September 25, 2012

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of	)	
	)	Docket No. 72-10
Northern States Power Company	)	
	)	ASLBP No.
(Prairie Island Independent Spent Fuel Storage Installation)	)	12-922-01-ISFSI-MLR-BD01

NORTHERN STATES POWER COMPANY'S ANSWER TO THE
PRAIRIE ISLAND INDIAN COMMUNITY'S PETITION TO INTERVENE

I. INTRODUCTION

Northern States Power Company, a Minnesota corporation, d/b/a Xcel Energy ("NSPM") hereby answers and opposes the Prairie Island Indian Community's Request for Hearing and Petition to Intervene in License Renewal Proceeding for the Prairie Island Spent Fuel Storage Installation, dated August 24, 2012 ("Petition" or "Pet."), which seeks a hearing in the license renewal proceeding for the Prairie Island Independent Spent Fuel Storage Installation ("ISFSI"). The Petition should be denied because none of the contentions proposed by the Prairie Island Indian Community ("the Community" or "PIIC") meets the NRC requisite standards for admissibility.

None of the contentions is supported by information demonstrating the existence of any genuine material dispute regarding the Prairie Island ISFSI application. The contentions do not reflect information that is set forth in the Prairie Island ISFSI license renewal application, challenge a pending NRC rule, and in many cases, are outside the scope of this proceeding.

II. PROCEDURAL BACKGROUND

By application dated October 20, 2011 and supplemented by letters dated February 29, 2012 and April 26, 2012, NSPM requested renewal of Materials License No. SNM-2506 for the Prairie Island ISFSI (the "Application"). On June 25, 2012, the Nuclear Regulatory Commission ("NRC" or "Commission") published a notice of opportunity for hearing ("Notice") regarding the Application. 77 Fed. Reg. 37,937 (June 25, 2012). The Notice permitted any person whose interest may be affected to file a written petition for leave to intervene by August 24, 2012. Id.

The Notice directed that any petition must set forth with particularity the interest of the petitioner and how that interest may be affected (i.e., standing), as well as the specific contentions sought to be litigated. Id. at 37,938. The Notice stated:

> For each contention, the petitioner must provide a specific statement of the issue of law or fact to be raised or controverted, as well as a brief explanation of the basis for the contention. Additionally, the petitioner must demonstrate that the issue raised by each contention is within the scope of the proceeding and is material to the findings the NRC must make to support the granting of a license renewal in response to the application. The petition must also include a concise statement of the alleged facts or expert opinions which support the petitioner and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the petitioner intends to rely. Finally, the petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact, including references to specific portions of the application for renewal that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application for renewal fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief. Each contention must be one that, if proven, would entitle the requestor/petitioner to relief.

Id. at 37,938.

III. STANDING

NSPM does not dispute the PIIC's standing.

IV. THE COMMUNITY'S CONTENTIONS DO NOT MEET THE COMMISSION'S STANDARDS FOR ADMISSIBILITY

In order to be admitted to a proceeding, a petitioner must plead at least one admissible contention. 10 C.F.R. § 2.309(a). For the reasons set forth below, the PIIC has not done so, and therefore, the Petition must be denied.

A. Standards for Contentions

1. Admissible Contentions Must Be Within the Scope of the Proceeding and May Not Challenge NRC's Rules

As a fundamental requirement, a contention is only admissible if it addresses matters within the scope of the proceeding and does not seek to attack the NRC's regulations governing the proceeding. 10 C.F.R. § 2.309(f)(1)(iii)-(iv) requires that a petitioner demonstrate that the issue raised by each of its contentions is within the scope of the proceeding and material to the findings that the NRC must make. Licensing boards "are delegates of the Commission" and, as such, they may "exercise only those powers which the Commission has given [them]." Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-316, 3 N.R.C. 167, 170 (1976) (footnote omitted); accord Portland General Electric Co. (Trojan Nuclear Plant), ALAB-534, 9 N.R.C. 287, 289-90 & n.6 (1979). Accordingly, it is well established that a contention is not cognizable unless it is material to a matter that falls within the scope of the proceeding for which the licensing board has been delegated jurisdiction. Marble Hill, ALAB-316, 3 N.R.C. at 170-71; see also Commonwealth Edison Co. (Zion Station, Units 1 and 2), ALAB-616, 12 N.R.C. 419, 426-27 (1980); Commonwealth Edison Co. (Carroll County Site), ALAB-601, 12 N.R.C. 18, 24 (1980).

