

April 27, 2015

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

In the Matter of	)	
	)	Docket No. 72-10-ISFSI-2
Northern States Power Co.	)	
	)	
(Prairie Island Nuclear Generating Plant,	)	ASLBP No. 12-922-01 ISFSI-MLR
Independent Spent Fuel Storage Installation))	)	BRD01

**PIIC’S ANSWER TO NSPM’S MOTION FOR SUMMARY DISPOSITION OF PIIC’S  
CONTENTION 6 (HIGH BURNUP FUEL) & CROSS MOTION FOR PARTIAL  
SUMMARY DISPOSITION OF PIIC’S CONTENTION 6 (HIGH BURNUP FUEL)**

**I. INTRODUCTION**

The Prairie Island Indian Community (“PIIC”) hereby answers the motion for summary disposition of Northern States Power Company, a Minnesota Corporation (“NSPM”), filed March 27, 2015, and cross moves for partial summary disposition of Contention 6 in its favor.<sup>1</sup> A genuine issue of material fact exists as to whether NSPM has satisfied its regulatory burden of demonstrating the safety of storing high burnup fuel (“HBF”) at the Prairie Island Independent Spent Fuel Storage Installation (“PI ISFSI”) for the first 20 years of storage. Moreover, given the lack of data demonstrating safety of extended HBF storage after 20 years, and NSPM’s admitted reliance on a speculative demonstration project to fulfill its regulatory burden, PIIC is entitled to partial summary disposition of Contention 6 such that NSPM’s license renewal term may not exceed 20 years. The Board should deny NSPM’s motion for summary disposition, grant PIIC’s motion for partial summary disposition, and proceed to a hearing to determine whether NSPM is entitled to renewal and, if so, the duration of that renewal not to exceed 20 years.

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<sup>1</sup> Pursuant to 10 C.F.R. § 2.1205, and for the sake of efficiency, PIIC files its answer to NSPM’s Motion for Partial Summary Disposition and PIIC’s Cross Motion for Partial Summary Disposition in a single pleading. PIIC’s Answer and Cross Motion are supported by (1) PIIC’s Statement of Material Facts (Attach. 1) and (2) the Declaration of John T. Greeves (“Greeves Decl.”) (Attach. 2 with Enclosures 1-9).

## II. PROCEDURAL BACKGROUND

NSPM seeks a 40-year extension of its license to operate the PI ISFSI.<sup>2</sup> PIIC intervened and raised seven contentions.<sup>3</sup> The subject of the instant motion is Contention 6, which contends that NSPM's Application "is deficient because it did not adequately address the potential degradation of [HBF] due to aging during storage, subsequent handling, and transportation." Pet. at 52. PIIC emphasized that "[l]ittle data are publicly available on the behavior of [HBF] during dry storage and on its subsequent handling and transportation" and that this lack of data precludes any "reliable predictions of degradation processes during extended dry storage." *Id.* at 53. In December 2012, the Board admitted Contention 6 over NSPM's objection, stating:

Contrary to Northern States' argument that the studies on which the Staff and PIIC rely relate only to "extended storage" (and so of necessity must be for a period longer than the 40 remaining years were the ISFSI license renewed), PIIC's claim is that no such bright line can be drawn to mark the age at which degradation becomes a concern. Whether these studies are adequate to show that high-burnup fuel is safe from serious degradation within the 40-year time frame is a question appropriate for adjudication on the merits.

*Northern States Power Co.* (Prairie Island Nuclear Generating Plant Independent Spent Fuel Storage Installation) LBP-12-24, 76 N.R.C. 503, 528 (2012).

In its motion for summary disposition of Contention 6 ("NSPM Motion"). NSPM asserts that it is entitled to a decision as a matter of law on Contention 6 because it has now "addressed the[] uncertainties" identified by the Board by (1) demonstrating intended compliance with temperature limits set forth in ISG-11, and (2) submitting an aging management plan ("AMP") that relies on future data collection from a proposed Department of Energy Cask Demonstration Project ("Demonstration Project"). *See* NSPM Motion at 3.

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<sup>2</sup> Prairie Island [ISFSI] License Renewal Application (Oct. 20, 2011) (ML11304A068) ("Application").

