

## PIEnvISFSIPEm Resource

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**From:** Trefethen, Jean  
**Sent:** Tuesday, September 18, 2012 4:33 PM  
**To:** 'Heather Westra'  
**Cc:** 'Pmahowald@piic.org'; Hair, Christopher; Lemoncelli, Mauri; Hsueh, Kevin; Barker, Allan  
**Subject:** Revised MOU for PI ISFSI relicensing  
**Attachments:** Draft Final MOU with PIIC for ISFSI.docx

Heather,

Attached please find a revised copy of the MOU. We believe that we have incorporated all of the changes discussed at last Friday's meeting. We left changes in alternate colored text to ease your review of the changes made. Please review and provide any comments or suggestions you have. I am available via email or phone (240-751-5358) if you have any questions or would like to discuss the MOU.

Have a great day.

Jean

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

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**From:** Trefethen, Jean

**Created By:** Jean.Trefethen@nrc.gov

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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 Environmental Assessment (EA) for renewing the licenses for the Prairie Island Independent Spent Fuel Storage Installation (PI ISFSI).

The NRC shall be the lead federal agency, and shall supervise the preparation of the PI ISFSI EA. The NRC acknowledges that the PIIC requested to be a Cooperating Agency for preparation of the PI ISFSI EA. 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 PI ISFSI EA 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 PI ISFSI EA in a timely, efficient, and thorough manner.
- C. To recognize that the NRC is the lead agency with responsibility for the completion of the PI ISFSI EA.
- 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. The NRC’s responsibilities include identifying the purpose of and need for the PI ISFSI EA; selecting alternatives for analysis; determining effects of the proposed alternatives; making recommendations on the proposed action; evaluating appropriate mitigation measures; and preparing the EA for PI ISFSI’s license renewal. In meeting these responsibilities, the NRC will follow the guidance set forth in NUREG-1748 *Environmental Review Guidance for Licensing Actions Associated with NMSS Programs, Final Report*; and all applicable statutory and regulatory requirements. ~~First MOU had evaluating appropriate mitigation measures, can we discuss this, especially in light of cumulative impacts analysis.~~
  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 PI ISFSI EA process, giving particular weight to those topics on which the PIIC is acknowledged to possess special expertise. ~~Should the NRC determine that preparation of an environmental impact statement (EIS) is necessary for the project, the PIIC’s roles and responsibilities, as memorialized herein, will carry forward for purposes of EIS development. The schedule for completing any EIS would be in accordance with Attachment C. If it is determined that an EIS is needed, how will Prairie Island be involved?~~
  3. The NRC will provide the PIIC with copies of documents underlying the PI ISFSI EA relevant to the PIIC’s responsibilities, including technical reports, data, analyses, and

drafts of the EA 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 PI ISFSI EA and is recognized to have special expertise in the following areas as they relate to the PIIC:
  - a. Historic and Archaeological 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 the effects of alternatives, identifying cumulative impacts, suggesting mitigation measures, and providing written comments on sections of the EA.
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 PI ISFSI EA, 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 timeframes for PIIC's reviews and submissions.
3. Each Party agrees to fund its own expenses and costs associated with the PI ISFSI EA 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 PI ISFSI EA.
- 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 drafts of the EA specific to the PIIC's areas of special expertise. Where the NRC and the PIIC disagree on significant elements of the PI ISFSI EA, and these disagreements cannot be resolved, the PIIC may document its views and submit them as comments to the EA to be incorporated in the final document as appropriate.
- 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 PI ISFSI EA 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 PI ISFSI EA.
- 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 PI ISFSI EA 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 PI ISFSI EA 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, C, and DG, consisting of ~~ten~~ ten (109) pages represents the entire and integrated MOU between the parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.

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### VIII. Signatures

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

<a href="#">Jenny Johnny</a> Johnson, Tribal Council President Prairie Island Indian Community (Cooperating Agency) 5636 Sturgeon Lake Road Welch, MN 55089	Date

Mark Satorius, Director Office of Federal and State Materials and Environmental Management Programs U. S. Nuclear Regulatory Commission (Lead Agency) 11545 Rockville Pike Rockville, Maryland 20852	Date



**Opportunities for Cooperating Agency Participation in the PI ISFSI EA**

	<b>PI ISFSI EA Stage</b>	<b>Potential Activities of the Prairie Island Indian Community (PIIC) within its acknowledged areas of special expertise</b>
1	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.
<del>3</del>	<u>Estimate effects of alternatives</u>	<u>Provide effects analysis and/or comments within the PIIC's areas of special expertise; identify effects within the PIIC's areas of special expertise.</u>
<del>4</del>	<u>Propose mitigation measures</u>	<u>Suggest mitigation measures to reduce impacts of proposed action, and alternatives if necessary. Decision to select mitigation measures for analysis is reserved to the NRC.</u>
<del>5</del> 3	Select the preliminary recommendation regarding the proposed action	Collaborate with the NRC project manager in developing criteria for selecting the preliminary recommendation regarding the proposed action; provide input on the EA specific to the PIIC's areas of special expertise, subject to the NRC's information handling requirements. The PIIC may provide written, comments on the final draft EA, if desired. Decision to select the preliminary recommendation is reserved to the NRC.
<del>5</del> 64	Select the final recommendation regarding the proposed action; issue PI ISFSI EA	Action reserved to the NRC. <u>Understand that FONSI/EIS determination is for NRC. If an EIS is necessary, how will Prairie Island be involved?</u>

EA 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 the working draft EA specific to the PIIC's areas of special expertise	Within 15 business days of receiving applicable sections of the working draft of the Draft EA for review
3	Provide comments on the EA, as appropriate.	Within 30 days of receipt of the final draft of the EA.

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Attachment C

EIS Schedule, if warranted

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

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***Agency Representatives***

**U.S. Nuclear Regulatory Commission**

Primary Representative: Jean Trefethen, Project Manager  
(301) 415-5137

Backup Representative: Jennifer Davis, Senior Project Manager  
[\(301\) 415-3835](#)

**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

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