It is also well established that a petitioner is not entitled to an adjudicatory hearing to attack generic NRC requirements or regulations. Duke Energy Corp. (Oconee Nuclear Station,

Units 1, 2, and 3), CLI-99-11, 49 N.R.C. 328, 334 (1999). "[A] licensing proceeding . . . is plainly not the proper forum for an attack on applicable statutory requirements or for challenges to the basic structure of the Commission's regulatory process." Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 A.E.C. 13, 20, aff'd in part on other grounds, CLI-74-32, 8 A.E.C. 217 (1974) (footnote omitted). Thus, a contention which collaterally attacks a Commission rule or regulation is not appropriate for litigation and must be rejected. 10 C.F.R. § 2.335; Potomac Electric Power Co. (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 A.E.C. 79, 89 (1974). Nor should licensing boards accept for litigation a contention which is or is about to become the subject of NRC rulemaking. Id. at 85, quoted in Oconee, CLI-99-11, 49 N.R.C. at 345. A contention which "advocate[s] stricter requirements than those imposed by the regulations" is "an impermissible collateral attack on the Commission's rules" and must be rejected. Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), LBP-82-106, 16 N.R.C. 1649, 1656 (1982); see also Arizona Public Service Co. (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), LBP-91-19, 33 N.R.C. 397, 410, aff'd in part and rev'd in part on other grounds, CLI-91-12, 34 N.R.C. 149 (1991). Likewise, a contention that seeks to litigate a generic determination established by Commission rulemaking is "barred as a matter of law." Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-93-1, 37 N.R.C. 5, 29-30 (1993).

With respect to safety issues, the scope of an ISFSI license renewal proceeding, which parallels that of a 10 C.F.R. Part 50 license renewal, by regulation focuses on management of aging of certain systems, structures and components ("SSCs"), and the review of time-limited aging evaluations.

An ISFSI license may be renewed for a period of up to 40 years by filing an application at least two years before the expiration of the existing license. 10 C.F.R. § 72.42 (a) and (b); see 76 Fed. Reg. 8,872 (Feb. 16, 2011). This application must contain the following:

(1) Time Limited Aging Analyses ("TLAAs") that demonstrate that structures, systems, and components important to safety will continue to perform their intended function for the requested period of extended operation (10 C.F.R. § 72.42 (a)(1));

(2) A description of the Aging Management Plan ("AMP") for management of issues associated with aging that could adversely affect structures, systems, and components important to safety (10 C.F.R. § 72.42 (a)(2));

(3) Design bases information as documented in the most recently updated Final Safety Analysis Report (10 C.F.R. § 72.42 (b)).

In turn, 10 C.F.R. Part 72 defines TLAAs and AMP in detail. Part 72 defines TLAAs as calculations and analyses that:

> (1) Involve structures, systems, and components important to safety within the scope of the license renewal, as delineated in subpart F of this part . . .;
>
> (2) Consider the effects of aging;
>
> (3) Involve time-limited assumptions defined by the current operating term, for example 40 years;
>
> (4) Were determined to be relevant by the licensee . . . in making a safety determination;
>
> (5) Involve conclusions or provide the basis for conclusions related to the capacity of structures, systems, and components to perform their intended safety functions; and
>
> (6) Are contained or incorporated by reference in the design bases.

10 C.F.R. § 72.3. In summary, the TLAA process is used to assess SSCs important to safety that have a time-dependent operating life to ensure that the components will perform as designed under the extended license term. 76 Fed. Reg. at 8,874-75.

The second required prong of the license renewal application, the Aging Management Plan, is "a program for addressing aging effects that may include prevention, mitigation, condition monitoring, and performance monitoring." 10 C.F.R. § 72.3. The AMP was included

as part of the license renewal process "because SSCs must be evaluated to demonstrate that aging effects will not compromise the SSCs' intended functions during the renewal period." 76 Fed. Reg. at 8,875. AMP requirements are addressed in the terms and conditions of the renewed license. Id.

