



PRAIRIE ISLAND INDIAN COMMUNITY
LEGAL DEPARTMENT

July 18, 2012

Mr. Kevin Hsueh
T-8F05
U.S. Nuclear Regulatory Commission
Washington, DC 20555

RE: Prairie Island Independent Spent Fuel Storage Installation Proposed License
Renewal (Docket 72-10)

Dear Mr. Hsueh:

In response to Larry Camper's June 14, 2012 letter initiating National Historic Preservation Action Section 106 Consultation for the above-referenced regulatory action, as required by the National Environmental Policy Act (NEPA), the Prairie Island Indian Community ("Community" or "Tribe") offers the following information and comments.

The Prairie Island Indian Community is a federally recognized Indian tribe. The Tribe's Reservation is located on the ancestral homeland of the Mdewakanton Dakota on Prairie Island, which is formed at the confluence of the Vermillion and Mississippi Rivers in southeastern Minnesota (approximately 35 miles southeast of the Twin Cities of Minneapolis and St. Paul, Minnesota). The Mdewakanton, "those who were born of the waters," have lived on Prairie Island for countless generations. The Tribe's current land base (including both trust and fee lands) has grown through various federal acts beginning in 1891 and direct purchases by the Tribal Council, and now totals over 3,000 acres (including both land and water).

The Prairie Island Nuclear Generating Plant ("PINGP"), owned by Northern States Power Company, a Minnesota corporation, d/b/a Xcel Energy ("NSPM"), is also located on Mdewakanton Dakota ancestral lands and immediately adjacent to the Prairie Island Indian Community Reservation. The PINGP's Independent Spent Fuel Storage Installation ("ISFSI") is approximately 600 yards from the nearest Community residences. *See Figure 1 on Page 2.*