<sup>3</sup> [PIIC's] Request for Hearing and Petition to Intervene in License Renewal Proceeding for the Prairie Island [ISFSI] (Aug. 24, 2012) (ADAMS Accession No. ML12237B193) ("Petition" or "Pet.").

### III. STATEMENT OF THE LAW

#### A. Legal Standard for Summary Disposition

The Board applies the standard set forth in subpart G of 10 C.F.R. Part II in ruling on motions for summary disposition. *See* 10 C.F.R. § 2.1205. Summary disposition is appropriate if “the filings in the proceeding, depositions, answers to interrogatories, and admissions on file, together with the statements of the parties and the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law.” 10 C.F.R. § 2.710(d)(2).<sup>4</sup> “[T]he moving party bears the initial burden of demonstrating that no genuine issue as to any material fact exists and that it is entitled to judgment as a matter of law.” *Detroit Edison Co.*, 76 N.R.C. at 450 (citing 10 C.F.R. § 2.325). In assessing this burden, the Board examines the record in the light most favorable to the non-moving party and must draw all reasonable inferences in favor of the non-moving party. *Advanced Med. Sys., Inc.* (One Factory Row, Geneva, Ohio 44041), CLI-93-22, 38 N.R.C. 98, 102 (1993).

When the moving party fails to make the requisite showing to meet its initial burden, “the Board must deny the motion—even if the opposing party chooses not to respond or its response is inadequate.” *Id.* at 102-03; *Detroit Edison Co.*, 76 N.R.C. at 450 (quoting *Cleveland Elec. Illuminating Co.* (Perry Nuclear Power Plant, Units 1 and 2), ALAB-443, 6 N.R.C. 741, 754 (1977) (“no defense to an insufficient showing is required”) (internal citation omitted)). If the moving party meets its initial burden, “the non-moving party must ‘counter each adequately supported material fact with its own statement of material facts in dispute and supporting documentation’ and cannot rely on ‘mere allegations or denials,’ or the facts in controversy will be deemed admitted. *Id.* (citing 10 C.F.R. § 2.710(a)).

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<sup>4</sup> The Board “applies standards analogous to those used by federal courts when ruling on motions for summary judgment under Rule 56 of the Federal Rules of Civil Procedure.” *In the Matter of Detroit Edison Co.* (Fermi Nuclear Power Plant, Unit 3), LBP-12-23, 76 N.R.C. 445, 450 (2012).

## **B. NSPM's Regulatory Burden as an Applicant**

NSPM applied for a 40 year license renewal for storage of HBF at PI ISFSI and has the burden, under 10 C.F.R § 72.42, to “demonstrate the safety of the continued storage of spent fuel for the requested term” of licensure. 76 Fed. Reg. 8,872, 8,880 (Feb. 16, 2011). These requirements ensure that renewed licenses “provide[] adequate protection of public health and safety.” 76 Fed. Reg. at 8880. In order to satisfy its burden, NSPM must “demonstrate that structures, systems, and components important to safety will continue to perform their intended function for the requested period of extended operation.” 10 C.F.R § 72.42. Specifically, NSPM must show that the spent fuel cladding in the PI ISFSI will be “protected during storage against degradation that leads to gross ruptures” or that the fuel is “otherwise confined such that degradation of the fuel during storage will not pose operational safety problems with respect to its removal from storage.” 10 C.F.R § 72.122(h)(1). NSPM must also demonstrate that the HBF it seeks to store at PI ISFSI will be readily retrievable for further processing and disposal. 10 C.F.R § 72.122(l).

## **IV. ANALYSIS**

### **A. There are genuine issues of material fact as to whether NSPM has demonstrated the safety of storing, retrieving, and transporting HBF during a 40-year renewal term.**

In asserting that it has demonstrated the safety of storage, retrieval, and transportation of HBF at PI ISFSI, NSPM first points to its intended compliance with Interim Staff Guidance-11, Revision 3, *Cladding Considerations for the Transportation and Storage of Spent Fuel* (Nov. 2003) (“ISG-11”). NSPM Mot. at 8. NSPM contends that it has demonstrated in its Application that the HBF cladding at PI ISFSI will remain below the temperature limits set forth in ISG-11. *Id.* NSPM asserts that its compliance with ISG-11’s cladding temperature limit “ensure[s] that the [HBF] continues to perform its intended function during storage.” NSPM Mot. at 9.

