching a copy of the letter from Mr. Ewald and a related letter from counsel for MECCA, one of the intervenors in the Monticello proceeding.


Joseph F. Hennessey
General Counsel

Atts.

As stated

cc: Secretary (2)

DRAFT

Dear Mr. Ewald:

This is in response to your letter of June 19, 1970, concerning the proceeding on the application of Northern States Power Company for a provisional operating license for the Monticello Nuclear Generating Plant.

Since this license application is presently in the process of adjudication before an atomic safety and licensing board, it would be inappropriate for the Commissioner to express a view on any of the safety or other issues involved. We believe, however, some comment on our part is warranted regarding the underlying matter you have raised, that of delay in licensing proceedings, and your recommendation that we convene a task force of interested governmental and private persons "to consider how the regulatory processes can be improved and modified to reduce delay and uncertainty without compromising the legitimate interests of the public".

As a preliminary observation, it does appear that some of the delay encountered in the Monticello proceeding stems from the fact that several novel legal and policy questions have been raised and there has been need for their consideration as matters of first impression. We also understand your letter to indicate that, because of other factors bearing on completion of facility construction, the delay experienced in the licensing proceeding has not actually been the determinative factor as respects scheduling of the Monticello facility for operation.

Speaking in a broader context, we believe we can fairly state that, historically, the AEC has had a basically good record as respects the matter of time consumed in its licensing hearings. While any agency's experience in this regard will necessarily not be uniform, our over-all record on time required for hearings has compared favorably with that of other Federal regulatory agencies.

A backward look at history cannot, of course, be the measure for assessing the adequacy of a system to deal with current problems and future needs; and this is particularly so in a sphere as dynamic as that of nuclear power. We have, accordingly, always been mindful that our regulatory procedures cannot remain static and that experience and anticipated requirements will point the way to desirable changes. We have recognized for some time that operating license applications would be peaking about this time and that personnel limitations on the regulatory staff would create problems. Unfortunately, we are experiencing personnel limitations despite our efforts to avert them.

Consistent with our recognition of the need for continuing review of our regulatory procedures, we have periodically commissioned special groups, with members of professional competence and breadth, to examine and recommend ways in which the AEC licensing process can be made a more efficient instrument for accomplishing its important public purposes. The two Mitchell panels, of 1965 and 1967, and last year's Internal Study Group were special task groups with this as their charge. The Joint Committee on Atomic Energy has also closely followed this aspect of the regulatory program, holding in-depth hearings on the subject and recommending legislation authorizing changes in the licensing process when this was warranted.

On a Government-wide basis, the Administrative Conference of the United States, in which representatives of this agency play an active role, has made a series of recommendations for improving the efficiency of the administrative hearing process and it plans to continue examination of this matter in its future activities. I might note, parenthetically, that many of the steps which have been recommended by the Administrative Conference were already a part of our licensing process. These include procedural rules designed to assure that regulatory activities may be carried out expeditiously in the public interest by limiting the issues to be considered in particular types of cases, prescribing the requirements applicable to intervention in a proceeding, providing for prehearing conferences, and for the filing of testimony in written form before hearing.

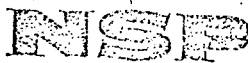
The foregoing is not intended as a recitation of laurels; still less, should it be taken as a sign of complacency on our part. The progressively increasing number of nuclear facilities, the passage of new legislation bearing on our licensing proceedings and the need to accommodate effectively the desire for participation in licensing hearings by affected members of the public, make constant attention to the fair and efficient workings of our regulatory procedures an agency imperative. Moreover, it would be misleading to create the impression that it is an easy task to strike that fine balance which properly accommodates the goal of conducting reasonably expeditious hearings and at the same time safeguards the legitimate interests of the public in participating in the regulatory review process. Reconciling these oftentimes conflicting considerations has been and will remain a paramount challenge for the administrative process.

We will, therefore, continue to review our procedures and make those changes from time to time that commend themselves as being beneficial. Insofar as licensing hearings are concerned, it will remain our objective to carry out the important purposes of the public hearing in a manner which will safeguard the right to meaningful participation by affected persons while at the same time minimizing delays in meeting the Nation's need for power.

In accordance with our regulations, your letter and this response have been made a part of the public records of the Commission. Copies are also being furnished to all of the parties to the Monticello proceeding for their information.

Sincerely,

Chairman



NORTHERN STATES POWER COMPANY

MINNEAPOLIS, MINNESOTA 55401

EARL EWALD
CHAIRMAN OF THE BOARD

June 19, 1970

Dr. Glenn T. Seaborg, Chairman
United States Atomic Energy Commission
Washington, D. C. 20545

Dear Dr. Seaborg:

This letter is prompted by the extraordinary AEC public hearing proceedings concerning the licensing of the Monticello Nuclear Generating Plant. These proceedings, which have just been recessed for the second time, are likely to result in substantial costs to Northern States Power Company and its customers, and to expose the people in our service area to the substantial risk of a curtailment of electric power with consequent hazards and losses. Delay or curtailment of service from Monticello requires excessive use of old generating plants which poses serious environmental considerations. Indeed, but for the coincidence of an extended strike of the sheet metal workers at the site, both of these very likely eventualities would be currently attributable to the delays encountered in the licensing procedure.