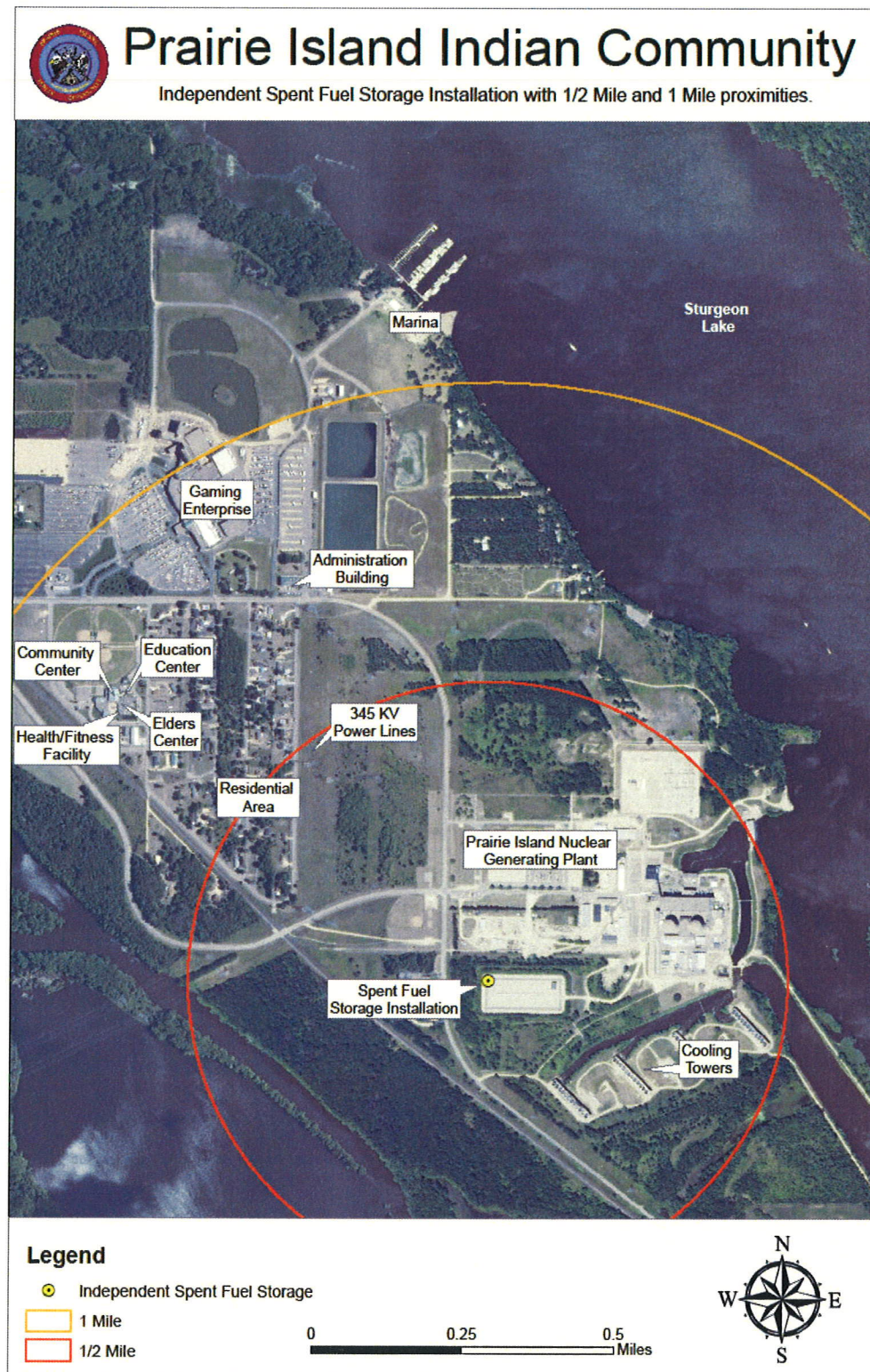


FIGURE 1

To our knowledge, there is no community closer to an ISFSI than ours. If the PINGP is decommissioned in 2034, the spent nuclear fuel will require a total of 98 casks.

While the archaeological and cultural resources within and around the Prairie Island ISFSI are extremely important to our Tribe, the Prairie Island Indian Community is also interested in and concerned about other potential health and environmental impacts and the environmental justice considerations implicated by this license renewal application. We hope that all of the Tribe's concerns will be addressed via the NEPA process.

We also remain concerned that this license renewal application is but the first of many renewal applications since there is currently no federal repository to receive and dispose of spent nuclear fuel, and there is considerable uncertainty about whether and to what extent our nation's nuclear waste and nuclear waste storage policies will be rewritten.

Archaeological Concerns

Prairie Island is rich in archaeological resources. These archaeological resources are an important part of the Prairie Island Indian Community's history and culture. Over the years there have been many archaeological surveys documenting and recording hundreds of prehistoric archaeological sites over the entire length of Prairie Island. These sites include burial mounds, habitation sites, and lithic scatters.

In recent years there have been a number of archaeological surveys conducted within the boundaries of the PINGP. We are concerned, however, that very little archaeological survey work was conducted in the immediate vicinity of the ISFSI *prior* to the construction of the ISFSI. The archaeological survey work used in the 1992 NRC ISFSI licensing proceedings was conducted in 1967 and has been found to be an unreliable source of information. Furthermore, the recent archeological surveys, upon which Xcel will rely to show no impacts, were very limited in nature, especially in the area of the ISFSI. These concerns are especially relevant given the NRC's decision to evaluate the expected expansion of the ISFSI in the cumulative effects analysis.

The NRC's 1992 Environmental Assessment ("EA") for the ISFSI license referenced a 1967 archaeological survey (conducted prior to the construction of the PINGP) that concluded, "nothing significant in the immediate area of the power plant or ISFSI was found." The EA further states that "no other areas of historical, archaeological and cultural significance are found within the site boundary." No information was provided relative to the aerial extent of the 1967 archaeological survey. (ML090260415, July 1992.)

NSPM's Environmental Report ("ER") for the original ISFSI license application also

referenced the 1967 survey work, stating that nothing significant was found in the immediate power plant or ISFSI areas. The reference cited for this information was the US Atomic Energy Commission's 1970 Final Environmental Statement ("FES") for the construction of the PINGP. No construction impacts (to archaeological sites) were discussed in the FES. The only archaeological reference cited in the FES was a published paper detailing Dr. Eldon Johnson's excavation of the Birch Lake Mound Site, located within the PINGP property boundaries, but well away from the ISFSI construction site.

Prior to the construction of the PINGP, NSPM hired Dr. Eldon Johnson (then, the State Archaeologist) to conduct archaeological surveys of the area. We learned, through the PINGP relicensing process, that Dr. Johnson was primarily interested in excavating the burial mounds, such as the Birch Lake Mound site that were located far from the PINGP construction site (and no where near the ISFSI site). In the immediate vicinity of the PINGP, Dr. Johnson conducted some mechanical trenching operations (close to the Mississippi River) and possibly some other work (mapping) in 1967. Unfortunately, as an NSPM-commissioned literature review and synthesis of all archaeological surveys and reports determined, the 1967 work was not well documented and the "excavation units could not be re-located and no map or specific notes of the surveyed locations from that year are currently available."

That was the extent of the archaeological survey work (or even a literature review) conducted prior to the construction of the ISFSI. There does not seem to be any evidence that any actual fieldwork took place in the vicinity of the ISFSI. We bring this to your attention because this work – the very limited and undocumented 1967 survey – served as the basis for the archaeological analysis for NSPM's ER and the NRC's 1992 EA for the ISFSI license.

In 2009 NSPM contracted with Merjent to conduct a Phase I archaeological survey, as required by the Settlement Agreement between the Prairie Island Indian Community and NSPM to settle Contention 1 of the PINGP relicensing adjudicatory proceedings. The 2009 Phase I archaeological survey conducted by Merjent was termed "limited" because shovel testing was not done in areas of inadequate ground visibility. The report states that "there is a possibility of deeply prehistoric archaeological sites across most of the Plant grounds, most recently demonstrated by a geomorphology study by Carl Hudak (2009)." Dr. Hudak's survey identified a paleosol, which is a stable surface capable of preserving cultural materials, at up to 3 meters deep. The Merjent report also states that "prehistoric archaeological sites could be buried under parking lots, modular buildings or other structures or features within the Plant." Shovel testing only provides information for the top meter of any location.

