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-----Original Message-----

From: Phil Mahowald [mailto:pmahowald@piic.org]
Sent: Friday, January 10, 2014 6:34 PM
To: Lopas, Sarah
Subject: Docket ID No. NRC-2012-0246

Dear Ms. Lopas:

Attached please find the Supplemental Comments of the Prairie Island Indian Community.

Sincerely,

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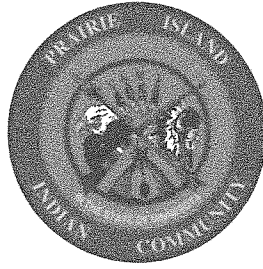
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PRAIRIE ISLAND INDIAN COMMUNITY
LEGAL DEPARTMENT

January 10, 2014

Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
ATTN: Rulemakings and Adjudications Staff

RE: Supplemental Comments on the draft Waste Confidence Generic Environmental
Impact Statement (NRC Docket ID: NRC-2012-0246)

The Prairie Island Indian Community ("PIIC" or "Tribe"), a federally recognized Indian tribe, offers the following supplemental comments to the Nuclear Regulatory Commission ("NRC") regarding the draft Generic Environmental Impact Statement (GEIS) that will form the regulatory basis for the proposed amendments to the Commission's Waste Confidence Rule, as noticed in the Federal Register on September 13, 2013 (78 FR 56621).¹

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). *See Figure 1.*

The Prairie Island Nuclear Generating Plant ("PINGP"), owned by Northern States Power, a Minnesota company 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, and is located on the

¹ These comments are in addition to the comments provided by Tribal Council Secretary Ronald Johnson and General Counsel Philip Mahowald at the December 4, 2013 public meeting in Minnetonka, Minnesota, and the comments PIIC submitted jointly with the states of New York, Massachusetts, Vermont, and Connecticut on December 20, 2013.

west bank of the Mississippi River in an area that is quite popular for recreational boating and heavily used by barges. *See Figure 2.*