NSPM overstates the effect of compliance with ISG-11. Indeed, NSPM concedes that ISG-11 may only apply to an initial 20-year storage period. *Id.* at 6. The NRC also acknowledges that the “short term laboratory tests and analysis” on which the guidance in ISG-11 was based “may not be applicable to the storage of HBF beyond 20 years, particularly with the current state of knowledge regarding HBF cladding properties.” Encl.6 to Pickens Decl., at 1. NSPM can rely upon its intended compliance with ISG-11 to demonstrate that HBF will continue to perform its intended function at PI ISFSI during the first 20 years of storage from April 2013 to April 2033, but ISG-11 cannot provide a basis for demonstrating the safety of HBF storage, retrieval, and transportation beyond that initial 20-year period.

Furthermore, genuine issues of material fact exist as to whether compliance with ISG-11 is sufficient to satisfy NSPM’s regulatory burden with respect to the first 20 years of HBF storage. Data concerning the safety of HBF storage during an initial 20 year period is very limited. The data that does exist (that which underlies ISG-11) is now over a decade old and has limited applicability because it is based on short term modeling and analyses and no HBF confirmatory demonstrations. *Id.*; Greeves Decl. ¶ 15. There is no demonstrative data at all confirming “that structures, systems, and components important to safety will continue to perform their intended function” during an initial 20 years of HBF storage, or that HBF will be readily retrievable for further processing and disposal during that same period. Greeves Decl. ¶ 32. Even ISG-11 itself states that “[d]ata is not currently available” with respect to “[high burnup] cladding performance during hypothetical accident conditions of transport.” Encl. 5 to Pickens Decl., at 2. For these reasons, genuine issues of material fact exist as to whether NSPM has satisfied its regulatory burden under 10 C.F.R §§ 72.42 and 72.122 of demonstrating the safety of storing, retrieving, and transporting HBF during an initial 20 year period.

**B. NSPM has failed as a matter of law to satisfy its regulatory burden of demonstrating the safety of storing, retrieving, and transporting HBF beyond 20 years.**

NSPM seeks a 40-year license renewal and must therefore demonstrate the safety of storing, retrieving, and transporting HBF for the duration of that term. NSPM admits that the uncertainties associated with the extended storage of high burnup “are associated with storage beyond twenty years.” NSPM Mot. at 7. NSPM’s Motion relies not on evidence which demonstrates the safety of storing HBF beyond 20 years, but instead upon assumptions of what might happen in the future with the proposed Demonstration Project – assumptions that fall short of factual evidence demonstrating the safety of storing HBF beyond 20 years. NSPM cannot satisfy its regulatory burden under 10 C.F.R §§ 72.42 and 72.122 without offering some factual evidence of safety concerning the behavior of HBF after 20 years of storage.

Ignoring this lack of evidence, NSPM asserts that it has “addressed the[] uncertainties” surrounding the safety of extended storage of HBF beyond 20 years by supplementing its application with a HBF AMP. NSPM claims the AMP satisfies the ten criteria set forth in *Standard Review Plan for Renewal of Spent Fuel Dry Cask Storage System Licenses and Certificates of Compliance* (March 2011) (“NUREG-1927”), available at ADAMS Acc. No. ML11020115. NSPM acknowledges that its satisfaction of at least three of these elements (Element 3–Parameters Monitored, Element 4–Detection of Aging Effects, and Element 5–Monitoring and Trending) relies solely on the Demonstration Project that will purportedly collect confirmatory data in the future regarding the safety of extended storage of HBF. NSPM Mot. at 7-8. This envisioned Demonstration Project involves loading a cask at the North Anna Power Station in Virginia in 2017 after which the cask will apparently remain in storage for ten years before being transferred to another facility yet to be decided for further evaluation. NSPM

Statement of Material Facts, ¶ 17. Assuming this process goes as planned, the first formal evaluation of data obtained from the Project will not occur until 2028 at the earliest. *Id.*, ¶ 18.