These regulatory requirements show that the scope of a license renewal proceeding is to demonstrate the safety of continued storage of spent fuel for the license term through TLAAs and the establishment of an AMP. In the most recent revision to Part 72, the Commission explicitly stated that if the "applicant demonstrates appropriate aging management and maintenance programs" then "a renewal term up to 40 years is reasonable and provides adequate protection of public health and safety." 76 Fed. Reg. at 8,880. NRC guidance for ISFSI license-renewal applications is consistent with this regulatory framework. For example, NUREG-1927, Standard Review Plan for Renewal of Spent Fuel Dry Cask Storage System License and Certificates of Compliance, "parallels the 10 CFR Part 54 license-renewal process for 10 CFR Part 50 licenses." SECY-04-0175, Options for Addressing the Surry Independent Spent Fuel Storage Installation License Renewal Period Exemption Request (Sept. 28, 2004) at 4 (describing the preliminary guidance used in the Surry ISFSI license renewal, which is the basis for NUREG-1927). As with the Part 50 license renewal process, this guidance is:

> risk-informed in that it does not dictate a new review of the current licensing basis, but rather it focuses on those areas that could have changed over the licensing period, the likelihood of those changes, and the potential consequences should those changes occur. The review guidance is focused on age-related material degradation, and what effect that potential degradation could have on the licensing basis. The review guidance does not suggest a reexamination of the design basis for an ISFSI in the areas of criticality, thermal, structural, and shield, except as they might be impacted by age-related materials degradation.

Id. In sum, the ISFSI license renewal process is designed to identify and manage age-related degradation that could have an effect on the current licensing basis. The process is not intended

"to be a vehicle for imposing new regulatory requirements" and challenges alleging deficiencies in the current licensing basis must be address through the license amendment process rather than in a license renewal proceeding. Standard Review Plan for Renewal of Spent Fuel Dry Cask Storage System Licenses and Certificates of Compliance, Final Report, NUREG-1927 (March 2011) at 9 (stating that "NRC bases a license or COC [Certificate of Compliance] renewal on the continuation of existing licensing basis throughout the period of extended operation and on the maintenance of the intended functions of the SSCs important to safety. The NRC does not intend a license renewal to be a vehicle for imposing new regulatory requirements. If new safety-related deficiencies are discovered, they must be addressed through the license or COC amendment process").

The NRC rules governing environmental reviews for ISFSIs – set forth in 10 C.F.R. sections 51.60 and 51.61– similarly provide for a more focused and, therefore, more effective review. Where a previous environmental report ("ER") has been submitted, as in this case, an applicant may submit a supplement which may be limited to "incorporating by reference, updating or supplementing the information previously submitted to reflect any significant environmental change, including any significant environmental change resulting from operational experience or a change in operations or proposed decommissioning activities." 10 C.F.R. § 51.60(a). This approach allows the NRC to rely on previous analyses and limit its National Environmental Policy Act ("NEPA") analysis to consideration of new and significant information.

2. Contentions Must Be Specific and Supported By a Basis Demonstrating a Genuine, Material Dispute

In addition to the requirement to address issues within the scope of the proceeding, a contention is admissible only if it provides:

- a "specific statement of the issue of law or fact to be raised or controverted;"
- a "brief explanation of the basis for the contention;"
- a "concise statement of the alleged facts or expert opinions" supporting the contention together with references to "specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue;" and
- "[s]ufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact," which showing must include "references to specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief."

10 C.F.R. §§ 2.309(f)(1)(i), (ii), (v) and (vi). The failure of a contention to comply with any one of these requirements is sufficient grounds for dismissing the contention. Arizona Public Service Co. (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 N.R.C. 149, 155-56 (1991) (emphasis added).

These pleading standards governing the admissibility of contentions are the result of a 1989 amendment to 10 C.F.R. § 2.714, now Section 2.309, which was intended "to raise the threshold for the admission of contentions." 54 Fed. Reg. 33,168 (Aug. 11, 1989); see also Oconee, CLI-99-11, 49 N.R.C. at 334; Palo Verde, CLI-91-12, 34 N.R.C. at 155-56. The Commission has stated that the "contention rule is strict by design," having been "toughened . . . in 1989 because in prior years 'licensing boards had admitted and litigated numerous contentions that appeared to be based on little more than speculation.'" Dominion Nuclear Connecticut, Inc.

(Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 N.R.C. 349, 358 (2001), petition for reconsideration denied, CLI-02-01, 55 N.R.C. 1 (2002) (citation omitted). The pleading standards are to be enforced rigorously. "If any one of the requirements is not met, a contention must be rejected." Palo Verde, CLI-91-12, 34 N.R.C. at 155 (citation omitted). A licensing board is not to overlook a deficiency in a contention or assume the existence of missing information. Id.

