
EXHIBIT D
January 11, 2013

Ms. Cindy Bladey, Chief
Rules, Announcements, and Directives
Office of Administration
Mail Stop: TWB-05-B01M
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

RE: Comments on Scope of Environmental Impact Statement Supporting the Rulemaking to Update the Waste Confidence Decision & Rule (Docket ID: NRC-2012-0246)

Dear Ms. Bladey:

The Prairie Island Indian Community (PIIC, Community or Tribe), a federally recognized Indian tribe, offers the following comments and recommendations to the Nuclear Regulatory Commission (NRC) on the proposed Environmental Impact Statement (EIS) in support of the Commission’s Waste Confidence Decision and Rule, as noticed in the Federal Register on October 25, 2012 (77 FR 65137). Please note that these comments are in addition to the comments provided by Tribal Council Secretary Ron Johnson at the November 14, 2012 public meeting in Rockville, MD, and the joint comment letter PIIC submitted with Northern States Power Company d/b/a Xcel Energy on January 2, 2013.

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.

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Figure 1. Lands of the Prairie Island Indian Community
The Prairie Island Nuclear Generating Plant (PINGP), owned by Northern States Power Company d/b/a Xcel Energy (Xcel), 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 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 2. Proximity of the PINGP and ISFSI to the Prairie Island Indian Community
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. Xcel has applied for a 40-year license extension for the ISFSI because its initial 20-year license is set to expire in 2013.

The PINGP and ISFSI are two of the most important issues for the Prairie Island Indian Community. The tribe was a Cooperating Agency for the development of the PINGP Unit 1 and 2 reactor license renewal EIS (license renewal approved by the NRC June 2011) and is currently a Cooperating Agency for the development of an Environmental Assessment (EA) for the pending 40-year ISFSI year license renewal application.

Although we are pleased that the NRC will be evaluating the environmental impacts of on-site nuclear waste storage, we remain concerned that this is just yet another update to the Waste Confidence Decision (WCD) and Temporary Storage Rule (TSR), with a conclusion that brings us no certainty or assurance that waste will ever leave Prairie Island. It bears reminding that when the ISFSI at Prairie Island was initially proposed in the early 1990s, it was to be temporary measure to keep the plant running and plant personnel working until Yucca Mountain could be opened. Our Tribe and others expressed concerns about the long-term storage of spent fuel in dry casks and the possibility that the waste would never leave Prairie Island. We were assured that the ISFSI was to be an interim or temporary solution until the national geologic repository at Yucca Mountain could begin accepting waste.

While we do recognize that the WCD and TSR do not explicitly authorize individual licensing actions (i.e., reactor and ISFSI), it is important to note that the WCD and TSR allow for indefinite on-site storage of spent nuclear fuel. During the process to relicense the PINGP Unit 1 and 2 license renewal, many commenters raised the issue of the environmental impacts of indefinite on-site storage of spent nuclear fuel in the EIS scoping process. The response from the NRC was that on-site storage of spent nuclear was a Category 1 issue (i.e., generic to all nuclear power plants) that would not be evaluated in the EIS for reactor renewal and that the existence of the WCD and TSR meant that waste could safely be stored on-site and that there was reasonable assurance that waste would not be stored on-site forever.

Recent events tell us that there is no assurance whatsoever that waste will ever leave Prairie Island or any site (in spite of an updated WCD and TSR). The WCD and TSR have been updated or revised over the last 20 years to reflect changing realities. Each subsequent revision or update changes the date by which a repository will be available or increases the amount of time spent nuclear fuel can “safely” remain on-site beyond the licensed life of a plant. In 2010, after 25 years of study and $25 Billion spent on Yucca Mountain, the Administration declared that we can do better and we must start over. Toward that end, the Blue Ribbon Commission (BRC) on America’s Nuclear Future was established in 2010 to develop a new path forward. The BRC’s work culminated in a January 2012 report that laid out several recommendations, including the need for a geologic repository. The Department of Energy (DOE) was to have developed an implementation plan (for the BRC’s
recommendations) by July 2012. It has been almost one year since the BRC released its report and recommendations with no implementation plan from the DOE.