i. Limitations of NRC Guidance

As a threshold issue, NSPM erroneously assumes that compliance with NUREG-1927 satisfies its regulatory burden. But simply addressing the AMP criteria in NUREG-1927 does not ensure the safety and ready retrieval of HBF during extended storage. NUREG-1927 was not developed to support license renewal periods beyond 20 years. Greeves Decl. ¶ 24. The guidance is also currently under significant revision to address the potential degradation of HBF due to aging during storage, subsequent handling, and transportation. *Id.* It has not been made available for public review. *Id.* As acknowledged by NRC staff in the April 8, 2015, ACRS meeting, guidance with respect to storage of HBF remains in its early stages, *id.*, which is underscored by the large number of NRC guidance documents pertaining to license renewal that are still in preparation, including: 1) response to Industry Proposals (NEI 14-03); 2) revisions to NUREG-1927; 3) final HBF Regulatory Issue Summary (RIS); 4) HBF Consequence Analyses; 5) completed technical report on monitoring of dry cask storage systems (DCSS); 6) completed technical report on stress analysis of fuel cladding in DCSS; and 7) Engagement of ASME Code Committee on Renewal Licensing. *Id.* Simply addressing – or promising to address at some point in the future – the ten criteria set forth in NUREG-1927 is insufficient to demonstrate the safety of storage, retrieval, and transportation of HBF beyond 20 years.

ii. Demonstration Projects under ISG-24, Generally

Reliance on future data collection through a yet-to-be-implemented Demonstration Project, without more, cannot demonstrate the safety of storing, retrieving, and transporting HBF beyond 20 years. The regulatory requirements that NSPM must satisfy are premised on demonstrating safety as a *precondition* to licenses being renewed. *See* 10 C.F.R. § 72.42 (requiring a license

application to include evidence “demonstrat[ing] that structures, systems, and components important to safety will continue to perform their intended function for the requested period of extended operation”). To say otherwise would be to flout the underlying purpose of the regulatory framework related to the storage and retrieval of spent fuel, which is to ensure the “protection of public health and safety.” 76 Fed. Reg. at 8,880. NSPM cannot demonstrate safety now with the mere expression of hope it will collect favorable data in the future.

NRC Guidance confirms that reliance on a future demonstration project alone cannot be squared with an applicant’s regulatory burden. The NRC has developed Interim Staff Guidance-24, *The Use of a Demonstration Project as Surveillance Tool for Confirmation of Integrity for Continued Storage of High Burnup Fuel Beyond 20 Years* (July 11, 2014) (“ISG-24”), ML14058B166 (Pickens Decl. Encl. 6), for evaluating whether a particular demonstration project has the necessary properties for use in a license application. In explaining that a Demonstration Project “is one acceptable method” of demonstrating compliance with regulations for storage of HBF beyond 20 years, ISG-24 states in puzzling fashion that “[t]here is no evidence to suggest that HBF cannot . . . be stored safely and then retrieved for time periods beyond 20 years.” *Id.* at 2. But critically, there is no evidence to suggest that HBF *can* be stored safely for extended periods and subsequently retrieved, which is the applicant’s burden under 10 C.F.R. §§ 72.42 and 72.122. The NRC cannot eliminate an applicant’s regulatory burden through guidance.

ISG-24 also confirms that NSPM’s reliance on the Demonstration Project is simply a post-hoc method of acquiring necessary confirmatory data that NSPM must demonstrate before a 40-year renewal term can be issued. ISG-24 lists the categories of data that a Demonstration Project could produce, including “data for benchmarking, confirming predictive models, and updating aging management plans,” as well as data “[i]dentifying any aging effects that may be missed



through short-term accelerated studies and analyses.” *Id.* According to ISG-24, this data, if obtained, could provide “confirmation” that (1) data “used for the first 20-year predictions” could be extrapolated beyond 20 years and (2) “[t]he condition of the fuel, after an appropriately long period of storage, does not degrade.” *Id.* Critically, ISG-24 describes the very data and conclusions drawn therefrom that NSPM must now produce to satisfy its regulatory burden. Of course, the problem is that the data from the Demonstration Project upon which NSPM relies won’t be evaluated until 2028 *at the earliest*—17 years after NSPM filed its renewal Application. PIIC acknowledges that demonstration projects such as the proposed Demonstration Project can serve as important sources of confirmatory data, but their relevance to a license renewal proceeding depends on the data actually being available for evaluation at the time the application is submitted. The regulations require nothing less.