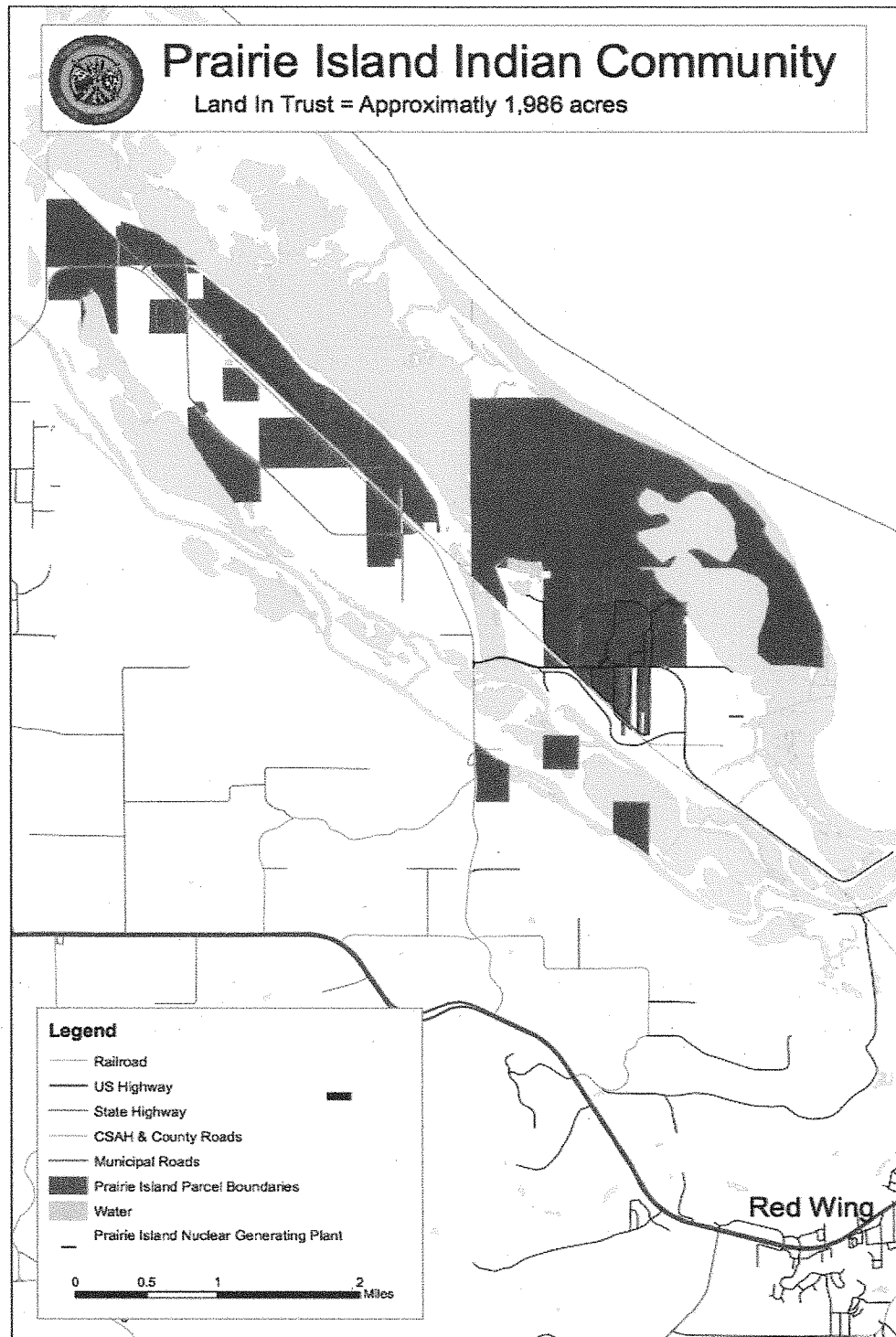


Figure 1. Lands of the Prairie Island Indian Community

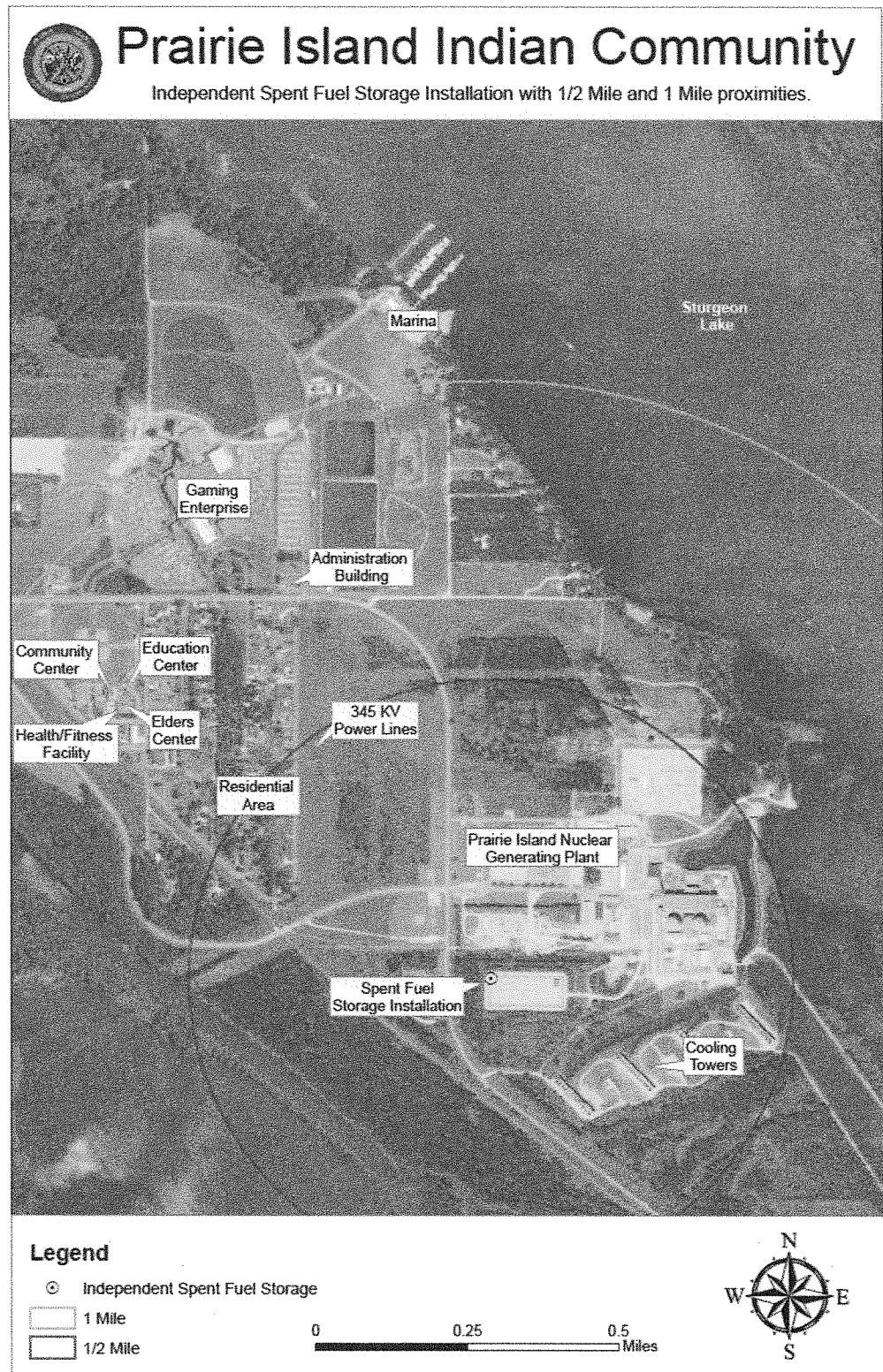


Figure 2. Proximity of the PINGP and ISFSI to the PIIC

The PINGP has been online since the early 1970s and will operate at least until 2034 (both operating licenses were renewed in June 2011 for an additional 20 years). If the PINGP is decommissioned in 2034, the spent fuel is estimated to require a total of 98 casks – approximately 2500 tons of spent nuclear fuel. If the PINGP is relicensed for a second renewal term (as speculated in the draft GEIS), approximately 1300 assemblies will be used, requiring an additional 33 dry casks, bringing the total of dry casks at the PINGP ISFSI to approximately 131 casks.

There are 35 casks currently stored on the PINGP ISFSI. The first 29 casks contain low burnup fuel. Every cask starting with the 30th cask will contain be high burnup fuel. NSPM has applied for a 40-year license extension for the ISFSI because its initial 20-year license expired in 2013 (now in timely renewal).

The PINGP and its ISFSI are two of the most important issues for the Tribe. The Tribe was a Cooperating Agency for the development of the EIS for the PINGP Unit 1 and 2 reactor license renewal application (approved by the NRC June 2011) and is currently a Cooperating Agency for the development of an Environmental Assessment (EA) for NSPM's proposed 40-year ISFSI year license renewal application (still pending).

The Tribe has a number of concerns regarding the draft GEIS. And, for reasons we articulate below, we have grave concerns that the conclusions made in the draft GEIS will become the default policy of the United States government—that spent nuclear fuel can safely stored on-site indefinitely—and that there will be no reason to enforce current law (i.e., the Nuclear Waste Policy Act) or pursue new legislation (i.e., recommendations of the Blue Ribbon Commission) that would require the removal of spent nuclear fuel from Prairie Island.

Waste Confidence

When the PINGP was originally licensed in the 1970s, it was assumed that the spent nuclear fuel would be sent to the Department of Energy's ("DOE") West Valley facility for reprocessing (at that time it was called the Nuclear Fuel Services Processing Plant.² There was no other mention of PINGP spent nuclear fuel in the May 1973 Final Environmental Statement Related to the Prairie Island Nuclear Generating Plant.

