

UNITED STATES NUCLEAR REGULATORY COMMISSION

NORTHERN STATES POWER COMPANY

MONTICELLO NUCLEAR GENERATING PLANT

DOCKET NO. 50-263

Request to Withhold Proprietary Information from Public Disclosure

Northern States Power Company, a Minnesota corporation, hereby requests that a report provided to the NRC as an attachment to the letter titled "Submittal of Revised Information for the Cycle 18 Lead Use Assemblies" dated May 2, 1997, be withheld from public disclosure due to its proprietary nature. The details of this request are provided in the following affidavit:

AFFIDAVIT

I, Roger O. Anderson, being duly sworn, depose and state as follows:

- (1) I am Director, Licensing and Management Issues, Northern States Power Company ("NSP") and have been delegated the function of reviewing the information described in paragraph (2) which is sought to be withheld, and have been authorized to apply for its withholding.
- (2) The information sought to be withheld consists of a design report (NSPNAD-96001 Rev 2, dated January 1997 and entitled "Monticello Cycle 18 Final Reload Design Report") that has been provided to the NRC as an attachment to the letter titled "Submittal of Revised Information for the Cycle 18 Lead Use Assemblies" dated May 2, 1997. The report has the words "NSP Proprietary Information" on each page.
- (3) In making this application for withholding of proprietary information of which it is the owner, NSP relies upon the exemption from disclosure set forth in the Freedom of Information Act ("FOIA"), 5 USC Sec. 552(b)(4), and the Trade Secrets Act, 18 USC Sec. 1905, and NRC regulations 10CFR9.17(a)(4), and 2.790(d)(1) for "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (Exemption 4). The material for which exemption from disclosure is here sought is all "confidential commercial information", and some portions also qualify under the narrower definition of "trade secret", within the meanings assigned to those terms for purposes of FOIA Exemption 4 in, respectively, Critical Mass Energy Project v. Nuclear Regulatory Commission 975F2d871 (DC Cir. 1992), Public Citizen Health Research Group v. FDA, 704F2d1280 (DC Cir. 1983).
- (4) Some examples of categories of information which fit into the definition of proprietary information are:
  - a. Information that discloses a process, method, or apparatus, including supporting data and analyses, where prevention of its use by NSP's competitors without license from NSP constitutes a competitive economic advantage over other companies;
  - b. Information which, if used by a competitor, would reduce his expenditure of resources or improve his competitive position in the design, manufacture, installation, assurance of quality, or licensing of a similar product;

- c. Information which reveals aspects of past, present, or future NSP funded development plans and programs of potential commercial value to NSP;
- d. Information which discloses patentable subject matter for which it may be desirable to obtain patent protection.

The information sought to be withheld is considered to be proprietary for the reasons set forth in paragraphs (4)a. and (4)b. above.

- (5) The information sought to be withheld was submitted to NRC in confidence. The information is of a sort customarily held in confidence by NSP, and is in fact so held. The information sought to be withheld has, to the best of my knowledge and belief, consistently been held in confidence by NSP, no public disclosure has been made, and it is not available in public sources. All disclosures to third parties including any required transmittals to NRC, have been made, or must be made, pursuant to regulatory provisions or proprietary agreements which provide for maintenance of the information in confidence.
- (6) Public disclosure of the information sought to be withheld is likely to cause harm to NSP's competitive position and foreclose or reduce the availability of profit-making opportunities. The research, development, engineering, and analytical costs comprise a substantial investment of time and money by NSP. The value of this information to NSP would be lost if the information were disclosed to the public. Making such information available to competitors without their having been required to undertake a similar expenditure of resources would unfairly provide competitors with a windfall, and deprive NSP of the opportunity to exercise its competitive advantage to seek an adequate return on its investment in developing this design information.

This letter contains no restricted or other defense information.

NORTHERN STATES POWER COMPANY

By *Roger O Anderson*  
Roger O Anderson  
Director  
Licensing & Management Issues

On this 5<sup>th</sup> day of may 1997 before me a notary public in and for said County, personally appeared Roger O Anderson, Director, Licensing and Management Issues, and being first duly sworn acknowledged that he is authorized to execute this document on behalf of Northern States Power Company, that he knows the contents thereof, and that to the best of his knowledge, information, and belief the statements made in it are true and that it is not interposed for delay.

*Cynthia V Jakobson*

