Comments should reference the page number and section (either ESRP section or Introduction or appendices).

The updated ESRP in printed paper, 3.5-inch disks and compact disk (CD) versions, and comments submitted are available for inspection and copying for a fee at the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC 20555–0001.

A limited number of copies of the updated draft ESRP in printed paper and CD versions (in WordPerfect 6.1 format) are available free, to the extent of supply, upon written request to the Office of Information Resources Management, Distribution Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Dated at Rockville, Maryland, this 11th day of September, 1997.

For the Nuclear Regulatory Commission.

David B. Matthews,

Acting Chief, Generic Issues and Environmental Projects Branch, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 97–26269 Filed 10–2–97; 8:45 am]

BILLING CODE 7590–01–P

Nuclear Regulatory Commission

[Docket No. 72–10]

Northern States Power Company Issuance of Director's Decision Under 10 CFR 2.206 (DD–97–24)

Notice is hereby given that the Director, Office of Nuclear Material Safety and Safeguards, has issued a Director's Decision concerning a Petition dated August 26, 1996, filed by Carol A. Overland, on behalf of the Florence Township, Minnesota, Board of Supervisors (Petitioner), under Section 2.206 of Title 10 of the Code of Federal Regulations (10 CFR 2.206).

The Director of the Office of Nuclear Material Safety and Safeguards has determined that the Petition should be denied for the reasons stated in the ''Director's Decision Under 10 CFR 2.206'' (DD–97–24), the complete text of which follows this notice. The Decision and documents cited in the Decision are available for public inspection and copying in the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC.

A copy of this Decision has been filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c). As provided therein, this Decision will become the final action of the Commission 25 days after issuance unless the Commission, on its own motion, institutes review of the Decision within that time.

Dated at Rockville, Maryland, this 26th day of September 1997.

For The Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

Director's Decision Under 10 CFR 2.206

I. Introduction

On August 26, 1996, Florence Township, Minnesota (Petitioner) filed a petition requesting that the Nuclear Regulatory Commission (NRC) institute a proceeding pursuant to 10 CFR 2.202 with regard to the application by Northern States Power Company (NSP), claiming, that NSP violated the Commission's regulations by failing to provide Lake City, Minnesota, with an opportunity to comment on a proposed emergency plan for an independent spent fuel storage installation (ISFSI) before submission to the NRC. The Petitioner requested that NRC: (1) Determine that NSP violated the requirements of 10 CFR 72.32(a)(14) by refusing to allow Lake City, Minnesota, 60 days to comment on NSP's emergency plan before submitting it to NRC; (2) reject NSP's application as incomplete and inadequate and return it to the corporation; (3) require that NSP specifically name the local governments referred to in section 5.6 of the emergency plan which are expected to respond in case of an accident; (4) require that NSP allow 60 days to the named local governments to review and comment upon NSP's emergency plan prior to NSP's resubmission of the application; (5) impose a penalty in the amount of one million dollars and require NSP to compensate the Petitioner in the amount of $7,500.00 for time expended by its Board and attorney in attempting to obtain the emergency plan before its submission to the NRC; and (6) provide hearings on this petition at which the Petitioner and members of the public may participate.

The Petitioner asserts as the basis for this request the regulatory requirement found at § 72.32(a)(14) of Chapter 10 of the Code of Federal Regulations [10 CFR 72.32(a)(14)]:

> The licensee shall allow the offsite response organizations expected to respond in case of an accident 60 days to comment on the initial submittal of the licensee's emergency plan before submitting it to NRC. Subsequent plan changes need not have the offsite comment period unless the plan changes affect the offsite response organizations. The licensee shall provide any comments received within 60 days to NRC with the emergency plan.

The petition has been referred to me for a decision. For the reasons given below, I have concluded that the Petitioner's requests should be denied.

II. Background

NSP has an onsite ISFSI at Prairie Island Nuclear Generating Plant (PINGP), which has a capacity to store 1920 spent fuel assembles in 48 Transnuclear TN–40 casks. In 1994, the Minnesota legislature enacted statutes authorizing NSP to store spent nuclear fuel at the ISFSI. 1994 Minn. Laws ch 641, arts. 1, 6 (codified at Minn. Stat §§ 116C.77-.80(1996)). The legislation authorized the immediate use of five casks and allowed the use of four additional casks upon a determination that NSP had: (1) Filed a license application with NRC for a separate dry cask storage facility in Goodhue County; (2) continued a good faith effort to implement the alternate site; and (3) arranged for the use of additional megawatts of wind power. The law also provided that NSP could not construct at the second site without first obtaining a Certificate of Site Compatibility from the Minnesota Environmental Quality Board (MEQB). The MEQB was authorized to certify that the alternative Goodhue County site was comparable to the independent spent fuel storage facility site located on Prairie Island.

NSP applied for a certificate from the MEQB in July 1995. It identified two possible sites for the Goodhue County spent fuel storage facility, both in Florence Township, south of the City of Red Wing.[1] On October 2, 1996, after receiving the report of a citizen Advisory Task Force, the MEQB determined that because of the additional risks it believed to be inherent in transporting spent nuclear fuel to a second site in Goodhue County away from PINGP, no other site in Goodhue County would be comparable to the Prairie Island facility and denied a certificate.

NSP's application to NRC included an emergency plan for the Goodhue County facility, which contained comments from the Minnesota Departments of Public Safety and Public Health, as well as the Goodhue County, Minnesota, Office of Emergency Management which coordinates emergency services within the county. NRC completed its acceptance review and docketed the NSP application on September 9, 1996. A ''Notice of Consideration of Issuance of a Materials License for the Storage of

[1] One of these was the site chosen by NSP for inclusion in its application to NRC. It is described as being situated south of Frontenac Station, north of Wells Creek, and between Territorial Road and the CP Rail railroad tracks.