Use of a demonstration project in conformity with regulatory requirements is illustrated by the NRC’s practices with respect to low-burnup fuel (“LBF”). In the mid-1980s, the DOE procured three prototype dry storage casks for testing at the Idaho National Engineering and Environmental Laboratory (“INEEL”).<sup>5</sup> In 1999, a project was funded to examine the LBF in dry storage at the INEEL. *Id.* This “Dry Cask Storage Characterization Project” sought to (1) “[o]btain data to confirm the predicted long-term integrity of dry storage cask systems and spent nuclear fuel under dry storage conditions” and (2) “[p]rovide data to augment the technical bases and criteria for evaluating the safety of spent fuel storage and transportation systems, and for extending dry cask storage licenses.” *Id.* at 2. Notably, the Project was “intended to provide confirmatory data *to be used by licensees submitting an application* (no later than 2004 for the first licensee) for continuing dry storage beyond 20 years and by the NRC staff in their technical

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<sup>5</sup> Greeves Decl. Encl. 9 (NRC, Dry Cask Storage Characterization Project-Phase 1: CASTOR V/21 Cask Opening and Examination, at 1 (September 2001), available at ADAMS Acc. No. ML013020363).

licensing reviews.” *Id.* at 1-2. In fact, the NRC went so far as to state that an “[a]n analysis of past performance of selected components of [LBF] systems is *required* as part of th[e] technical basis” for renewal of licenses for extended LBF storage. *Id.* at 1. Unlike the pre-application collection of LBF confirmatory data which occurred in “preparation for possible license renewal[s],” *id.* at 1, so applicants could “demonstrate the safety of the continued storage of spent fuel for the requested term” of licensure, 10 C.F.R. § 72.42; 76 Fed. Reg. 8,880 (Feb. 16, 2011), NSPM’s intended collection of HBF data at a still-uncertain future time pursuant to ISG-24 is nothing more than a promise to demonstrate the safety of continued storage of HBF beyond 20 years at some point in the future.

Worse yet, data could have been generated much earlier in order to avoid the utter absence of confirmatory evidence that NSPM must now confront. After the first publication of ISG-11 in May 1999, the NRC identified a need for “a confirmatory dry storage demonstration program” for HBF. *See* Greeves Decl. Encl. 4 at v. “[T]he desirability for such a program further increased to obtain confirmatory data about the potential changes in cladding mechanical properties induced by dry storage” after the second revision of ISG-11 in 2002. *Id.* As a result, the DOE commissioned a study “to examine the options available for a confirmatory experimental program supporting regulatory acceptance of practical approaches for storing and later transporting” HBF. *Id.* at vii. Published in 2003, the study recommended various options for implementing needed research and noted that six utilities with existing ISFSIs, four dry storage system vendors, two fuel vendors, and six national laboratories expressed interest in supporting a demonstration project. *Id.* at v.

Despite a discussed rollout in 2003, no demonstration project has been implemented to date despite the fact that the NRC has known for at least 16 years that “confirmatory data” regarding

the safety of extended HBF storage is needed. It is against that backdrop that NSPM requests approval to store HBF at PI ISFSI for 40 years without any shred of confirmatory evidence that such storage is safe beyond 20 years. Reliance on future data collection, without more, cannot demonstrate *today* the safety of storing, retrieving, and transporting HBF during an extended period beyond 20 years. NSPM has fallen short of meeting its regulatory burden under 10 C.F.R §§ 72.42 and 72.122 as a matter of law, and PIIC is entitled to partial summary disposition of Contention 6 such that NSPM's renewal, if granted, not exceed 20 years.

ii. Proposed DOE Cask Demonstration Project at North Anna Power Station

Aside from the problems inherent in relying on *future* data to show safety *today*, there is strong reason to doubt that the Demonstration Project upon which NSPM relies will move forward as planned, if at all. NSPM asserts as “material facts” speculative predictions about the Demonstration Project that are predicated on a multitude of dubious assumptions:<sup>6</sup>

1. NSPM claims that the North Anna Power Station will host the Demonstration Project, which will entail loading and storing a TN-32 bolted lid cask with intact HBF. NSPM Statement of Material Facts, ¶ 13. But this is conditioned on an amendment to North Anna Power Station's current license that (1) permits loading of HBF in a TN-32 bolted lid cask and (2) includes requirements to avoid unmonitored release of radionuclides into the atmosphere. Greeves Decl. ¶ 25. There is no evidence that such amendments have been or will for certain be secured. *Id.*

