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June 29, 1979

Joseph Hendrie, Chairman
Victor Gilinsky, Commissioner
Richard Kennedy, Commissioner
Peter Bradford, Commissioner
John Ahearne, Commissioner
U. S. Nuclear Regulatory Commission
Washington, D.C. 20555

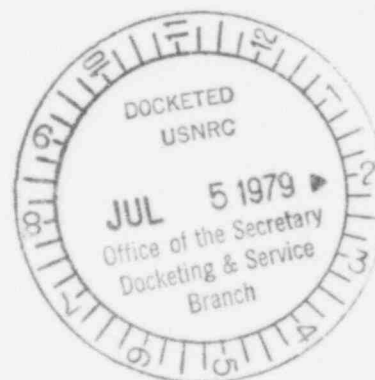
RE: Minnesota v. NRC, No. 78-1269
(D.C. Cir., May 23, 1979)

Gentlemen:

On June 18, 1979, Terry Hoffman, Executive Director, Minnesota Pollution Control Agency ("MPCA"), requested the Nuclear Regulatory Commission ("Commission") to reopen the record of the Prairie Island spent fuel pool modification proceeding for the purpose of taking additional evidence in response to the remand ordered by the United States Court of Appeals for the District of Columbia Circuit in the above-captioned proceeding. The Northern States Power Company ("NSP"), licensee of the Prairie Island Nuclear Generating Plant, opposes this request.

In its May 23, 1979 opinion, the Court of Appeals remanded the instant proceeding to the Commission "for clarification and consideration in the light of a related proceeding and other current developments" (slip op. at 3). While correctly stating that the Court does not dictate the procedures which the Commission must employ on the remand (slip op. at 11), the Court did opine that (id.):

The breadth of the questions involved and the fact that the ultimate determination can never rise above a prediction, suggest that the determination may be a kind of legislative judgment for which rulemaking would suffice.



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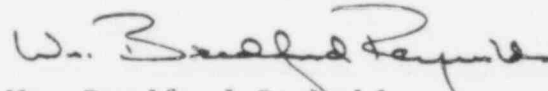
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In this regard, the Court confirmed its agreement with the legal position of the Commission that "it may proceed in these matters by generic determinations" (slip op. at 15-16).

The appropriateness of dealing with the remanded issues through a generic rulemaking proceeding is further expanded upon in the June 11, 1979 memorandum from Stephen F. Eilperin to the Commissioners. As Mr. Eilperin notes, there are some 21 spent fuel pool expansion applications presently pending before the Commission; of these, eight are currently before various hearing bodies of the Commission. To hold eight separate hearings on this generic issue, with the prospect for numerous other such hearings as additional applications are processed, would not serve to develop a comprehensive and meaningful record on which to resolve the remanded questions. This can best be accomplished by generic rulemaking. Furthermore, resolution of this issue in a rulemaking proceeding would make the results available for use in the Commission's consideration of construction permit and operating license applications.

For all these reasons, NSP urges the Commission to reject the request of MPCA that the remand ordered in Minnesota v. NRC be handled through piecemeal adjudication in individual licensing proceedings.

Respectfully submitted,



Wm. Bradford Reynolds
Counsel to Northern States
Power Company

WBR:pan

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