

PIEnvISFSIPEm Resource

From: Trefethen, Jean
Sent: Thursday, January 19, 2012 3:56 PM
To: Hsueh, Kevin; Longmire, Pamela
Subject: PI site visit and MOU
Attachments: PI MOU ML081610273.pdf

Good afternoon,

I just got off the phone with Allan Barker from Region III. We discussed opportunities for a PI ISFSI site visit and he recommended that we come when they have their end of cycle meeting. We can get a lot accomplished at this meeting as most of the players we want to see will already be gathering together for the public meeting and a Gov to Gov meeting that are planned. RIII also schedules a performance assessment meeting with the PI tribal council at or about the same time. The date has not been set yet but we should expect it to occur in the end of March or in April. Allan will get back to me next week to let me know if the dates have been firmed up at all.

Allan also shared with me that Heather Westra and he spoke about what worked well for the PINGP license renewal and she said that the communications were excellent in large part because of an MOU between the NRC and the PIIC. I have attached this MOU, I am going to review it this afternoon. She suggested that it clearly laid out responsibilities and this greatly facilitated the process. I am not sure about the entire process of writing an MOU but we might consider creating one that mirrors the attached NRR MOU.

Let me know your thoughts. Have a great afternoon.

Jean

U.S. Nuclear Regulatory Commission
Office of Federal and State Materials and
Environmental Management Programs
Environmental Project Manager

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**Memorandum of Understanding Between
The U.S. Nuclear Regulatory Commission
and
The Prairie Island Indian Community
as a Cooperating Agency**

I. Introduction

This Memorandum of Understanding (MOU) establishes a cooperating agency relationship between the U.S. Nuclear Regulatory Commission (NRC) and the Prairie Island Indian Community (PIIC) for the purpose of preparing the Supplemental Environmental Impact Statement (SEIS) for renewing the licenses for the Prairie Island Nuclear Generating Plant, Units 1 and 2 (PINGP).

The NRC shall be the lead federal agency, and shall supervise the preparation of the PINGP SEIS. The NRC acknowledges that the PIIC requested to be a Cooperating Agency for preparation of the PINGP SEIS. The NRC grants the PIIC's request and recognizes the PIIC has special expertise in the following areas listed in Section IV B. of this document. This MOU describes responsibilities and procedures agreed to by the PIIC, as a Cooperating Agency, and the NRC, as the Lead Agency; the PIIC and the NRC are the Parties to this MOU. The cooperating agency relationship established through this MOU shall be governed by all applicable statutes, regulations, and policy, including the NRC's regulations (in particular 10 C.F.R. Part 51).

II. Purpose

The purposes of this MOU are:

- A. To designate the PIIC as a Cooperating Agency in the PINGP SEIS process.
- B. To provide a framework for cooperation and coordination between the NRC and the PIIC that will aid in the successful completion of the PINGP SEIS in a timely, efficient, and thorough manner.
- C. To recognize that the NRC is the lead agency with responsibility for the completion of the PINGP SEIS.
- D. To describe the respective responsibilities, jurisdictional authority, and expertise of each of the Parties in the planning process.

III. Authorities for the MOU

- A. The authorities of the NRC to enter into and engage in the activities described within this MOU include, but are not limited to:
 - 1. National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*)
 - 2. The Atomic Energy Act (42 U.S.C. 2011 *et seq.*)
 - 3. The NRC regulations (10 C.F.R. Part 51 – *Code of Federal Regulations*, Title 10, Energy, Part 51, “Environmental Protection Regulations for Domestic Licensing and Related Regulation Functions.”)
- B. The authorities of the PIIC to enter into and engage in the activities described within this MOU include, but are not limited to:
 - 1. The Department of Interior regulations (25 U.S.C. Section 476bb -. *United States Code*, Title 25, Indians, Chapter 14, Miscellaneous, Subchapter II, Indian Self-Determination and Education Assistance, Part D - Tribal Self-Governance).
 - 2. The Constitution and Bylaws adopted by the Tribal Members on May 23, 1936, and approved by the Secretary of the Interior on June 20, 1936, as amended.

IV. Roles and Responsibilities

- A. The NRC Responsibilities:
 - 1. As lead agency, the NRC retains final responsibility for the content of all documents, which include the Draft PINGP SEIS and the Final PINGP SEIS. The NRC’s responsibilities include identifying the purpose of and need for the PINGP SEIS; selecting alternatives for analysis; determining effects of the proposed alternatives; making recommendations on the proposed action; evaluating appropriate mitigation measures; and preparing the draft and final SEIS for PINGP’s license renewal. In meeting these responsibilities, the NRC will follow the guidance set forth in NUREG-1555, Supplement 1, *Standard Review Plans for Environmental Reviews for Nuclear Power Plants, Supplement 1: Operating License Renewal*; and all applicable statutory and regulatory requirements.
 - 2. To the fullest extent consistent with its responsibility as lead agency, the NRC will utilize the comments, recommendations, data, and/or analyses provided by the PIIC in the PINGP SEIS process, giving particular weight to those topics on which the PIIC is acknowledged to possess special expertise.
 - 3. The NRC will provide the PIIC with copies of documents underlying the PINGP SEIS relevant to the PIIC’s responsibilities, including technical reports, data, analyses, comments received, and sections of substantive working drafts of the Draft and Final SEIS specific to the PIIC’s areas of special expertise, subject to the NRC’s information handling requirements.