The Commission has explained that this "strict contention rule" serves multiple purposes, which include putting other parties on notice of the specific grievances and assuring that full adjudicatory hearings are triggered only by those able to proffer at least some minimal factual and legal foundation in support of their contentions. Oconee, CLI-99-11, 49 N.R.C. at 334. By raising the threshold for admission of contentions, the NRC intended to obviate lengthy hearing delays caused in the past by poorly defined or supported contentions. Id. As the Commission reiterated in incorporating these same standards into the Part 2 rules, "[t]he threshold standard is necessary to ensure that hearings cover only genuine and pertinent issues of concern and that issues are framed and supported concisely enough at the outset to ensure that the proceedings are effective and focused on real, concrete issues." 69 Fed. Reg. 2,182, 2,189-90 (Jan. 14, 2004).

Under these standards, a petitioner is obligated "to provide the [technical] analyses and expert opinion" or other information "showing why its bases support its contention." Georgia Institute of Technology (Georgia Tech Research Reactor, Atlanta, Georgia), LBP-95-6, 41 N.R.C. 281, 305, vacated in part and remanded on other grounds, CLI-95-10, 42 N.R.C. 1, aff'd in part, CLI-95-12, 42 N.R.C. 191 (1995). Where a petitioner has failed to do so, "the [Licensing] Board may not make factual inferences on [the] petitioner's behalf." Id., citing Palo Verde, CLI-91-12, 34 N.R.C. 149. See also Private Fuel Storage, L.L.C. (Independent Spent

Fuel Storage Installation), LBP-98-7, 47 N.R.C. 142, 180 (1998) (a "bald assertion that a matter ought to be considered or that a factual dispute exists . . . is not sufficient"; rather, "a petitioner must provide documents or other factual information or expert opinion" to support a contention's "proffered bases") (citations omitted).

Further, admissible contentions "must explain, with specificity, particular safety or legal reasons requiring rejection of the contested [application]." Millstone, CLI-01-24, 54 N.R.C. at 359-60 (citation omitted). In particular, this explanation must demonstrate that the contention is "material" to the NRC's findings and that a genuine dispute on a material issue of law or fact exists. 10 C.F.R. §§ 2.309(f)(1)(iv), (vi). The Commission has defined a "material" issue as meaning one where "resolution of the dispute would make a difference in the outcome of the licensing proceeding." 54 Fed. Reg. at 33,172 (emphasis added).

As observed by the Commission, this threshold requirement is consistent with judicial decisions, such as Connecticut Bankers Association v. Board of Governors, 627 F.2d 245, 251 (D.C. Cir. 1980), which held that:

> [A] protestant does not become entitled to an evidentiary hearing merely on request, or on a bald or conclusory allegation that . . . a dispute exists. The protestant must make a minimal showing that material facts are in dispute, thereby demonstrating that an "inquiry in depth" is appropriate.

651 F.2d at 251 (footnote omitted); see also Baltimore Gas & Electric Co. (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-14, 48 N.R.C. 39, 41, motion to vacate denied, CLI-98-15, 48 N.R.C. 45, 56 (1998)("It is the responsibility of the Petitioner to provide the necessary information to satisfy the basis requirement for the admission of its contentions . . . "). A contention, therefore, is not to be admitted "where an intervenor has no facts to support its position and where the intervenor contemplates using discovery or cross-examination as a fishing

expedition which might produce relevant supporting facts." 54 Fed. Reg. at 33,171.[1] As the Commission has emphasized, the contention rule bars contentions where petitioners have what amounts only to generalized suspicions, hoping to substantiate them later, or simply a desire for more time and more information in order to identify a genuine material dispute for litigation. Duke Energy Corp. (McGuire Nuclear Station, Units 1 and 2), CLI-03-17, 58 N.R.C. 419, 424 (2003).

Therefore, under the Rules of Practice, a statement "that simply alleges that some matter ought to be considered" does not provide a sufficient basis for a contention. Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), LBP-93-23, 38 N.R.C. 200, 246 (1993), review declined, CLI-94-2, 39 N.R.C. 91 (1994). Similarly, a mere reference to documents does not provide an adequate basis for a contention. Baltimore Gas & Electric Co. (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-25, 48 N.R.C. 325, 348 (1998).