If the delays encountered in this licensing procedure are duplicated in connection with the other nuclear power plants scheduled for commercial service in the next few years, it can safely be asserted that the splendid promise of nuclear power will have had a very short life. Without regard to the competitive cost advantages and the environmental protection advantages of nuclear power, no electric utility with any sense of its responsibility to assure a reliable power generating system could rely on the timely availability of new nuclear power generating plants.

On January 10 of this year the Advisory Committee on Reactor Safeguards concluded that the Monticello Plant could be

JUN 23 1970

Dr. Glenn T. Seaborg

June 19, 1970

Page 2

operated without undue risk to the health and safety of the public. While certain final details were left to be resolved with the regulatory staff, it took the AEC until March 11, 1970, to decide to hold a public hearing on its own motion and to announce such decision. This delay in initiating the public hearing procedure automatically put off the public hearing until April 28, 1970, a date so close to the scheduled plant completion date that unusual procedures would have been required to permit a license to issue following such a hearing in a timely manner, consistent with plant completion.

We thereupon proceeded with a motion for authorization to load fuel and conduct low power startup tests - activities which carry no potential for harm to persons or property off-site and activities with respect to which none of the intervenors' contentions was reasonably related. The regulatory staff, which by this time had concluded that the full power license could be issued upon completion of the plant, concurred in the motion. The motion was denied by the Atomic Safety and Licensing Board, not on grounds of safety, but because the regulatory staff couldn't decide how to respond to a subpoena for AEC inspection reports. At this time, May 1, the first adjournment of the hearing took place.

When the adjournment was declared, NSP decided to proceed with modification of the furnace-sensitized stainless steel components in the Monticello reactor. This program, which had been under consideration for some time, was undertaken at this time because of the recess in the hearing. This work has now been completed and has been approved by the ACRS and the regulatory staff.

Finally, two weeks after the subpoena was issued, the staff on May 8 agreed to furnish the inspection reports subject to certain very appropriate deletions, i.e. information of a proprietary nature, certain names of individuals, names of other plants, and identification of certain internal AEC guides and memoranda. On or about June 2 the reports, without the deleted material, were actually made available and the hearing was reconvened on June 15. In reply to objections

Dr. Glenn T. Seaborg

June 19, 1970

Page 3

by the intervenors as to the deletions, NSP secured permission from its contractors, whose proprietary data were included in the deleted information, to make such data available to the intervenors on a confidential basis which would not preclude their use of the material for the only purpose for which it may have been properly requested, i.e., to conduct cross-examination. The intervenors rejected the offer proclaiming their abhorrence of secrecy. If they were to see the deleted proprietary material, the entire public must see it too, they claimed. This, of course, would destroy the value of the proprietary data to its owners.

The Board, in the face of this patent mischief, refused to determine whether the intervenors would in any way be prejudiced, and professing to perceive a principle of law at issue, announced that it would again adjourn the hearing pending a determination as to whether it has jurisdiction to further consider the matter of the deletions and as to whether the intervenors have any rights to the deleted material.

In the end, the Board announced that it would send these matters to the Atomic Safety and Licensing Appeal Board for resolution before again convening the hearing. This, apparently will produce another delay of several weeks, at least.

Public hearings on the location and licensing of nuclear power plants, in principle, are desirable. They provide a means for public participation in decisions affecting the health and safety of the public. But the hearings have to be scheduled and conducted in a manner which fully recognizes all of the public interests involved in power plant installations. In doing this, means have to be developed to distinguish between the headline seeking dissident, the true representatives of the public, the competent and the incompetent. If not, the penalties to society could be large indeed.

The intervenors in the Monticello hearing are three college graduate students, a high school student, and two lawyers alternating in representing a group of citizens concerned about the environment.

Dr. Glenn T. Seaborg

June 19, 1970

Page 4

A review of the more than fourteen hundred pages of testimony already accumulated at the public hearings would disclose that there has not been identified any single aspect of the plant or its operation which requires modification in the interest of public safety.

The three college graduate students, who may be capable in their fields of specialization, have no expertise in nuclear power. They have been permitted to extend the hearing unnecessarily while enjoying the rare opportunity to "play lawyer". When the hearing was reconvened on June 15, more than two months after reference was made to the Operations Manual in the intervenors' presence at the prehearing conference on April 7, and despite numerous references to it in the FSAR, these intervenors requested the right to review the Operations Manual. The request was characterized by the Board as late "in the extreme". The Board is currently considering the appropriateness of the inclusion of this six-volume document in the record.

The high school student, could contribute little to the safety review process and has presently withdrawn from the hearing, and the two attorneys purporting to represent the citizens group and their witnesses have contributed no technical or safety commentary worthy of consideration.