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<sup>6</sup> NSPM's “facts” regarding the details and timing of the Demonstration Project are taken primarily from the declaration of its expert whose opinion is based on “subjective belief or unsupported speculation” rather than the “methods and procedures of science.” *See Duke Cogema Stone & Webster*, 61 N.R.C. at 80 (quoting *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 589-90 (1993)). For the express purposes of summary disposition, mere allegations are insufficient — and that includes allegations which are in the nature of speculation or bare conclusory statements by an expert. *See, e.g.*, 10 C.F.R. § 2.710(b); *see also Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), LBP-07-3, 65 NRC 237, 253 (2007); *Duke Cogema Stone & Webster*, 61 NRC at 80 (citing *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. at 589-90).

2. NSPM claims that the cask in the Demonstration Project will be instrumented to gather data used to confirm models and demonstrate compliance with ISG-11. NSPM Statement of Material Facts, ¶ 15. But this is based on the dubious assumption that sampling methods can be licensed, funded, and deployed without creating undue risk. Greeves Decl. ¶¶ 25-26. Obtaining samples will be technically difficult once the cask has been moved onto the ISFSI pad. *Id.* ¶ 26. The lack of an adequate sampling plan at this time is underscored by the Electric Power Research Institute's (EPRI) statement that it will continue to investigate and evaluate methods for performing gas sampling for the storage period. *Id.* ¶¶ 26-27. Moreover, NRC staff has also acknowledged the difficulty of implementing a research program in a sealed system such as the one proposed for the Demonstration Project. *Id.* ¶ 28. The NRC has neither approved nor reviewed processes for safely monitoring fuel temperature, moisture, or gas composition, under the proposed conditions of the Demonstration Project. *Id.* These facts call into question the feasibility of achieving the very purpose of the Demonstration Project: obtaining and evaluating confirmatory data with respect to the extended storage of HBF beyond 20 years.

3. NSPM claims that Demonstration Project data will be available for analysis on a quarterly basis, NSPM Statement of Material Facts, ¶ 16, but EPRI's final test plan for cavity gas pressure or gas sampling includes no such requirements. Greeves Decl. ¶ 27.

4. NSPM claims that the cask will remain in storage at the North Anna Power Station for at least 10 years, and will then be transported to another facility capable of handling the fuel in dry conditions where further evaluation will occur. NSPM Statement of Material Facts, ¶ 17. But again, transporting the cask to a second facility is premised on a number of assumptions. The DOE Idaho National Laboratory is being assessed for the capability to handle the Demonstration Project casks after their removal from the North Anna Power Station, but feasibility studies and

conceptual design studies have not been completed and funding has not been authorized. Greeves Decl. ¶ 30. Further, the U.S. Government is not in compliance with a 1995 Settlement Agreement for missing deadlines related to waste removal from the Idaho National Laboratory. *Id.* As a result, the DOE must renegotiate a difficult consent agreement with the State of Idaho before sending spent nuclear fuel to the Idaho National Laboratory. *Id.* The transport of the cask to a second facility is far from a certainty.

5. NSPM claims that formal evaluations of data collected from the Demonstration Project will be performed at various “Toll Gates” throughout the renewal period and that the first “Toll Gate” assessment will occur in 2028. NSPM Statement of Material Facts, ¶ 18. Again, the ability to analyze data at the first “Toll Gate” in 2028 is conditioned on many of the aforementioned assumptions, including obtaining necessary licensing, creating safe and effective sampling methods, and obtaining approval of an adequate site for casks to be transported for testing. Greeves Decl. ¶¶ 20-22.

In sum, the Demonstration Project relied upon by NSPM is nothing more than a proposal – a proposal based on a speculative, currently unsettled, and necessarily evolving research plan that does not provide adequate assurance that the research can be timely conducted in a technically acceptable manner and adequately inspected and documented within permitted constraints. Greeves Decl. ¶¶ 23-30. Perhaps this should be no surprise given that ISG-24 does not contain consensus based standards, criteria, or references, similar to those used in other AMPs. *Id.* ¶ 24. Accordingly, the Demonstration Project does not provide an adequate foundation upon which NSPM can satisfy its regulatory burden under 10 C.F.R §§ 72.42 and 72.122 with respect to extended storage of HBF beyond 20 years.