This history is relevant because the WCD and TSR are inextricably linked to the development of a national repository. The responsibility for developing the repository, however, rests with a different federal agency, which may or may not receive adequate appropriations. Given this past history, how can anyone reasonably believe that spent nuclear fuel will ever leave reactor sites? What assurances do we have that once we start anew to develop a geologic repository, as the BRC recommends, that future a Congress will fully fund the project or some future President won’t scrap that process altogether by claiming we can do better?

Generic EIS versus Site-Specific EIS

According to the FRN, the EIS “will evaluate the environmental impacts of the storage of spent nuclear fuel after cessation of reactor operations.” Moreover, the FRN states that the analysis will include three possible scenarios: until a repository is made available at the middle of the century, the end of the century or if no repository is available by the end of the century. And finally, we are told that the EIS will not consider site-specific issues or concerns.

The National Environmental Policy Act (NEPA) requires that federal agencies consider every significant aspect of the environmental impact of an action before proceeding with it (i.e., take a hard look at potential environmental impacts). We fail to see how the “hard look” goal can be met by not evaluating site-specific issues or concerns.

The environmental and human health impacts of failing to secure permanent disposal will result from the long-term storage of spent nuclear fuel in either the spent fuel pool or dry casks. These impacts will stem from accidents or releases from casks (which vary from site to site) and pool leaks or fires. Since the environment is unique at each site, how can a generic EIS possibly capture unique site-specific features, such as geology, soil conditions, water features, elevation, population densities around the site, and economic costs and benefits?

In vacating the 2010 decision and rule, the Court of Appeals identified three specific deficiencies in the analysis that will be evaluated as part of the WC EIS. We offer comments on each of the three deficiencies.

1. The Court held that the Commission did not evaluate the environmental effects of failing to secure permanent disposal when the Commission concluded that permanent disposal will be available “when necessary.”

The NRC plans to evaluate this possibility by including three scenarios—a mid-century repository, an end of century repository, and no repository—in the EIS. As stated above, the scenarios will evaluate the environmental effects generically.

In our view, “failing to secure permanent disposal,” means that the spent nuclear fuel is on-
site (either in the pool or in dry casks) and that the environmental effects of that failure would be different for each site because the affected environment is different for each site. Each reactor site has distinct environmental characteristics that were evaluated as part of its original licensing basis. Not every dry cask storage site uses the same cask design. The environmental effects of finite (50 or 100 years) or indefinite spent fuel storage therefore must be evaluated on site-specific basis.

In the case of the Prairie Island ISFSI, there will be 98 casks on-site once the PINGP has been decommissioned. Currently 29 casks are filled with low burn-up fuel. Xcel has yet to load a cask with high burn-up fuel, but is scheduled to load six (6) casks in 2013. As we understand it, there are some very serious potential issues associated with the long-term storage of high-burn-up fuel, such as embrittlement, stress corrosion cracking, delayed hydride cracking, metal fatigue and other types of degradation that could compromise cladding integrity and structural integrity of cask components that have yet to be resolved. Will the NRC’s generic EIS assume that all pools and casks contain high burn-up fuel?

How will the generic EIS evaluate radiological releases stemming from accidents? What if fuel has been transferred to a second cask? What if there is no pool in which to transfer fuel to a different cask? Will a generic cask, with high or low burn-up fuel, be assumed to be in use? What about the number of casks? What about the health risks to people living nearby? In the case of the Prairie Island ISFSI, our people are 600 yards from the ISFSI. We have no assurance that there will be any type of pool once the plant is decommissioned. There are stand alone spent fuel storage facilities in the county that have no pools. How will these factors be included in the generic EIS?

EISs also must contain an environmental justice analysis, that is, an analysis of impacts to determine any disproportionately high and adverse human health or environmental effects to low-income, minority, and tribal populations as a result of implementing the proposed action. Since an environmental justice analysis is, by its very nature, site-specific, we would like to know how a generic EIS could possibly capture the environmental justice effects of failing to secure a national repository.

A “one size fits all” approach will not work in this case. The environmental effects of failing to establish a repository (i.e., the spent nuclear fuel remains on site) will vary from site to site depending on the affected environment.

2. The Court concluded that the Commission failed to properly examine the risk of spent fuel pool leaks associated with the storage of spent fuel on site for 60 years after the expiration of a plant’s operating license in a forward-looking fashion.

We fail to see how pool leaks (resulting from long-term spent fuel storage) can possibly be evaluated generically. The risks and consequences of pool leaks will be different for each site, depending upon a number of factors, including local hydrology, depth to groundwater, proximity to surface waters, and the use of ground or surface waters as a community water...
supply (i.e., risk to human health). These very site-specific issues cannot be evaluated generically.