Unless the renewed motion presented by NSP to the Atomic Safety and Licensing Board before the second adjournment for authority to load fuel is promptly granted, the hearing process will surely delay startup of the plant after it is complete and ready for startup. This assumes that current labor difficulties will be resolved in the near future. Delays due to the regulatory process in the startup of the plant after it is complete and ready for fuel loading will have at least three major adverse effects upon NSP and the public it serves:

1. Reduced reliability of electric power supply by reduced generating margin and lowering of coal reserves in the Upper Midwest.
2. Increased costs to NSP and its customers in excess of \$1,100,000 per month.

Dr. Glenn T. Seaborg

June 19, 1970

Page 5

3. Increased detrimental effects on environmental quality from electrical generation by older fossil-fueled plants not presently equipped with modern emission controls.

Such delays will also cause the General Electric Company to incur additional costs of \$500,000 per month of delay. Authority to load fuel without delay following completion of the Monticello Plant is needed to ameliorate these adverse effects.

Even if the renewed motion for fuel loading authority is granted, any delay in reconvening the hearing will result in the same adverse consequences to the public interest when the fuel loading and low-power startup testing program are concluded.

Strong and innovative leadership is required now if the licensing process is not to break down entirely. I urge you, as promptly as practicable, to convene a task force of interested governmental and private persons, including, if appropriate, legislators and members of the judiciary, to consider how the present regulatory processes can be improved and modified to reduce delay and uncertainty without compromising the legitimate interests of the public. Delay in proceeding on this matter will undoubtedly seriously impede the development and utilization of nuclear power.

Because of the relationship of matters in this letter to issues now subject to the hearing process, I recognize that you may wish to place this letter in the public document room.

, Sincerely,



EARL EWALD

cc: Commissioner James T. Ramey
Commissioner Wilfrid E. Johnson
Commissioner Theos J. Thompson
Commissioner Clarence E. Larson
Chairman John N. Nassikas
Congressman Chet Holifield
Governor Harold LeVander
Mr. Harold L. Price

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July 6, 1970

224-1364

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Chairman, Department of Geography
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Re: In the Matter of Northern States Power Company
Monticello Nuclear Generating Plant, Unit 1
Docket No. 50-263

Gentlemen:

On June 19, 1970, Mr. Earl Ewald, Chairman of NSP, sent a letter to Dr. Glenn T. Seaborg. It was a five page letter, essentially consisting of complaints as to the nature of the AEC proceedings concerning the Monticello Plant.

It was interesting to note that MECCA did not obtain a copy of this letter in the usual manner with an Affidavit of Mailing attached, but rather received it as an AEC document. NSP is ably represented by Washington counsel, Mr. Gerald Charnoff, a local Minneapolis law firm, as well as house counsel. Any of these attorneys could have informed Mr. Ewald that it was necessary to send copies of communications to all parties.

There is no doubt, on the basis of this letter, that Mr. Ewald was trying to put pressure on the AEC to affect the outcome of the Quasi-Judicial proceeding now pending in this matter. The letter is replete with threats of the things which will happen if NSP is not immediately given its own way. It attacks the three physics graduate students, the MECCA lawyers or anyone else who questions NSP.

When NSP first applied to build a plant at Monticello, it accepted all of the rules and regulations of the AEC. The present hearings, along with the intervention, are a part and parcel of that proceeding. It is paradoxical that on one hand, NSP is suing the State of Minnesota in defense of the AEC, but on the other hand, when those AEC rules conflict with NSP's wishes, they too become the object of NSP's scorn.

Valentine B. Deale, Esq.
Dr. Eugene Greuling
Dr. John C. Geyer
July 6, 1970

Page No. 2.


MECCA is confident that the threats contained in Mr. Ewald's letter will have no effect on the outcome of any of this Board's decisions. If Mr. Ewald does not realize that this is a Quasi-Judicial proceeding, MECCA does. NSP has consistently attempted to bring undo pressures on this Board in Mr. Ewald's letter and otherwise by trying to place the burden of any of our electrical shortages upon this Board. Such is simply not the case. The Monticello plant has suffered from labor problems and is, at this present time, in the throes of a serious strike which has virtually shut down construction. The plant is not complete and under no set of circumstances could it be operational.

MECCA believes that your Board should make it absolutely clear that Mr. Ewald's letter to Dr. Seaborg can and will have no affect on the outcome of these proceedings. It would not hurt to clarify that your Board is independent from any other aspects of the Atomic Energy Commission and once licensing proceedings are commenced, cannot be affected by any other branch of the AEC.

Yours very truly,

MECCA

Lawrence D. Cohen



William J. Hennessy

LDC/k1

United States of America
Atomic Energy Commission

In the matter of
Northern States Power Company
Monticello Nuclear Plant Unit 1

Docket No. 50-263

Certificate of Service

I hereby certify that copies of MECCA's letter to the Atomic Safety and Licensing Board dated July 6, 1970 was served upon the following by deposit in the U.S. mail, first class, this 6th day of July, 1970

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