Rather, NRC's pleading standards require a petitioner to read the pertinent portions of the license application, including the safety analysis report and the ER, state the applicant's position and the petitioner's opposing view, and explain why it has a disagreement with the applicant. 54 Fed. Reg. at 33,171; Millstone, CLI-01-24, 54 N.R.C. at 358. If the petitioner does not believe these materials address a relevant issue, the petitioner is "to explain why the application is deficient." 54 Fed. Reg. at 33,170; Palo Verde, CLI-91-12, 34 N.R.C. at 156. A contention that does not directly controvert a position taken by the applicant in the license application is subject to dismissal. See Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Unit 2),

[1] See also Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-687, 16 N.R.C. 460, 468 (1982), vacated in part on other grounds, CLI-83-19, 17 N.R.C. 1041 (1983) ("[A]n intervention petitioner has an ironclad obligation to examine the publicly available documentary material pertaining to the facility in question with sufficient care to enable [the petitioner] to uncover any information that could serve as the foundation for a specific contention. Stated otherwise, neither Section 189a. of the [Atomic Energy] Act nor Section 2.714 [now 2.309] of the Rules of Practice permits the filing of a vague, unparticularized contention, followed by an endeavor to flesh it out through discovery against the applicant or staff.").

LBP-92-37, 36 N.R.C. 370, 384 (1992), appeal dismissed, CLI-93-10, 37 N.R.C. 192, stay denied, CLI-93-11, 37 N.R.C. 251 (1993). Furthermore, an allegation that some aspect of a license application is "inadequate" or "unacceptable" does not give rise to a genuine dispute unless it is supported by facts and a reasoned statement of why the application is unacceptable in some material respect. Florida Power & Light Co. (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-90-16, 31 N.R.C. 509, 521 & n.12 (1990).

B. The PIIC's Contentions Are Inadmissible

1. Contention 1: Reliance on Waste Confidence Decision and Temporary Storage Rule

Contention 1, which alleges that NSPM's ER is deficient because it "relies on NRC's Waste Confidence Decision ('WCD') and Temporary Storage Rule ('TSR')" (Petition at 23), must be dismissed because it impermissibly challenges a pending rulemaking.

The PIIC challenges the ER because it fails to identify or address the impacts from long-term, on-site storage of spent nuclear fuel to account for the possibility that there will be no permanent mined repository prior to the end of the 40 year renewal term. Petition at 24-25. The PIIC explains that this asserted deficiency is due to NSPM's reliance on the NRC's WCD and TSR.[2] Together, the WCD and TSR provide that the Commission has determined that (1) "spent fuel generated in any reactor can be safely stored without significant environmental impacts for at least 60 years beyond the licensed life for operation;" (2) "there is reasonable assurance that sufficient mined geologic repository capacity will be available to dispose" of spent nuclear fuel when necessary; and (3) environmental reports associated with an application for an initial ISFSI license or an amendment, among other things, do not need to discuss the environmental impact

[2]Although the Petition states that the ER relied on "the draft proposed revised rule", Petition at 23, the WCD and the TSR were promulgated in 2010, 75 Fed. Reg. 81,037 (Dec. 23, 2010), long before NSPM submitted its application. NSPM cites to the TSR codified at 10 C.F.R. § 51.23. See Application at E-1 – E-2.

of spent fuel storage beyond the period following the term of the license for which the application is being made. 10 C.F.R. §§ 51.23(a)-(b).

As discussed in the Petition, the U.S. Court of Appeals for the District of Columbia Circuit on June 8, 2012, vacated both the WCD and the TSR. New York v. NRC, 681 F.3d 471, 483 (D.C. Cir. 2012)(vacating the WCD and TSR). The PIIC contends that the ER's reliance on the WCD and TSR is improper and that the ER is deficient because it did not account for the possibility that there might be no permanent mined repository in 40 years. However, Contention 1 completely ignores the fact that, in response to the Court's decision, the Commission, on August 7, 2012, exercised its inherent supervisory authority over adjudications and explicitly directed how it would deal with contentions which had been, or would in the near future be, filed relying on the WCD/TSR. Calvert Cliffs Nuclear Project, LLC, et al. (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-12-16, 76 N.R.C. ___ (Aug. 7, 2012) (slip op. at 6). The Commission's Memorandum and Order stated that it is "considering all available options for resolving the waste confidence issue, which could include generic or site-specific NRC actions, or some combination of both." Id. at 4. With respect to pending or new waste confidence contentions, the Commission directed that "these [pending] contentions – and any related contentions that may be filed in the near term - be held in abeyance pending our further order." Id. at 6. The only exception that the Commission provided was in the event that the Commission in the future determines "that case-specific challenges are appropriate for consideration." Id. at 6 n.11.