4. The NRC staff will identify milestones in the standard license renewal review schedule to incorporate activities listed in Attachment B to this MOU.

B. Cooperating Agency Responsibilities:

1. The PIIC is a Cooperating Agency for developing the PINGP SEIS and is recognized to have special expertise in the following areas as they relate to the PIIC:
 - a. Historic and Archeological Resources
 - b. Socioeconomics
 - c. Land Use
 - d. Environmental Justice
2. The PIIC will work with the NRC to mutually coordinate, prioritize, identify and manage tasks to provide information, comments, and technical expertise to the NRC regarding those topics, and the data and analyses supporting them, in which it has special expertise or for which the PIIC requests its participation. The NRC and the PIIC will identify staff to implement and coordinate these activities. In particular, the PIIC may provide information on the following topics:
 - a. Identification and preservation of the PIIC historic, cultural and archaeological Indian tribe resources
 - b. Socioeconomic data and analysis directly related to the PIIC
 - c. Land use data and analysis directly related to the PIIC
 - d. Environmental justice data and analysis directly related to the PIIC
3. Within its areas of expertise, the PIIC may participate in any of the activities identified in Attachment A. These activities include, but are not limited to: identifying data needs, identifying effects of alternatives, identifying cumulative impacts, suggesting mitigation measures, and providing written comments on sections of substantive working drafts of the Draft and Final SEIS and supporting documents.
4. When the PIIC provides information, technical analyses, data sets or comments, it will provide the data and other information to be used in developing the PINGP SEIS, within the schedule identified in Attachment B.

C. Responsibilities of the Parties:

1. The Parties agree to participate in this planning process in good faith and make all reasonable efforts to resolve disagreements.
2. The Parties agree to comply with the review schedule, which incorporates specific milestones provided in Attachment B and includes dates for PINGP SEIS milestones and timeframes for PIIC's reviews and submissions.
3. Each Party agrees to fund its own expenses and costs associated with the PINGP SEIS process.

V. Other Provisions

- A. **Authorities Not Altered.** Nothing in this MOU alters, limits, or supersedes the authorities and responsibilities of any Party on any matter within their respective jurisdictions. Nothing in this MOU shall require any of the Parties to perform beyond its respective authority.
- B. **Financial Obligations.** Nothing in this MOU shall require any of the Parties to assume any obligation or expend any sum in excess of authorization and appropriations available. This MOU does not obligate any funding.
- C. **Immunity and Defenses Retained.** Each Party retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of this MOU. The PIIC does not waive sovereign immunity by entering into this MOU and specifically retains immunity and all defenses available to it as a sovereign identity and all other applicable laws.
- D. **Conflict of Interest.** The Parties agree not to utilize any individual for purposes of environmental analysis, or the PIIC representation, including officials, employees, or third party contractors, having a financial interest in the outcome of the PINGP SEIS.
- E. **Documenting Disagreement or Inconsistency.** As described in IV.B.3 above, the NRC staff will provide an opportunity for the PIIC to review sections of substantive working drafts of the Draft and Final SEIS specific to the PIIC's areas of special expertise. Where the NRC and the PIIC disagree on significant elements of the PINGP SEIS (such as designation of the alternatives to be analyzed or analysis of effects), and these disagreements cannot be resolved, the PIIC may document its views and submit them as comments to the Draft and Final SEIS.
- F. **Management of Information.** The PIIC acknowledges that all data and information provided will become part of the NRC's official record and will be available for public review, except that NRC may withhold information from the public that is exempt from disclosure under the Freedom of Information Act and other applicable statutory authorities. The PIIC agrees that internal working draft documents for the development of the PINGP SEIS will not be made available for review by individuals or entities other than the Parties to this MOU.

Information the PIIC considers confidential, proprietary, Sensitive Unclassified Non-Safeguards Information or protected under NRC regulations will be labeled according to requirements in 10 C.F.R. § 2.390. In particular, all signatories and concurring parties shall ensure that shared data, including data concerning the precise location and nature of historic properties and properties of religious and cultural significance are protected from public disclosure to the greatest extent permitted by law, including conformance to Section 304 of the National Historic Preservation Act, as amended and Section 9 of the Archaeological Resources Protection Act and Executive Order No. 13007 on Indian Sacred Sites (*Federal Register*, Vol. 61 No. 104, May 24, 1996).

In cases where the license applicant provides information it considers confidential or proprietary, PIIC agrees that such information is to be held confidential and kept separate from the information necessary for the environmental analysis. Should the PIIC cause any distribution of confidential or proprietary information to occur, the PIIC

will return the information to the NRC and the PIIC may have its cooperating agency status terminated.