When the ISFSI at Prairie Island was initially proposed, in the early 1990s, it was to be *temporary* measure, only for a few years, to keep the plant running and plant personnel working, until the national repository (legislatively mandated to be at Yucca Mountain) could be opened. The Tribe, along with countless others, expressed concerns regarding the *long-term* storage of spent fuel in dry casks and the possibility that the waste would never leave Prairie Island. We understood then that the ISFSI was to be an *interim* or *temporary* solution until the national repository could begin accepting waste.

² Final Environmental Statement Related to the Prairie Island Nuclear Generating Plant, US Atomic Energy Commission, May 1973, Docket Nos. 50-282, 50-306, page V-37.

The NRC's EA for the Prairie Island ISFSI states that the TN-40 dry casks are designed to provide storage for spent nuclear fuel for at least 25 years.³ The Purpose and Need (of the NRC action) was to allow the PINGP 1 and 2 to operate until 2013 and 2014 by approving on-site spent nuclear fuel storage. The implication in the EA was that the ISFSI was for a short duration.

Minnesota law requires approval from the Public Utilities Commission ("PUC") and the State Legislature before a utility can use on-site dry cask storage. During the process to evaluate NSP's application for a Certificate of Need ("CON") for the Prairie Island dry cask storage facility by the PUC, hearings were held before Administrative Law Judge Allan Klein in November and December 1991. In April 1992, Judge Klein recommended that the PUC deny the CON because of the likelihood that the Prairie Island ISFSI would not be temporary. In his Findings of Fact, Conclusions, and Recommendations, ALJ Klein stated that the essentials of the Findings and facts of the CON could be summarized as:

1. If we knew that the dry cask storage would be temporary, then it is a reasonably safe and cost effective way to deal with the storage problem, and would be eligible to receive a Certificate of Need. In particular, the radiation from the casks would be negligible, and would not pose a health risk to any person.
2. Unfortunately, the past delays in federal siting efforts raise questions about whether the dry casks storage will be temporary or will end up being permanent.
3. There has not been any substantial attempt to evaluate the Prairie Island storage site as a permanent location, nor has there been any comparison of this site with other sites in the state to determine which could be the preferable location for a permanent storage facility. The same is true for the method of storage—dry cask storage has not been evaluated as a permanent method.
4. The likelihood that the dry cask storage would become permanent is so great that it is appropriate to require legislative authorization if the project must go forward immediately. Neither the Commission nor NSP can control the timing or direction of the federal siting effort. Once the casks are in place, the path of least resistance is to leave them there indefinitely.
5. A reasonable alternative would be to wait and see whether the federal government can, in fact, progress its effort to the point that the Commission

³ US NRC, Environmental Assessment Related to the Construction and Operation of the Prairie Island Independent Spent Fuel Storage Installation, July 1991. Docket 72-10. ML090260415 at p. 2.

can be satisfied that the dry cask storage will be only temporary. It is possible to stretch-out Prairie Island and use other alternatives to meet energy needs while we wait and see how the federal effort is progressing. However, the cost of this wait and see approach is greater than the dry cask approach, but that cost has not been fully developed in this record.⁴

Despite these findings and conclusions, the Public Utilities Commission rejected Judge Klein's recommendation and ruled that NSPM could store the waste, but the MN Legislature reduced the number of casks allowed from 48 to 17 (NSPM initially sought a CON for 48 dry casks, the amount of casks permitted by its current NRC license). Subsequent Legislative action in 2003 lifted the 17-cask limit.

The 1992 legislative hearings for the Prairie Island ISFSI were highly contentious and divisive. It is highly doubtful that NSPM would have received state approval then if legislators and the public believed that the waste would be on-site for an additional 60 or 100 years after reactor operations cease, or indefinitely, as the draft GEIS now contemplates.

As mentioned previously, NSPM has filed an application seeking a 40-year license extension for the PINGP ISFSI. A draft EA was issued in November of 2013. The stated purpose and need of the proposed action (i.e., the PINGP ISFSI license renewal) "is to provide an option (emphasis added) that allows for the continued temporary storage of spent nuclear fuel generated by the PINGP Units 1 and 2."⁵ Given that the Yucca Mountain national repository has all but been abandoned, and that there seems to be no action on siting and developing a different repository location, the Tribe does not believe that the continued storage of spent nuclear fuel at Prairie Island is either optional or temporary.

While we do recognize that the Waste Confidence Rule does not explicitly *authorize* individual licensing actions (i.e., reactor and ISFSI), it is important to note that the Waste Confidence Rule *allows* for *indefinite* on-site storage of spent nuclear fuel by stating that on-site storage is safe for 60 to 160 years, or even indefinitely. It is because of the Waste Confidence Rule that the Administration can state that we can do better than Yucca Mountain and Congress has lost any sense of urgency in solving the nation's nuclear waste issues.

The first Waste Confidence and Decision and Rule were adopted in 1984 in response to a 1979 lawsuit regarding spent nuclear fuel storage and disposition. The decision by the US

⁴ State of Minnesota, Office of Administrative Hearings, In the Matter of the Application of Northern States Power Company for a Certificate of Need for the Construction of an Independent Spent Fuel Storage Facility. Findings of Fact, Conclusions, and Recommendations. April 10, 1992. 6-2500-5462-2, E-002/CN-91-9.

⁵ US NRC Draft Environmental Assessment for the Proposed Renewal of the Prairie Island Independent Spent Fuel Storage Installation, November 2013. Docket 72-0010. ML13205A120.

Court of Appeals for the District of Columbia directed the NRC to determine whether a disposal solution for spent nuclear fuel would be available by the time a reactor ceased operations (i.e., end of its license) and if not, determine whether the spent fuel could be safely stored after that date.