3. The Court concluded that the Commission failed to properly examine the consequences of spent fuel pool fires associated with the post-licensed-life storage of spent fuel.

Again, the consequences of a spent fuel fires will be different for each site, depending on the type of fuel used, whether there are properly trained responders, potential radiological releases, the populations near the plant, and resultant economic impacts from the radiological releases (from the spent fuel fire).

The FRN notice also stated that the EIS scoping process would be used to accomplish a number of milestones (i.e., proposed action, the scope, other resources, etc.). Toward that end, we offer the following comments and recommendations.

**Proposed Action and Purpose and Need**

According to the FRN, the scoping process for the draft EIS will be used to “define the proposed action that is to be the subject of the EIS.” This seems backward. It is the responsibility of the lead federal agency undertaking the development of the EIS to determine the proposed action. It should not be left up to the loudest voices to determine what the proposed action should be. There are those who will wish to define the proposed action in the narrowest possible terms, while others will seek the broadest interpretation. We understand that the NRC will use NUREG-1748 to some degree in the development of the EIS. According to NUREG-1748, the proposed action section of the EIS should also describe “the desired outcome or goals of the proposal.” It is not clear what the desired outcome or goals are, other than to satisfy the US Court of Appeals' remand. This WCD EIS presents a real opportunity to the NRC to take a hard look at the very real environmental effects of not having a national repository (a very real possibility given political and societal attitudes towards nuclear waste disposal).

The proposed action is key to all other aspects of the EIS, including the scope, which is usually defined by the proposed action (such as a licensing action) and available NRC guidance to determine what is in or out of scope.

In addition, the purpose and need of the EIS should be defined by the NRC, not stakeholders. Questions such as why the action is needed or how the WCD EIS will be applied in licensing actions are best determined by the lead federal agency.

The approach described in NUREG-1748 also requires a description of the “affected environment” such as land, water resources, ecology, historic and cultural resources, socioeconomics, and environmental justice in the EIS. How will the affected environment be defined or described in the generic WC EIS?
In this case, there appears to be no specific guidance for developing the WC EIS and, to some extent, the comments submitted in response to the FRN will be used to guide the NRC in developing the WC EIS. In our view it doesn’t appear that NUREG-1748 really fits in this case. As discussed further below, we recommend that the NRC also evaluate NUREG-1437.

Identify any environmental assessments and other EISs that are being or will be prepared that are related to but are not part of the scope of the EIS being considered

In 2011 the NRC initiated the Long-Term Waste Confidence Update EIS (ML11340A141). The NRC held some public meetings and webinars on the process. Comments on the NRC report were due on February 17, 2012; the NRC should evaluate the public comments and comment letters submitted as part of that EIS process, which is now on hold pending the completion of the WC EIS.

In a related action, in May 2012 the NRC released the report, “Identification and Prioritization of the Technical Information Needs Affecting Potential Regulation of Extended Storage and Transportation of Spent Nuclear Fuel” (ML12130A189). Comments were due on July 2, 2012. This report is important to the WC EIS in that it is a technical evaluation of the long-term use of dry casks, including an analysis of technical needs and knowledge gaps. This is especially important as the risk to the environment and human health would stem from accidents or leaks from the long-term use of dry casks or long-term pool storage. The foundation of assurance (that waste can be safely stored on-site) is the long-term performance of the dry casks. Without a complete technical evaluation of the dry casks, we have no idea whether they will perform as expected for another 50 years, 100 years or an indefinite period of time.

Identify other environmental review and consultation requirements related to the proposed action

The FRN does not mention how the NRC plans to consult with any impacted federally recognized tribes. Federally recognized Indian tribes have an expectation that they will be consulted on a government-to-government basis. Tribes are not the public and should not be treated as such. Please do not publish a notice in the Federal Register and expect tribes to respond.

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, states: the United States has a unique legal relationship with Indian Tribal governments; the United States recognizes the right of Indian Tribes to self-government and tribal sovereignty; each agency shall have an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies which affect the Tribe.

Simply put, the NRC has an obligation to consult with federally recognized Indian tribes on a government-to-government basis before decisions are made. The Waste Confidence EIS does
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have tribal implications — de facto approval of indefinite on-site spent nuclear fuel, next to a federally recognized Indian tribe.