The PIIC agrees that in order to allow full and frank discussion of preliminary analysis and recommendations, meetings to review such pre-decisional and deliberative documents will not be open to the public.

- G. **Responsibility for Decision Making.** While the Parties agree to make reasonable efforts to resolve procedural and substantive disagreement, they acknowledge that the NRC retains final responsibility for the decisions identified in the PINGP SEIS.
- H. **MOU Limitations.** Nothing in this MOU is intended to confer a binding or enforceable right of action on any party.
- I. **Retention of Rights.** Cooperating agency status for the PINGP SEIS does not preclude the PIIC from participating in the NEPA process according to the provisions in 10 C.F.R. Part 51.

VI. **Agency Representatives**

Each Party will designate a representative and alternate representative, as described in Attachment C, to ensure coordination between the PIIC and the NRC during the planning process. Each Party may change its representative at will by providing written notice to the other Party.

VII. **Administration of the MOU**

- A. **Approval.** This MOU becomes effective upon signature by the authorized officials of all the Parties.
- B. **Amendment.** This MOU may be amended through written agreement of all signatories.
- C. **Termination.** If not terminated earlier, this MOU will end when the Final PINGP SEIS is issued by the NRC. Any Party may end its participation in this MOU by providing written notice to the other Party.
- D. **Entirety of Agreement.** This MOU, including Attachments A, B, and C, consisting of nine (9) pages represents the entire and integrated MOU between the parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.

VIII. Signatures

The Parties hereto have executed this MOU on the dates shown below.

/Original signed by R. Johnson/	June 17, 2008
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Ronald Johnson, Tribal Council President Prairie Island Indian Community (Cooperating Agency) 5636 Sturgeon Lake Road Welch, MN 55089	Date

/Original signed by E. Leeds/	June 14, 2008
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Eric Leeds, Director Office of Nuclear Reactor Regulation U. S. Nuclear Regulatory Commission (Lead Agency) 11545 Rockville Pike Rockville, Maryland 20852	Date

Opportunities for Cooperating Agency Participation in the PINGP SEIS

	PINGP SEIS Stage	Potential Activities of the Prairie Island Indian Community (PIIC) within its acknowledged areas of special expertise
1	Conduct scoping and identify issues	Identify significant issues; identify relevant local and regional organizations and interest groups.
2	Collect inventory data	Identify data needs; provide data and technical analyses within the PIIC's areas of special expertise.
3	Estimate effects of alternatives	Provide effects analysis and/or comments within the PIIC's areas of special expertise; identify effects within the PIIC's areas of special expertise.
4	Propose mitigation measures	Suggest mitigation measures to reduce impacts of proposed action and alternatives. Decision to select mitigation measures for analysis is reserved to the NRC.
5	Select the preliminary recommendation regarding the proposed action; issue Draft PINGP SEIS	Collaborate with the NRC project manager in evaluating alternatives and in developing criteria for selecting the preliminary recommendation regarding the proposed action; provide input on sections of substantive working drafts of the Draft SEIS specific to the PIIC's areas of special expertise, subject to the NRC's information handling requirements. The PIIC may provide written, public comments on the Draft SEIS, if desired. Decision to select the preliminary recommendation is reserved to the NRC.
6	Respond to comments	Review comments within the PIIC's areas of special expertise and assist in preparing responses, as appropriate.
7	Working draft of the Final PINGP SEIS	NRC staff will provide sections of substantive working drafts of the Final SEIS specific to the PIIC's areas of special expertise for its review in accordance with this MOU.
8	Select the final recommendation regarding the proposed action; issue Final PINGP SEIS	Action reserved to the NRC.

Schedule

	Potential Activities of Cooperating Agency (PIIC) within its acknowledged areas of expertise	Input to NRC needed by
1	Provide data and information identified under Section IV(B)(2) of the MOU to NRC.	Within 60 calendar days of MOU signing by NRC and PIIC representatives
2	Provide review comments on sections of substantive working drafts of the Draft SEIS specific to the PIIC's areas of special expertise before it is sent to publishing as an official Draft SEIS for public comments; attend draft SEIS review meeting.	Within 15 business days of receiving applicable sections of the working draft of the Draft SEIS for review
3	Provide comments on the Draft SEIS, as appropriate.	Within the time period identified in the <i>Federal Register</i> Notice for publication of the Draft SEIS for public comment
4	Provide comments on sections of substantive working drafts of proposed responses to public comments on the Draft SEIS, specific to the PIIC's areas of special expertise.	Within 10 business days of receiving draft compilation of comments and responses
5	Provide comments on sections of substantive working drafts of the Final SEIS, specific to the PIIC's areas of special expertise.	Within 15 business days of receiving applicable sections of the working draft of the Final SEIS for review

Agency Representatives

U.S. Nuclear Regulatory Commission

Primary Representative: Richard Plasse, Project Manager
(301) 415-1427

Backup Representative: To Be Determined

Prairie Island Indian Community

Primary Representative: Heather J. Westra, Interim Director
Land and Environment Department
(651) 329-5796

Backup Representative: Philip R. Mahowald, General Counsel
(651) 267-4006