The 1984 Waste Confidence Rule and Decision expressed the NRC's views that one or more mined geologic repositories will be available by the years 2007 – 2009 (Finding 2) and if necessary, spent fuel can be safely stored on-site (or in the reactor pool) for at least 30 years beyond the expiration of the reactors operating license (or a minimum of 70 years) (Finding 4).

In 1990, the Waste Confidence Rule and Decision were updated to state that there was reasonable assurance that at least one mined geologic repository would be available by the first quarter of the 21st century (Finding 2) and if necessary, spent fuel can be safely stored for at least 30 years beyond the licensed life of the plant (which now includes license extension, or for a minimum of 90 years) (Finding 4).

The 2010 Waste Confidence Decision and Rule, which was later found to be deficient by the US Court of Appeals because it failed to consider the environmental impacts of continued or indefinite on-site spent nuclear fuel storage, assured us that at least one mined geologic repository will be available *when needed* (Finding 2) and spent nuclear fuel can now be safely stored for 60 years beyond the licensed life of the reactor (regardless of when the plant ceases operations) (Finding 4).

These shifting dates and timeframes have not inspired confidence that a national repository will become available, and have done much to frustrate host communities. While having a date included in 10 CFR 51.23 might be a reflection of current thinking of whether a repository might be available, it adds nothing. We do not believe that the final rule should include a timeframe by which a repository will become available. Instead we believe that the NRC should include a plan for updating the Waste Confidence GEIS that would be reflective of the current status of a repository.

We remain frustrated and discouraged that the “temporary” storage facility has become permanent storage. The PINGP ISFSI license will be renewed repeatedly during the long-term and indefinite storage terms, because to deny a license renewal application is, in effect, the same as approving the license renewal application. Denying the application does nothing. The waste stays on site.

Purpose and Need

The draft GEIS identifies three areas that comprise the Purpose and Need of the proposed action (the Waste Confidence Decision and Temporary Storage Rule): to improve the efficiency of the NRC's licensing process by generically addressing the environmental impacts of continued storage; to prepare a single document that reflects the NRC's current

understanding of these environmental impacts; and to address the deficiencies in the 2010 Waste Confidence rule identified by the US Court of Appeals.

It is not clear why the NRC included licensing process efficiency improvements in the scope of the draft GEIS. As we understand, each licensing action must still meet the requirements of the National Environmental Policy Act (NEPA), either through an EIS or an EA during licensing actions

With respect to drafting a document that reflects the NRC's current understanding of the environmental impacts of continued storage, we see no discussion regarding the NRC's plan to update the GEIS in the future. The final GEIS published in 2014 should not be the final word on environmental impacts in the year 2174 or beyond. The final GEIS should include some discussion regarding the NRC's plan or ideas about how or whether the final GEIS would be revised or updated. It should not be left to the public to litigate an update to this important document.

The Waste Confidence final GEIS, when adopted, will provide the regulatory basis for the proposed amendment to the 10 CFR 51.23 (the Waste Confidence Decision and Temporary Storage Rule). The effect of 10 CFR 51.23 is that the public is prevented from raising (or litigating) issues regarding the environmental impacts of continued storage of spent nuclear fuel during licensing actions (either reactor or spent fuel storage installations). If the nation'

Alternatives

Section 1.6 discusses alternatives to the proposed action, including the "No Action" alternative, which if implemented, would require the NRC to perform site-specific reviews of the environmental impacts of continued storage during licensing actions. In dismissing this alternative, the draft GEIS states that the alternative is not viable because of the costs associated with these site-specific reviews (to the public, the agency, and licensee) and that licensing boards would be required to hear nearly identical contentions in each proceeding. The NRC is already required to meet NEPA for licensing actions, either through an EIS or EA; the environmental effects of continued storage would simply be another aspect of those documents.

As an organization that has spent considerable sums in participating in the NEPA process (EIS for the PINGP 1 and 2 license renewal and EA for the ISFSI renewal) and litigating environmental and safety issues, the Tribe does not believe that "costs" justify the dismissal of this Alternative. The licensee will simply pass the costs of the review on to the ratepayers and the NRC currently recovers most of its costs from the licensee/applicant (current estimate is that 90 percent of the NRC's budget is from licensee fees). As far as the costs to the public, that decision is best left to the tribes, states, cities, or communities impacted by continued spent fuel storage. Not everyone impacted by continued storage is aware of the draft GEIS and how the Waste Confidence Rule affects their communities and prevent them from raising issues related to continued storage during subsequent licensing actions.

According to the January 2012 report, issued by the Blue Ribbon Commission on America's Nuclear Future (BRC or Commission), the Nation's taxpayers are currently financially responsible for the numerous partial breach of contract lawsuits filed by the utilities on behalf of its ratepayers. If the Government begins accepting waste in 2020 (close to 6 years from now), the government liability is estimated to be \$16.2 Billion (in 2012). The Government's partial breach of contract liability increases by \$500 Million for each year of delay. Of course, this is in addition to the estimated \$15 Billion already spent to develop the now-abandoned Yucca Mountain site.

The additional costs of site-specific reviews are nothing compared to the money already wasted developing and abandoning the Yucca Mountain site. The Nation's ratepayers have willingly paid licensing fees, Nuclear Waste Fund fees, and their taxes, with the expectation that they would get something for their money—a national repository for the spent fuel generated in their communities and states and assurances that the environmental impacts of these spent fuel storage facilities will be evaluated with respect to their unique site and not some generic "reference site." The additional costs of site specific environmental reviews are nothing more than a legal device to shield the NRC and licensees from litigation related to long-term storage.

Site-specific reviews (during subsequent licensing actions) would more accurately reflect NRC's current understanding of the environmental impacts of continued storage (at the time of the licensing action, rather than 60-100 years in the past). Rather than dismissing site-specific reviews because of the costs, the final GEIS should also include some discussion regarding the benefits of site-specific reviews. The environment of each ISFSI is unique and the benefits of evaluating the site-specific environmental impacts to these unique sites must be evaluated.