Executive Order 13175, signed by Presidents Clinton, Bush, and Obama, applies to all federal agencies, including the NRC. It is our view that the NRC must consult with PIIC regarding the waste confidence EIS (which tacitly approves indefinite on-site spent nuclear fuel storage). We expect a meeting with the Tribal Council and not just an invitation to attend a public meeting.

Indicate the relationship between the timing of the preparation of the environmental analyses and the Commission’s tentative planning and decision-making schedule

The US Court of Appeals, in its June 8, 2012 decision vacating the Waste Confidence Decision and remanding for further proceeding, said nothing about a timeframe in which the EIS must be completed. Since the WCD and TSR have widespread licensing implications, we would like to see that the EIS be done carefully and thoroughly and not rushed through to meet some artificial 2-year time period. In our view, a 24-month review limits or constrains a thorough consideration of all possible ideas and options.

The schedule for the long-term update to the Waste Confidence Rule and related EIS indicated that a draft EIS would be available in 2017 and the final EIS and a final decision would be in 2018/2019. Furthermore, COMSECY-12-0016 (Approach for Addressing Policy Issues Resulting from Court Decision to Vacate Waste Confidence Decision and Rule) contemplated completing the EIS in 2017.

A review of recently completed reactor licenses (17) indicates that the review time ranged from 21 months to 76 months, with an average of 32.9 months. Taking out the outliers (45, 62, and 76 months) reduces the review time to 26.9 months. The NRC plans for an average review time of 24 (no hearing) to 30 (hearing) months. Regardless of the length it takes to complete the reactor license renewal, the licensee will still be allowed to operate as long as it is in timely renewal. It does not seem likely that a reactor license renewal will not be granted if the Waste Confidence EIS is not completed within 24 months.

As was stated in COMSECY-12-0016, the Waste Confidence Decision and Rule "undergirds agency licensing decisions on new reactor licensing, reactor license renewal, and ISFSI licensing" (and relicensing), it is crucial that the NRC the necessary time and get it right.

Alternatives to WC EIS

As we have stated above, we fail to see how a generic EIS can adequately evaluate the environmental effects of failing to establish a national repository. This is especially troubling to us as previously, the WCD and TSR have not allowed site-specific analyses of long-term waste storage impacts during licensing proceedings (i.e., reactor renewal and ISFSI renewals). For ISFSI renewals there is an environmental assessment process, although the scope is
limited. We recommend that the NRC evaluate whether a tiered approach could be used for developing the WC EIS, where some issues might be generic to all pools or sites and other issues would be site specific. This approach is used in reactor renewals, where certain issues have been identified as Category 1 or generic issues (to all plants) that warrant no further evaluation unless new and significant information is identified. Site Specific (or Category 2) issues are evaluated in the Supplemental EIS the NRC prepares as part of the relicensing process (see NUREG-1437).

By using a tiered approach, the NRC could develop a generic WC EIS that would later be supplemented in ISFSI licensing actions or reactor relicensing (in the case of pool storage) to evaluating the site-specific environmental impacts.

Some commenters have suggested that site-specific impacts (of failing to secure a national repository) are evaluated in other NEPA documents and that there is no need to do so in the WC EIS. That just is not true. As mentioned above, there is no analysis of spent fuel storage issues in EIS’s for reactor license renewal. As well, the EIS’s for ISFSI renewals contain no analysis of long-term spent nuclear fuel storage issues. This is where the WCD and TSR have been the most effective. By stating that there will be a geologic repository, either by date certain or “when necessary” and that spent nuclear fuel can safely be stored on-site for 30 or 60 years beyond the licensed life of the plant, the WCD and TSR have effectively prevented any analysis of the environmental effects of long-term spent fuel storage (i.e., failing to secure a national repository). Without a site-specific WC EIS we will never know that the real environmental effects of failing to secure a repository are. This can change with now. We urge the NRC to consider site-specific environmental effects.

As one of the Petitioners in the challenge to the WCD and TSR, which resulted in the remand to the NRC, we appreciate the opportunity to provide comments on this important issue. We hope you find our comments and suggestions helpful as you proceed with this important endeavor. As the closest community in the United States to a spent fuel storage facility, there is no more important issue to us.

Sincerely,

Philip R. Mahowald
General Counsel
Prairie Island Indian Community