On September 6, 2012, in SRM-COMSECY-12-0016, the Commission directed the NRC Staff to develop a generic environmental impact statement ("EIS") to support an updated WCD and TSR. Staff Requirements – COMSECY-12-0016 - Approach for Addressing Policy Issues Resulting from Court Decision to Vacate Waste Confidence Decision and Rule (Sept. 6, 2012)

(ADAMS Accession No. ML12250A023). The Commission directed that a final rule and EIS be published within 24 months of issuing the SRM. Id. It is well established that licensing boards "should not accept in individual license proceedings contentions which are (or are about to become) the subject of rulemaking by the Commission." Oconee, CLI-99-11, 49 N.R.C. at 345 (1999), quoting Douglas Point, ALAB-218, 8 A.E.C. at 85. The Commission cautioned that site-specific analyses of waste confidence issues should be conducted "only in rare circumstances in which there is an exceptional or compelling need to proceed otherwise," and in such cases, the Staff must submit an information paper to the Commission prior to taking any action. SRM-COMSECY-12-0016 at 2. Therefore, since Contention 1 is challenging NSPM's reliance on the WCD/TSR, which is now the subject of rulemaking, and the Staff has not identified in an information paper to the Commission compelling circumstances requiring a site-specific analysis, Contention 1 must be dismissed.[3]

2. Contention 2: Cumulative Impacts

Contention 2 alleges that NSPM's ER is deficient because it fails to address the cumulative impacts of "the federal process for establishing a common mined geologic repository" (Petition at 30), impacts of the NRC's future actions on the Waste Confidence Decision ("WCD") and revised Temporary Storage Rule ("TSR"), impacts of the Prairie Island Nuclear Generating Plant's ("PINGP") 20 year license renewal, and the future expansion of the ISFSI. This contention must be dismissed because the alleged cumulative impacts are vague, are outside the scope of this proceeding, and in part, concern waste confidence issues.

[3] Should the NRC Staff choose to perform a site-specific analysis, this contention (and those portions of subsequent contentions challenging the WCD/TSR) should be held in abeyance in accordance with the Commission's August 27, 2012 Order pending Staff presentation to the Commission, and the Commission's determination that case-specific challenges are appropriate.

To the extent that this contention suggests that the ER should address periods beyond the 40-year license term and 48 dry casks, as described in the response to Contention 1, these aspects of the contention should be dismissed because they challenge pending rulemaking for the NRC's WCD/TSR. PIIC alleges a number of omissions from the ER that are essentially challenges to WCD/TSR. First, PIIC asserts that limiting the analysis to the 40 year license period can only be appropriate "if NSPM assumes the viability of a common mined geologic repository." Petition at 31. Then, PIIC asserts that the ER "fails to assess the effects of the application in light of the NRC's future actions on Waste Confidence Decision and revised Temporary Storage Rule." Id. PIIC also alleges that the "ER fails to assess how more than 40 years of extended storage will affect the fuel assemblies and internal casks components specifically their transportability" and that "the ER makes no assessment of the long-term viability of cask storage that may well be required by very long term on site storage – the impact of which is the possible permanent storage of SNF at Prairie Island." Id. at 35 (emphasis added). These issues are collateral attacks on the NRC's pending WCD/TSR rulemaking and as such must be dismissed. 10 C.F.R. § 2.335; Douglas Point, ALAB-218, 8 A.E.C. at 89. Furthermore, PIIC's contention that NSPM's ER should consider the impacts of as yet undetermined actions on the WCD/TSR is vague and must be dismissed.