Finally, if the potential health and environmental impacts associated with the storage of spent nuclear fuel in a permanent repository cannot be assessed generically, and therefore will necessitate a site-specific environmental impact statement, then the NRC ought not be allowed address generically the potential health and environment impacts of *de facto* permanent storage at multiple facilities around the country. Site specific analysis must be performed.

Scope of the GEIS

The draft GEIS discusses the three possible continued storage time frames: 1) short-term storage of no more than 60 years after the licensed life of a reactor (could be either 2034 or 2054 depending on whether the PINGP is relicensed for a second time); 2) long-term storage of no-more than 160 years after the licensed life of the reactor (2194 or 2214, depending upon a second renewal term); and 3) indefinite on-site storage.

When nuclear power plants were originally constructed, it was understood by the public and host communities that the plants would operate for 40 years and then, following decommissioning, the site would be released for some other purpose. Under the NRC's

short-term scenario, the PINGP and its ISFSI will have been on Prairie Island for at least 121 years, with one license renewal, or 141 years with two renewals. Under the NRC's longer-term scenario, the timeframe would be 221 or 241 years. This was not what was contemplated when PINGP Units 1 and 2 were approved, or when the ISFSI was approved. Because the plant is built and the ISFSI is constructed there is nothing host communities can do.

The draft GEIS optimistically states that the NRC believes that a repository could be available by the end of the short-term (60 years) because the DOE has expressed its intention to provide repository space by 2048. The 2048 date was included in the DOE's strategy to implement the BRC's 2012 recommendations. There is nothing to suggest that the DOE will meet this goal; legislation that could implement the BRC/DOE's recommendations is stalled in the Senate with no companion version in the House.

As the NRC stated in the draft GEIS, the purpose of the document is to prepare a single document that reflects the NRC's current understanding of these environmental impacts. We suggest that the final GEIS include a discussion of the current status of the Yucca Mountain project (which remains the official geologic repository under the NWPAA) and the political realities of licensing a national repository. As a host community for the PINGP ISFSI, our Tribe has grown tired of relying on the NRC's wishful thinking.

Timeframes Evaluated

For the PINGP ISFSI site, the short-term storage of no more than 60 years after the licensed life of a reactor could be to either 2094 or 2114, depending on whether the PINGP is relicensed for a second time; long-term storage of no more than 160 years after the licensed life of the reactor would be until 2194 or 2214, depending upon a second renewal term; and indefinite on-site storage. The draft GEIS assumes that institutional controls will continue. We are concerned that the utility now operating the facility will even exist in 60 or 160 years, and we fail to see how the NRC can make this assumption. The NRC has failed to provide any factual basis to support this assumption with any confidence.

With respect to the indefinite and the long-term scenarios, there is no certainty that current (and future) licensees will be responsible for the financial resources needed to support long-term and indefinite storage operations. What will happen if licensees cannot fulfill their legal financial obligations? Will the US Government provide sufficient resources and protection to ensure continued safe and secure storage? If so, will these sites become Federal storage sites? We have no basis for assuming that the current structure of financial assurances for spent fuel storage will continue to exist during the long-term and indefinite time periods. Furthermore, the final GEIS should discuss the impacts from the potential loss of institutional controls and oversight.

How can we possibly know whether a utility (or any entity as we know them today) will be in business in 160 years or beyond?

High Burn-up Fuel

Section 2.1.1.3 provides a general description of the reactor designs (i.e., boiling water or pressurized water) and the fuel used (i.e., low burnup, high burnup, mixed oxide, etc.). The PINGP Units 1 and 2 have been using high burn-up fuel since the 1990s and it is estimated that 69 of the 98 casks that will eventually be stored on-site will contain high burnup fuel. If PINGP Units 1 and 2 are relicensed for a second renewal term, an additional 33 casks of high burnup fuel will be filled (for a total of 102 high burnup fuel casks). Page 2-7 of the draft GEIS states “For purposes of analysis in this draft GEIS, the NRC relies for impact analysis on the larger reactor lifetime amount of spent fuel discharged at low burn-ups (i.e., 1,600 MTU) unless otherwise stated in the description of environmental impact.” It is further states that this has to do with the fact the lower burn-up fuel takes up more space (i.e., more fuel, more casks, larger ISFSI). This statement ignores the potential public health impacts from the continued storage of high burnup fuel. The problems, concerns and uncertainties associated with high burnup fuel – cladding and cask component degradation, embrittlement, etc. – are well documented. The final GEIS must be revised to include a discussion of public health and environmental impacts from the high burnup fuel.

DTS—constructed during long-term time frame (160 years after operations cease)

Section 2.1.4 discusses the dry transfer system (DTS) that could be constructed at or near ISFSI sites during the long-term and indefinite storage periods. According to the draft GEIS, the DTS would enable the retrieval of spent nuclear fuel for inspection or repackaging without the use of a spent fuel pool. Indeed, the concept of long-term or indefinite storage is dependent upon the ability to transfer the spent nuclear fuel, at some point in time, to new storage casks. We were therefore alarmed to read in the draft GEIS that while several DTS designs and related concepts have been put forward, there are “no dry transfer systems at US nuclear power plants sites today.” Moreover, there is very little information about the “reference DTS” in the draft GEIS. Will all ISFSI sites use the same design? While there are general statements that the DTS would be licensed under 10 CFR Part 72 and would have to meet the radiological protection requirements of 10 CFR Part 20, we do not have any real licensing and operating experience with DTSs in which we can put our faith. Once again, we are asked to just trust the government.