Spent Fuel and Notice of Opportunity for Hearing'' was published in the **Federal Register** on September 17, 1996. The Petitioner and several others sought a hearing as provided by 10 CFR 2.105. An Atomic Safety and Licensing Board (ASLB) was established on October 9, 1996. Among the issues raised in the petitions to intervene by the Petitioner and by Lake City, Minnesota, were issues associated with emergency planning, substantially similar to the issues raised by the Petitioner in the petition requesting that the NRC institute a proceeding pursuant to 10 CFR 2.202. Consequently, the staff deferred the response to the Petition until completion of the ASLB hearing process.

Because of the physical proximity of its Reservation to PINGP, the Prairie Island Indian Community had been particularly interested in seeing the offsite ISFSI built. Since the MEQB decision effectively ended the possibility of that facility being developed, the Indian Community initiated litigation in the Minnesota State Courts in December 1996, seeking to overturn the MEQB decision. When the litigation began, NSP requested and was granted a suspension of both NRC staff's review of the Goodhue County application and the ASLB proceeding, just prior to the pre-hearing conference which was scheduled for December 1996. State litigation ended in July 1997, when the Minnesota Supreme Count declined to hear an appeal of the Minnesota Court of Appeals ruling which affirmed the MEQB decision. Subsequently, in a letter dated July 22, 1997, NSP withdrew the Goodhue County application. NRC acknowledged the withdrawal in a letter dated August 4, 1997. The ASLB issued a Memorandum and Order terminating its proceeding on July 30, 1997. However, a motion for reconsideration is currently under review by the Board.[2]

III. Discussion

Section 72.32(a)(14) provides that the offsite response organizations expected by the licensee to respond to an on-site emergency should be provided an opportunity to comment on an ISFSI emergency plan.[3] As required by 10 CFR 72.32(a)(14), NSP contacted the offsite response organizations it expected to respond to an on-site emergency at the proposed Goodhue County facility. NSP requested comments from the Minnesota Departments of Public Safety and Public Health and the Goodhue County, Minnesota, Office of Emergency Management. All three responded to NSP's request. Their comments were provided to NRC with the emergency plan.

The Petitioner claims that because the Lake City, Minnesota, Fire Department contracts with Florence Township to provide fire protection, it is one of the offsite response organizations that NSP would contact in case of an on-site emergency at the Goodhue County ISFSI. Lake City is not located in Goodhue County, however, and therefore is not expected by the applicant to respond to an on-site emergency.

The emergency plan appropriate for an ISFSI is an on-site emergency plan. The staff has determined that there are no credible accidents at an ISFSI which have significance for offsite emergency preparedness.[4] There is no specific requirement that any particular political jurisdiction be contacted to comment on an ISFSI emergency plan. Rather, the applicant is required to determine which services it will require from offsite providers and to seek comments from those organizations. NSP did not indicate in the emergency plan that Lake City, Minnesota, was expected to respond to an on-site emergency. Further, no evidence has been provided that NSP, at the time of the submittal of the license application, had plans to seek emergency planning assistance from Lake City, Minnesota. Thus, there is no violation of 10 CFR 72.32(a)(14) to warrant any enforcement action.

The Petitioner raised several additional requests regarding NRC's review of NSP's Goodhue County application. These are matters which the NRC considers during the license review, not as part of a Petition filed under 10 CFR 2.206. Further, in light of the fact that NSP has now withdrawn the application, they are moot.

Conclusion

I have concluded that NSP did not violate NRC regulations by failing to provide Lake City, Minnesota, with an opportunity to respond to the proposed emergency plan. As provided by 10 CFR 2.206(c), a copy of this Decision will be filed with the Secretary of the Commission for the Commission's review.

Dated at Rockville, Maryland, this 26th day of September, 1997.

For The Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 97–26273 Filed 10–2–97; 8:45 am]

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[2] On July 30, 1997, the Petitioner filed a response to NSP's July 24, 1997, Motion for Withdrawal of Application and Termination of Proceeding. In the response, the Petitioner requested that the ASLB dismiss the NSP application with prejudice, or alternatively, deny NSP's application, or impose a condition of withdrawal that the application for the Florence Township site shall not be resubmitted. The ASLB considered this Petitioner's June 30, 1997, submittal to be a motion for reconsideration. On August 29, 1997, the staff responded that Florence Township's motion for reconsideration should be denied on the basis that the proceeding had not sufficiently progressed such that dismissal with prejudice is appropriate, and on the basis that Florence Township has not demonstrated legal harm warranting the relief it requests.

[3] The regulatory requirements for comments on the emergency plans for ISFSIs, like the requirements for the emergency plans, are separate and quite different from those for nuclear reactors. The requirements for emergency plans for ISFSIs are for on-site emergencies only. Because offsite health effects have not been identified for accidents at ISFSIs, there is no requirement for neighboring jurisdictions to be involved in emergency response. There is, for instance, no requirement for evacuation planning and hence no need for the kinds of more elaborate plans associated with nuclear reactors.

[4] See NUREG–1140, ''A Regulatory Analysis on Emergency Preparedness for Fuel Cycle and Other Radioactive Material Licensees.''

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39143; File No. SR–Amex–97–29]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to Listing and Trading of DIAMONDS℠ Trust Units

September 29, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 11, 1997, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to list and trade under Amex Rules 1000 *et seq.* DIAMONDS℠, units of beneficial interest in the DIAMONDS Trust. In addition, the Exchange proposes to adopt Amex Rule 1005, ''Dow Jones Indexes,'' relating to license and warranty issues. The text of the proposed rule change is available at the