The 2009 report briefly mentions the work done by Dr. Johnson in the 1960s: "And the

lack of documentation from the archaeological salvage operations of the 1960s, *left doubts that the entire grounds of the plant had been surveyed, and that all mounds had been discovered and recorded* (emphasis added).” Indeed, the 2009 survey identified a previously unrecorded mound site. Again, we are presented with clear evidence that the ISFSI was not properly surveyed before it was constructed.

The 2009 survey of the ISFSI area found that while most of the area had been heavily disturbed by the construction of the PINGP and ISFSI, there was “some potential for deeply buried sites beneath zones of superficial disturbance, and also for sites that may be relatively intact but covered with fill.” Furthermore, the report goes on to state that in spite of heavy disturbance in the area of the ISFSI, “*there are select areas that appear to remain largely undisturbed, and that have the potential to contain intact prehistoric and historic archaeological deposits* (emphasis added).” Within the ISFSI area, specific relatively undisturbed sites include: 1) the area between the ISFSI and the Protected Area; and 2) the fenced area surrounding the ISFSI. The survey found no prehistoric or historic features in these areas, but recognized that there is potential for archaeological resources in minimally disturbed areas that are covered in vegetation. These particular areas need special attention in the EA as the NRC considers cumulative impacts from the expected expansion of the ISFSI.

NSPM submitted an archaeological report by Westwood Professional Services as a supporting document to its ISFSI ER. The report raises many questions. This report apparently also references the conclusions of the 1967 survey work by Johnson that there “no archaeological resources found in the vicinity of the ISFSI site during investigations conducted during the licensing process.” As previously stated, there was no new archaeological survey work done prior to ISFSI construction and that the initial licensing documents and environmental reports and assessments relied on the 1967 work.

On page 2 of the Westwood report, it is stated that because of NSPM policies Westwood personnel were not allowed to excavate the test pits on site. Rather, NSPM personnel excavated the 8 test pits (approximately 1 foot in width and 6 feet in depth); the material removed from the test pits was stored until the archeologists could inspect the soil profiles and screen the removed matrix.

With regard to the NSPM regulations apparently specifying that all ground-disturbing activities be conducted by PINGP personnel only, we question (and the Westwood report does not specify) whether a trained archeologist was on site at least to observe that correct excavation procedures were followed. Without a trained archeologist on-site to observe the methodology, it cannot be documented that the test pits were excavated (and material stored) according to the MN State Historic Preservation Office (SHPO) guidelines for archeological projects. It is interesting to note that the 2009 Merjent report,

when discussing shovel testing or coring, also recommended that an archaeologist be present to observe ground disturbing activities. Finally, we would be interested in knowing how long and under what conditions the material was stored.

The 8 test pits inside the ISFSI fence line were approximately 6 feet deep, and although the report does specify, the intervals appear to vary from 200 to 400 feet. This area was significantly impacted by the construction of the ISFSI and PINGP. According to the Westwood report, no prehistoric or historic artifacts were recovered. As we discussed above, however, the 2009 Merjent Report concluded that within the ISFSI area, specific relatively undisturbed sites (between the ISFSI and the Protected Area the fenced area surrounding the ISFSI) have the potential to contain intact prehistoric and historic archaeological deposits. And finally, the 2009 Hudak surevy documented a paleosol at 3 Meters and the 2009 Merjent report reminds us that “there is a possibility of deeply prehistoric archaeological sites across most of the Plant grounds.”

The NRC should consider all of this information when evaluating the cumulative impacts of relicensing and expanding the ISFSI.

Recommendations

We offer the following recommendations:

- An archaeologist must evaluate the information (reports, etc.) and prepare the Section 106 portions of the EA.
- The EA must consider impacts to all archaeological sites within the Area of Potential Effect (APE), not just those sites listed on the National Register of Historic Places (NRHP). There are sites within the PINGP that are eligible for listing on the NRHP or whose status has not been evaluated.
- The NRC should request a copy of the 2009 Merjent Study (limited Phase I), which discusses, in greater detail, the archaeological resources within the PINGP.
- The NRC should request a copy of the 2009 Hudak study, which documented the paleosol.

We thank you for this opportunity to provide information to the NRC regarding the license renewal of the ISFSI at the PINGP.

Prairie Island Indian Community Comments Regarding Section 106 Consultation

Mr. Kevin Hsueh

July 18, 2012

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We would be glad to discuss this matter with you further. Please feel free to contact me at (651) 267-4006 if you have any questions or need any additional information.

Sincerely,



Phillip R. Mahowald

General Counsel

cc: Ms. Jean Trefethen (via email at Jean.Trefethen@nrc.gov)