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March 22, 2000

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The Secretary  
US Nuclear Regulatory Commission  
Washington, DC 20555-0001

Attention: Rulemakings and Adjudications Staff

On December 21, 1999 the Nuclear Regulatory Commission (NRC) posted a notice in the Federal Register (Volume 64, Number 244, pages 71331-71333) requesting comments on the NRC's intention to amend its regulations to require licensees to notify Indian tribes in advance of certain shipments of high level radioactive waste, including spent fuel.

The Prairie Island Indian Community is a federally recognized Indian tribe organized under 25 U.S.C. Section 476 and is governed under the terms of the Constitution and By-Laws adopted by tribal members on May 23, 1936 and approved by the Secretary of the Interior on June 20, 1936. Its members are Mdewakanton and Wahpekute descent of the Dakota Sioux. There are approximately 550 enrolled tribal members; one hundred and sixty (160) members live on the reservation. The Prairie Island Indian community is located on Prairie Island, which is formed at the confluence of the Vermillion and Mississippi rivers in southeastern Minnesota, approximately 40 miles southeast of Minneapolis.

The Prairie Island Indian Community's interest in spent nuclear fuel issues, including transportation and storage, arises from the construction and operation of the Prairie Island Nuclear Generating Plant next to our reservation (the power plant has been operational since 1973). To date, we know of no one in the United States who lives so close to a nuclear facility. Our neighbor, Northern States Power (owner of the power plant), has begun to store spent nuclear fuel in dry casks on a concrete pad just three blocks from our homes, our church, our community center, and our business (see Figure 1). We have been monitoring the Department of Energy's (DOE) efforts to develop a national solution for nuclear waste storage and Congress's recent efforts to identify an interim storage facility.

The United States government has a Trust relationship with the Prairie Island Indian Community. The United States has a responsibility to protect the environment, human health, natural and cultural resources, and property interests in Indian Country. Protecting our people from harmful impacts demands that the federal government safely

remove spent nuclear fuel from Prairie Island. As spent nuclear fuel from the Prairie Island Nuclear Generating Plant will be transported through and adjacent to our reservation to a federal storage facility, we have a right to know when those shipments are occurring.

We support the NRC's efforts to fully and meaningfully involve Indian tribes in the safe transportation of nuclear waste. It is absolutely critical that tribes be directly consulted on nuclear waste shipments. Without a mechanism to notify tribes of these shipments, meaningful and direct involvement in emergency planning and preparedness activities will not occur.

We fully expect to be involved with all shipments of spent nuclear fuel traveling through and adjacent to our reservation. It is not clear, however, whether the "prenotification" requirement will extend to shipments heading to a private storage facility or just those shipments going a national repository. As the Commission may be aware, Private Fuel Storage, a consortium of seven utilities, including Northern States Power, has submitted a license application to the NRC for a nuclear waste storage facility on the Skull Valley Goshute Indian Reservation in Skull Valley, Utah. If licensed, this facility could store up to 40,000 tons of spent nuclear fuel. Most likely, the spent fuel will be transported through and adjacent to our reservation. Our land, people, and resources will be equally impacted by these shipments, yet it is not clear whether the proposed rulemaking would apply to these shipments. Some clarification on this point would be greatly appreciated.

In response to the questions posed in the Advanced Notice of Proposed Rulemaking, we provide the following information:

#### **A. Developing a List of Native American Tribal Contacts**

A.1 Working with the Bureau of Indian Affairs (BIA) would be a good first step in developing a list of tribal contacts. The NRC must make every effort to ensure that the tribes along proposed shipping routes are directly contacted. The NRC should not assume that because there may have been no response to a letter that there is no interest. If a tribe is along a transportation corridor and there is no response to a letter, the NRC must make direct personal contact to ensure that the tribe knows about the shipments and whether the tribe wants to be involved.

A.2 The tribes who respond to an initial inquiry from the NRC will be the ones most interested, perhaps because their lands are located along a shipment route. These tribes should be given the opportunity to update their points of contacts on an annual basis. We would recommend annual updates similar to that required of the states, or ask that contact points be updated whenever there is a change (i.e., change in elected officials or staff).

A.3 By working directly with tribes along the shipping routes (e.g., establishing lines of communication), the NRC will know how a particular tribe can be best contacted in case of a schedule change or an emergency. The tribes that are interested and want to participate must be made aware that they have an obligation to provide the most current

and reliable information. This should not be a major impediment to the notification process.

### **B. Minimizing the Licensees' Administrative Burden**

B.1 Currently, all licensees are required to notify the states of pending shipments. We do not believe that notifying impacted tribes in advance will be a burden to licensees. If the routes are known in advance, the licensees will know which tribes need to be notified.

B.2 It is hard to believe that shipments will occur without a great deal of advance planning and warning. By planning in advance and working with the tribes along the routes, there should be no problem. If the licensee decides to proceed with the shipment, without contacting the impacted tribe, it runs the risk that the tribal government will object to the shipment crossing through its jurisdiction.

### **C. Identifying the Location of Tribes Along Shipment Routes**

C.1 The location of potentially impacted tribal lands is dependent upon the routes the licensee will use. By first identifying the routes, the licensees will have a much better idea of which tribes to contact. The BIA maintains a geographic database of tribal lands that could be used as a starting point. It should be noted, however, that the database might not include all the landholdings of a tribe (i.e., limited to Reservation and not include Trust lands). It must also be noted that tribal boundaries are often expanding and as such, tribal jurisdictional responsibilities are also increasing. In fact, our own land base has increased by 1,000 acres in the last two years. Without direct consultation with Indian tribes, these facts may not be known.

C.2 A central geographic database would be a good starting point. See comment above.

C.3 The rule should apply to all lands and not just Reservation lands. Tribes may have reservation, Trust lands, and fee owned lands and consider them to have equal importance. Some tribes may have hunting and gathering rights on ceded lands, which are lands or territory that were transferred to the United States in a treaty or agreement. Because of these interests, a tribe must be notified if shipments are to pass through ceded lands. The BIA's geographic database will not include the locations of ceded lands; this information will only come through direct consultation with a tribe.

### **D. Safeguards Information**

D.1 Yes, when spent fuel is being transported through or adjacent to tribal lands, that tribe should be notified.

D.2 Yes, this rule should be broadened to include tribal governments.

D.3 No, the act of notifying tribes of shipments in advance does not increase the risk to safeguarding shipments. Indian tribes are governments with great responsibilities, like the states. Notifying the tribes should be no different than notifying a state.

D.4 The rule should be similar to that required of a state government.

D.5 There may be some tribes who do not wish to receive Safeguards Information. The NRC will never know which tribes do not wish to participate unless each tribe along the routes has been contacted. The response will vary from tribe to tribe, depending on available resources and staff.

D.6 Only if the NRC inspects each state's actions to control and protect Safeguards Information.

D.7 There appears to be a presumption that tribes are not capable of protecting Safeguards Information. Most Tribal governments address a great many issues in their daily deliberations, most of which are considered to be confidential. We see no reason why the Safeguards Information would not afforded the same measure of confidentiality.

D.8 Again, why is there a presumption that Indian tribes are not capable of protecting Safeguards Information? There should be no exemption.

D.9 No. The licensee should be required to notify the impacted tribe. The NRC cannot leave pre-notification to discretion of the licensee.

Again, thank you for the opportunity to provide comments on this most important issue. We are hopeful that our comments will assist the NRC in moving forward with a rulemaking that will result in the prenotification to Indian tribes along spent fuel transportation corridors.

Respectfully,

*Absent*  
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