The PIIC contends that the ER is deficient because it fails to assess the cumulative impacts of an ISFSI expansion, given the PINGP license renewal and the Minnesota Public Utilities Commission ("MPUC") granting a Certificate of Need ("CON") for additional casks. While the NRC license for the ISFSI authorizes up to 48 storage casks, MPUC had only authorized sufficient casks to support operation of Units 1 and 2 through the end of the PINGP original operating license (i.e., 29 casks). Minnesota Department of Commerce, Final Environmental

Impact Statement, Xcel Energy Prairie Island Nuclear Generating Plant, Extended Power Uprate Project and Request for Additional Dry Cask Storage (July 31, 2009) at vi. In support of the PINGP license renewal, NSPM applied to the MPUC for a CON to allow additional casks during the license renewal period. To avoid having to seek multiple approvals from the MPUC, NSPM requested a CON for up to 35 additional casks, sufficient to store all spent fuel that would be generated during the period of extended operation. Id. NSPM has not applied to the NRC to increase the current NRC-licensed capacity of the ISFSI. Because NSPM has not applied for an NRC license to increase the capacity of the ISFSI, evaluation of any such expansion in the current application is beyond the scope of this proceeding.

The Commission has stated that, to bring a future action into play within the NEPA context, "a possible future action must at least constitute a 'proposal' pending before the agency (i.e., ripeness), and must be in some way interrelated with the action that the agency is actively considering (i.e., nexus)." Duke Energy Corporation (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Stations, Units 1 and 2) CLI-02-14, 55 N.R.C. 278, 295 (2002) (footnote omitted). "The issue of ripeness ultimately boils down to what constitutes a 'proposal'." Id. Where the future action involves a license amendment that the agency has never seen, it would have a difficult time appraising how those effects would combine with those of another action to create a cumulative impact. Id. In McGuire, the Commission found that, even where a contract to use mixed oxide ("MOX") fuel had been signed by Duke, a contention in the license renewal proceeding suggesting that the cumulative impact of the future use of this was not ripe because Duke had not submitted a license application to use MOX fuel, and during the 6 1/2 years until the MOX fuel could be delivered, any number of events could occur that might render such an application unnecessary. Id. at 296; see also Crow Butte Resources, Inc. (North Trend

Expansion Area), CLI-09-12, 69 N.R.C. 535, 570 (2009) ("Issues that may arise in a future proceeding based on an entirely separate application are not relevant to the proceeding at hand") (footnote omitted). Similarly, NSPM has not submitted a license amendment to the NRC to expand its ISFSI and any impacts associated with a possible future expansion are not ripe for evaluation. See Application at E-13 ("If and when NSPM chooses to pursue a license amendment to store additional casks past the 48 currently authorized, it will do so in a separate license amendment request . . . accompanied by a Supplemental Environmental Report.").

The Commission has adopted the "nexus test" set forth in Webb v. Gorsuch, which provides that there is a nexus "only if the projects are so interdependent that it would be unwise or irrational to complete one without the other." McGuire, CLI-02-14, 55 N.R.C. at 297 (citing Webb v. Gorsuch, 699 F.2d 157, 161 (4th Cir. 1983)). Here, NSPM can extend the term of its current ISFSI license without applying for or construction of an expansion of the ISFSI. To be sure, there is dependence in that a future expansion depends on the current ISFSI exceeding its allowed storage capacity. However, "there is not 'interdependence' going in both directions" because renewal of the current ISFSI license does not rely on the ability to expand the ISFSI in the future. Duke Energy Corporation (Catawba Nuclear Station, Units 1 and 2), LBP-04-4, 59 N.R.C. 129, 171 (2004). If an expansion is necessary, it will be seven years before construction commences and the cumulative impacts of those actions can be addressed within the context of the license amendment necessary to support those actions. See id.

Furthermore, neither the regulations governing the contents of an ER, nor NRC guidance on the environmental review of ISFSI license renewal applications, requires a cumulative impacts analysis by the applicant or Staff. 10 C.F.R. § 51.45 and 10 C.F.R. § 51.61 describe the contents required for an ISFSI license renewal environmental report. 10 C.F.R. § 51.45 specifies those

instances where a cumulative impact analysis is required, such as site preparation activities prior to construction (as defined in 10 C.F.R. § 51.4). There is no requirement for an ISFSI license renewal ER to contain a cumulative impact analysis. While NUREG-1748, Environmental Review Guidance for Licensing Actions Associated with NMSS Programs (August 2003), "suggests" that the NRC include a paragraph relating to cumulative impacts in its EA,[4] it explicitly states that "CEQ regulations do not require an assessment of cumulative impacts in an EA." NUREG-1748 at 3-12. Additionally, ISFSI license renewal ERs submitted by other applicants have not been required to assess the impacts from either an anticipated or hypothetical ISFSI expansion. In fact, the Surry ISFSI ER initially assessed the impacts of a future ISFSI expansion in its environmental analysis and the NRC Staff subsequently requested that discussion of such impacts be removed from the application and that the edited portions be resubmitted. See Letter from NRC to Dominion re: Request for Additional Information Regarding the Surry Independent Spent Fuel Storage Installation License Renewal Application and Exemption Request (TAC Nos. L23455 and L23456) (June 13, 2003) at 8-9 (ADAMS Accession No. ML031671468) (requesting that Dominion "revise the environmental report to only address the requested licensing actions in the application" because the "ER provides assessments for modifications of the design with a fourth storage pad. However, this design modification is not part of the ISFSI design which is requested in the license renewal.").