It is not clear whether dry casks will be *required* to be changed during the long-term or extended storage periods. We have no assurance that the casks in use can be used for 160 years or longer. As we understand from reviewing the NRC’s May 2012 report, “Identification and Prioritization of the Technical Information Needs Affecting Potential Regulation of Extended Storage and Transportation of Spent Nuclear Fuel,” there are a number of technical issues regarding extended dry cask storage that have yet to be resolved, such as the lack of monitoring or inspection capability for cladding, fuel cladding interactions, fuel assembly hardware and damaged fuel cans, fuel baskets, stainless steel canister, stainless steel canister, stainless steel canister and steel/cast iron and seals, polymer seals, neutron absorbers, neutron shielding and other components. Given that there seems to be no current way of internally monitoring a cask, we question whether or how

a licensee can or will determine that a cask is no longer technically sound. Will the NRC make a determination, during Part 72 license renewals, that the dry casks in use are technically sound for the proposed re-licensing period? What is the expected operational life of a DTS? We have heard that the DTS could be a mobile facility, yet the DTS referenced in the draft GEIS appears to be a fixed facility.

It is with these questions in mind that we are reminded of the statement in the NRC's 1992 EA for the Prairie Island ISFSI: *the TN-40 dry casks are designed to provide storage for spent nuclear fuel for at least 25 years*. We remain very skeptical. It appears that the technical capabilities of the dry casks in use at the Prairie Island ISFSI keep expanding and improving as time progresses and the prospect of an available repository diminishes.

It is not clear which guidance document the NRC will use to evaluate DTS license applications to ensure that the requirements of NEPA are met. We remain very skeptical about the construction and operation of a facility that has never been built, but is an integral aspect of long-term and indefinite spent nuclear fuel storage. Greater detail regarding the licensing and other regulatory requirements of the DTS must be clarified and included in the final GEIS, and not just included as a reference for the reader to locate.

The final GEIS should include a discussion regarding the minimum level of institutional controls that should be in place at each ISFSI and DTS during long-term and indefinite storage.

There is no information regarding the skill level of workers expected to unload and re-load spent nuclear fuel that has been stored for dry casks for 100-150 years.

Our Tribe is one of the closest communities in the nation to an ISFSI, and we expect assurances that environmental impacts will be thoroughly evaluated well before it is time to construct such a facility.

Historic and Cultural Resources

The draft GEIS assumes replacement of the ISFSI and construction of the DTS during the long-term. Section 4.12 discusses the potential impacts on historic and cultural resources during these events. We do not believe that impacts to historic and cultural resources have been adequately evaluated in the draft Waste Confidence GEIS.

As discussed in the draft GEIS, there are two possible license types for ISFSIs: a general license, which is granted by Subpart K of 10 CFR 72 (restricted to operating plants), or a site-specific license, issued under Subparts A through I of 10 CFR 72.

According to NUREG-1572, Information Handbook on Independent Spent Fuel Storage Installation, the major advantages of a General License ISFSI are that that no additional environmental documents are required (i.e., the applicants Environmental Report (ER) or the NRC's EA). Compliance with NEPA, for General License sites, is via the Certificate

of Compliance (CoC) EA for the cask *design*, not the construction of the ISFSI. The draft GEIS reiterates this by stating that there is no Section 106 (of the national Historic Preservation Act) review. In other words, once a utility has a General License no additional environmental analysis seems to be required.

For a Site-Specific license, like the Prairie Island ISFSI, an ER was submitted in 1991 for the original license and more recently by NSPM for the renewal. The NRC issued the original EA in 1992 and has just issued a draft EA for the renewal.

Throughout much of the draft GEIS there are many statements alluding to extensive prior land disturbance during the construction of the power plant. There seems to some thought that prior construction all but removed any potential for historic or cultural resources to be present. This seems to be at odds with the statement that “for sites that had conducted field investigations, on average, the number of historic and cultural resources present were 35 per site” (page 4-47 of draft GEIS).

In our own experience with the PINGP Units 1 and 2 and PINGP ISFSI license renewals, reliance on original licensing documents (for either the reactor or the ISFSI) is no guarantee that all historic and cultural resources are either documented or no longer present. That is, license applications for both the PINGP reactor and ISFSI renewals indicated that no archaeological resources were present in the vicinity of the projects. The ASLB disagreed and we subsequently learned, that in spite of extensive ground disturbing activities during the construction of the PINGP Units 1 and 2, there was still the possibility of deep prehistoric archaeological sites across most of the PINGP and that prehistoric archaeological sites could be buried under parking lots, modular buildings or other structures or features within the plant. Past construction activities is no guarantee that historic and cultural resources are no longer present.

Currently, there are 68 total ISFSI licenses; of these only 14 are site-specific.⁶ While some General License ISFSIs are clearly within the original footprint of power plant construction, many are not (e.g., the Point Beach General License ISFSI, on the shore of Lake Michigan, is about .5 mile from plant, surrounded by trees and vacant fields).

NUREG-1571 also states that because General License ISFSIs are restricted to plants still operating under 10 CFR 50, a utility must apply for a Site-Specific license when the plant is decommissioned. The draft GEIS states that the replacement of the at-reactor ISFSI and initial and replacement DTS would require a site specific review and compliance with the NHPA before a decision is made. Our concern is that once these General License ISFSI goes through the more rigorous site specific licensing process, it will be too late – any potential historic or cultural resources would already have been destroyed by the construction of the General License ISFSI. The final GEIS should discuss how the environmental impacts of General License ISFSI’s would be evaluated before the reactors are decommissioned.

⁶ US NRC, 2013-2014 Information Digest, NUREG-1350, Volume 25, August 2013.

As we stated earlier, it is not clear how DTS facilities will be evaluated, relative to NEPA. Will DTS be evaluated using NUREG-1748 (Environmental Review Guidance for Licensing Actions Associated with NMSS Programs) or some other guidance?