**C. A condition in a non-binding, yet-to-be-approved draft license to evaluate yet-to-be-collected data does not demonstrate the safety of storing HBF beyond 20 years.**

NSPM further points to a condition in a draft PI ISFSI renewed license that purports to require NSPM to submit to an evaluation of data acquired through the Demonstration Project prior to 20 years of storage. NSPM Mot. at 3. NSPM cannot satisfy its burden of demonstrating the safety of storage, retrieval, and transportation of HBF beyond 20 years with a draft license condition that is simply a mere promise to evaluate data in 2028. Furthermore, NSPM's ability to satisfy the condition is highly questionable given the likelihood that the Demonstration Project will not move forward as planned. Promises to submit to evaluations of data that may never be obtained aren't really promises at all.

NSPM also states that the NRC recently renewed a 40-year license for HBF storage at Calvert Cliffs that contained a substantially similar condition. However, the storage system at Calvert Cliffs is materially different from the system at the PI ISFSI. The Calvert Cliffs HBF Dry Storage Canisters are loaded in horizontal storage modules, include different cladding, and have histories distinct from casks at the PI ISFSI. Greeves Decl. ¶ 31. Furthermore, because the HBF safety issues raised in this proceeding were apparently not specifically investigated as a part of the Calvert Cliffs renewal, *id.*, that renewal has no bearing on whether NSPM has met its regulatory burden to obtain a 40-year renewal at the PI ISFSI.

**V. CONCLUSION**

PIIC simply seeks to ensure the "adequate protection of public health and safety" for the members of its community by putting NSPM to its regulatory burden of demonstrating that HBF can be safely stored, retrieved, and transported at the PI ISFSI. *See* 76 Fed. Reg. 8,880. Genuine issues of material fact exist as to whether NSPM has satisfied its burden during an initial 20-year term consistent with the requirements of 10 C.F.R §§ 72.42 and 72.122. The lack of any

evidence demonstrating that HBF can be safely stored, retrieved, and transported at the PI ISFSI beyond the initial 20 year period consistent with the requirements of 10 C.F.R §§ 72.42 and 72.122 compels partial summary disposition of Contention 6 in PIIC's favor. A renewed license, if granted, cannot permit storage of HBF at PI ISFSI in excess of 20 years. Accordingly, the Board should deny NSPM's motion for summary disposition, grant PIIC's motion for partial summary disposition, and proceed to a hearing on Contention 6 to determine whether NSPM is entitled to renewal and, if so, the duration of that renewal not to exceed 20 years.

## **VI. CERTIFICATION**

Counsel for PIIC has made a sincere effort to contact the parties to this proceeding to resolve the issues raised in PIIC's motion for partial summary disposition of Contention 6, *see* 10 § C.F.R. § 2.323(b), and certifies that this motion is not interposed for delay, prohibited discovery, or any other improper purpose. We believe in good faith that there is no genuine issue of material fact as to whether NSPM has satisfied its burden of demonstrating the safety of storing, retrieving, and transporting HBF after 20 years of storage, and that PIIC is therefore entitled to partial summary disposition under 10 C.F.R. § 2.1205 and 2.710(d). Counsel for NSPM stated that NSPM opposes PIIC's cross motion and counsel for NRC Staff stated that it takes no position on PIIC's cross motion and reserves the right to respond.

Respectfully submitted,

*/Signed electronically by Philip R. Mahowald/*

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April 27, 2015

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**Before the Atomic Safety and Licensing Board**

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	)	Docket No. 72-10-ISFSI-2
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(Prairie Island Nuclear Generating Plant,	)	ASLBP No. 12-922-01-ISFSI-MLR-
Independent Spent Fuel Storage Installation))	)	BRD01

**CERTIFICATE OF SERVICE**

Pursuant to 10 C.F.R § 2.305, I hereby certify that copies of the foregoing “PIIC’S  
ANSWER TO NSPM’S MOTION FOR SUMMARY DISPOSITION OF PIIC’S  
CONTENTION 6 (HIGH BURNUP FUEL) & CROSS MOTION FOR PARTIAL SUMMARY  
DISPOSITION OF PIIC’S CONTENTION 6 (HIGH BURNUP FUEL),” dated April 27, 2015,  
have been served upon the Electronic Information Exchange, the NRC’s E-Filing System, in the  
above captioned proceeding, this 27th day of April, 2015.

*/Signed electronically by Philip R. Mahowald/*

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