Severe accidents

Section 4.18 of the draft GEIS discusses the environmental impacts of postulated accidents (design basis or severe) and concludes that, although the consequences would be significant and destabilizing, the risk is SMALL because the likelihood of these events occurring is remote. There is no discussion of the potential economic consequences of postulated accidents. This should be included in the final GEIS. It is not enough to state that the likelihood is remote and end the discussion. These consequences must be fully evaluated in the draft GEIS. As the final Waste Confidence GEIS will no doubt be held up by some as “proof” that long-term or indefinite storage is without environmental impact, the final GEIS must include some discussion or evaluation of the socioeconomic impacts to communities from severe or design-basis accidents.

As one of the closest communities to an ISFSI, our Tribe has a lot at stake. Our lands are held in Trust by the United States government for the benefit of all current and future tribal members. Our main source of revenue – Treasure Island Resort and Casino – is located on this land, just one mile from the PINGP ISFSI. The economic consequences to our Tribe from an accident would be great: the Tribe could no longer provide needed benefits and services to our tribal members, tribal members could no longer reside on tribal lands (due to contamination), and our traditions and culture would be irreparably harmed. This is not an impact or consequence that can be addressed generically.

Terrorism

Section 4.19 of the draft GEIS discusses the potential environmental impacts from acts of terrorism and sabotage at the fuel storage facilities. The document discusses the two US Court of Appeals decisions regarding the consideration of environmental impacts from terrorist attacks in NEPA analyses. The Ninth Circuit held that the NRC needed to consider these environmental impacts in its NEPA reviews. The Third Circuit upheld the NRC’s position that acts of terrorism are too far removed or remote to be included in the agency’s reviews. The draft GEIS further states that because some continued storage will occur within the Ninth District, “this draft GEIS discusses the environmental impacts of successful terrorist attack to comply with *San Luis Obispo Mothers for Peace v. NRC*.”

According to the draft GEIS, “the environmental impact for a successful terrorist attack, if one occurs, could be significant and destabilizing” (page 4-84). To the Tribe, with its tribal members homes just 600 yards from the Prairie Island ISFSI, this statement is the one of the most significant in the draft GEIS. The draft GEIS later discusses various generic events that could occur during the three time periods—theft of materials, physical attacks, etc—

and all were found to have a low probability of occurring and therefore the environmental risk would be SMALL.

This conclusion, that that the environmental risk is SMALL, should not be the end of the NRC's analysis. In the absence of a national repository or interim storage site, the NRC will eventually relicense every existing ISFSI. Current general license ISFSIs will switch to a site-specific license once the reactors are decommissioned. The NRC must include an analysis of the potential environmental impacts of terrorism in all of its NEPA reviews for ISFSI licenses. This is especially important given the dry storage time periods we are discussing in the draft GEIS. Since we have no idea whether the draft GEIS will ever be updated once its final, the NRC must include an analysis of terrorist acts on every site-specific ISFSI renewal. It shouldn't be up to host communities or others to expend their own resources to force the NRC to include this review in NEPA documents via litigation.

Every day our society is confronted by the reality that there are people willing to give their lives to harm our nation to make political or religious statements. The terrorism analysis in the draft GEIS referenced events that occurred in recent time (i.e., September 11, 2001 attacks); we have no idea what might happen in the future, especially during the timeframes discussed in the draft GEIS (i.e., 160 years or beyond).

Transportation

Chapter 6 generally discusses cumulative impacts (other past present, and reasonably foreseeable actions) and Section 6.3.2.4 briefly discusses the transportation of spent fuel to a repository for disposal. The draft GEIS assume that this will happen. Since no dry cask is currently licensed to transport high burn-up fuel, the final GEIS must discuss any potential licensing challenges (for high burn-up fuel) and the possibility that this particular fuel might never leave its storage location. Its not enough to assume that it will happen.

Costs

Chapter 7 discusses the costs and benefits associated with the Proposed Action, as well as the alternatives. There is no discussion regarding the significant costs (to the ratepayer or the taxpayers) to decommission ISFSIs, or to construct new ISFSIs and a DTS over the long-term and indefinite timer-periods. The draft GEIS assumes that there will be sufficient funding available for decommissioning the respective ISFSIs and constructing new ISFSIs, fabricating new dry casks, and constructing and operating the DTS (and eventually decommissioning it). Who will pay for this? What if State regulatory agencies (i.e., public utility commissions or public service commissions) simply refuse to allow the utilities (if they even exist) to pass along those costs to the ratepayers? If this draft GEIS is to support a revised Waste Confidence Rule, shouldn't the cost of implementing the rule also be included?

In a recent filing with the Minnesota Public Utilities Commission (MPUC) rate case, NSPM testified that its installed per cask cost at Prairie Island is \$5.96 million (which

includes cask fabrication, loading and licensing costs).⁷ That's \$372 million in today's dollars for the 63 additional casks needed to store all of the waste generated during the PINGP 20-year license extension, and another \$584 million in today's dollars to re-load all 98 casks in a hundred years (if the plant is only licensed to operate another 20 years). The draft GEIS assumes a second reactor renewal term, which adds an estimated 33 additional dry casks for a total number of dry casks of 131. The 2013 cost to replace 131 dry casks is estimated to be \$781 million. This does not include costs to decommission the existing ISFSI, license and construct the DTS or any labor costs associated with the unloading of dry casks. We have no idea whether these costs have been factored into the PINGP's and ISFSI's respective decommissioning plans. Has the NRC performed this review? If not, then what is the factual basis for this assumption?

This cost scenario will be repeated across the county and will be in the billions of dollars before the indefinite storage phase begins. According to a report issued by Oak Ridge National Laboratory, the current fleet of 104 commercial nuclear power plants annually discharge approximately 2,000 metric tons of heavy metals (MTHM) of spent nuclear fuel.⁸ As of the end of 2011 the inventory of commercial spent nuclear fuel was approximately 67,600 MTHM (the result 50 years of reactor operations). At the current rate of discharge, the current operating reactors will generate an additional 67,600 MTHM spent nuclear fuel over the next 30 years. That represents a total of approximately 135,200 MTHM of spent nuclear fuel that will be generated (or approximately 465,920 spent nuclear fuel assemblies).⁹ If we assume 40 assemblies per cask,¹⁰ that amounts to approximately 11,648 dry casks. Using the 2013 cost per cask at the PINGP, the conservative estimated cost for replacing these dry casts would be more than \$69 billion in today's dollars. This estimate doesn't include any costs related licensing, constructing and operating the DTS across the county, which one could assume would be in the billions of dollars as well.

Whether the \$69 billion dollar figure is too high or low is irrelevant. The fact is, the NRC has not even considered the costs associated with its assumptions, and whether the cost to replace these casks will be borne by the ratepayer and/or the taxpayer. We have no assurance that the state regulators will allow the utilities to recover their costs. If the plants

⁷ See Direct Testimony and Schedules of Timothy J. O'Connor dated November 4, 2013 in Docket No. E002/GR-13-868 at pp. 49-52 and Appendix A.

⁸ Available at <http://info.ornl.gov/sites/publications/Files/Pub40536.pdf> (February 2013).

⁹ See "Storage of Spent Nuclear Fuel," by Andrew C. Kadak, which was published in the National Academy of Engineers' Summer 2012 issue of The Bridge on Managing Nuclear Waste, available at

<http://www.nae.edu/Publications/Bridge/59220/59226.aspx>: "By the end of 2011, the United States commercial nuclear waste inventory had reached approximately 65,000 metric tons of heavy metal (MTHM). This represents about 224,000 fuel assemblies." (at p. 25).

¹⁰ Based on the 40 fuel assembly capacity of the TN-40 and TN-40HT casks, but also recognizing that many casks are much smaller than the TN-40 and TN-40HT in use at the PI ISFSI.

are no longer operating, will they have ratepayers from whom they can recover their costs? Will the utilities' shareholders be asked to cover these costs? A likely scenario is that utilities still operating or otherwise in control of the ISFSI sites will seek to recover their costs from the Federal government (due to partial breach of contract), like they have been doing for the last decade. As is stated in the draft GEIS, the Waste Confidence rule is not a licensing decision, but, the Waste Confidence Rule does, in fact, allow the Federal government to do nothing (i.e., develop and license a repository) because of its conclusions (i.e., that it is safe to store spent nuclear fuel on-site for the long-term or indefinitely).

Environmental Justice

We do not believe that the Environmental Justice impacts of long-term or indefinite storage have been fully evaluated in the draft GEIS. We fully understand that the Waste Confidence Rule is not a licensing decision and that each facility will go through a renewal licensing process. Nevertheless, the Waste Confidence Rule allows for long-term or indefinite storage by virtue of the conclusions in the draft GEIS that the environmental impacts of continued storage are SMALL (with the exception of impacts to historic and cultural resources).

In the case of the Prairie Island ISFSI, which is now in the process of being relicensed for a proposed 40-year renewal term. We find it hard to believe that, given the status of the national repository (none) and the conclusions in this draft GEIS, that the storage term will be limited to just 40 years. The 40-year renewal term is an arbitrary time period, based on nothing more than the hope that a repository might be available by the end of the 40 years.

The Tribe will continue to be impacted by the PINGP ISFSI long after this GEIS is final and sitting on a shelf. It will be left up to our descendants and their descendants to keep fighting for the removal of spent nuclear fuel from the Tribe's homeland.

Supplemental Questions

A list of 4 supplemental issues was provided to attendees at the December 4 public meeting in Minnetonka, Minnesota.

Issue 1 asks whether the specific policy statements regarding the timeline for repository availability should be removed from the rule text. The shifting dates and timeframes in previous update to the rule have not inspired confidence that a national repository will become available and in fact, have done much to frustrate host communities. While having a date included in 10 CFR 51.23 might be a reflection of current thinking of whether a repository might be available, it adds nothing. We do not believe that the final rule should include a timeframe by which a repository will become available. Instead we believe that the NRC should include a plan for updating the GEIS that would be reflective of the current status of a repository.

January 10, 2014

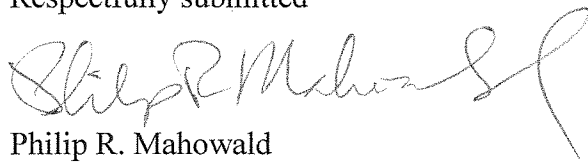
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Issue 2 asks whether specific policy statements regarding the safety of continued spent fuel storage should be included in the rule, given the expansive and detailed information in the draft GEIS. In May 2012, the NRC issued the draft report “Identification and Prioritization of the Technical Information Needs Affecting Potential Regulation of Extended Storage and Transportation of Spent Nuclear Fuel.” Our understanding was that this technical report was related to the NRC’s Long-Term Waste Confidence Update, initiated in 2011. The “Extended Storage” technical report identified a number of technical issues related to long-term storage of spent nuclear fuel, such as the lack of monitoring or inspection capability for cladding, fuel cladding interactions, fuel assembly hardware and damaged fuel cans, fuel baskets, stainless steel canister, stainless steel canister, stainless steel canister and steel/cast iron and seals, polymer seals, neutron absorbers, and neutron shielding. These technical issues must be resolved.

The Tribe recommends that the NRC finalize the “Extended Storage” technical report before issuing the final Waste Confidence GEIS. The information and conclusions in a final Extended Storage report would certainly help the public understand whether spent nuclear fuel for can be stored on-site for the long-term or indefinitely. Our comment letter to the NRC can be found in ADAMS (ML12191A218).

The Tribe remains concerned that the environmental impacts long-term and indefinite storage have not been adequately evaluated in this draft GEIS. Prairie Island is the Tribe’s homeland, and the Tribe is unwilling to now or in seven generations bear the risks and costs associated with a nuclear waste dump it has never supported.

Respectfully submitted

A handwritten signature in dark ink, appearing to read "Philip R. Mahowald", with a stylized flourish at the end.

Philip R. Mahowald
General Counsel