The PIIC alleges that the expansion of the ISFSI will result in cumulative impacts, such as "archaeological (constructing the additional pads), traffic from construction activities, health impacts from additional casks." Petition at 33-34. This assertion is vague, is unsupported by any

[4] NUREG-1748 "suggest[s] that a paragraph be included in the EA that (i) notes the resources with anticipated environmental impacts for the proposed action, (ii) explains that NRC searched for activities that could result in cumulative impacts for those resources, and (iii) states whether there are significant cumulative impacts." NUREG-1748 at 3-12 (emphasis added).

documentation or expert testimony, and thus, should not be admitted. Furthermore, PIIC raised similar issues regarding impacts to archaeological resources as a result of a future ISFSI expansion in the PINGP license renewal proceeding, and these concerns were addressed by NSPM as part of a settlement agreement with the PIIC. Prairie Island Indian Community's Notice of Intent to Participate and Petition to Intervene (Aug. 18, 2008) at 9 ("the expansion of the Independent Spent Fuel Storage Installation ('ISFSI') at the PINGP site to accommodate the additional spent fuel produced during the license renewal term, was not analyzed by The 106 Group for its potential impact on culture resources."). As described in the Application at E-31 - E-32, NSPM entered into a settlement agreement with PIIC in the PINGP license renewal proceeding to address, among other things, PIIC's concerns regarding protection of archaeological resources. Application at E-32.[5] The 2009 Settlement Agreement provided for, among other things: (1) a Phase I Reconnaissance Field Survey of the disturbed areas within the Plant's boundaries; (2) an opportunity for PIIC to review and comment on the survey protocol; (3) an opportunity for PIIC to observe the survey; (4) development of a Cultural Resource Management Plan ("CRMP")[6] in cooperation with PIIC; (5) an annual report from NSPM to PIIC regarding any archeological or ground disturbing activities at PINGP within the previous year; (6) revision of NSPM's Archaeological, Cultural & Historic Resources Procedure and its Excavation & Trenching Controls Procedures in cooperation with PIIC; (7) training for

[5] The Settlement Agreement Among The Prairie Island Indian Community and Northern States Power Co. Regarding Contentions 1, 6, and 11 is attached as Exhibit C to the Joint Motion for Approval of Settlement and Dismissal of PIIC Contentions 1, 6, and 11 (Apr. 3, 2009) (ADAMS Accession No. ML090930374) ("2009 Settlement Agreement").

[6] The CRMP was developed as a tool for employees responsible for planning, reviewing, approving, and overseeing construction, excavation, or other undertakings on the plant property. Cultural Resource Management Plan, Prairie Island Nuclear Generating Plant (September 15, 2010) at 1-2. The CRMP was developed by NSPM in cooperation with PIIC and the U.S. Department of Interior, Bureau of Indian Affairs (BIA). Id. The CRMP describes the roles of personnel, including external agencies and entities such as the PIIC; previously performed surveys and studies; previously identified archaeological and cultural resources; and procedures for the protection and treatment of archaeological and cultural resources on NSPM property.

personnel responsible for excavation or ground disturbing activities, in which PIIC is invited to participate; and (8) retention of a qualified archaeologist for consultation. 2009 Settlement Agreement at 2-3. The Application describes extensive archaeological studies conducted at the PINGP, which were, in part, performed to respond to PIIC's concerns. Application at E-31. In its Petition, PIIC expresses "concern[]. . . that very little archaeological survey work was conducted in the immediate vicinity of the ISFSI *prior* to construction of the ISFSI." Petition at 34 (emphasis in original). PIIC also alleges that surveys conducted in 1992 and 1967 are unreliable and states that recent surveys were limited in nature. Petition at 34. The application notes that a limited Phase I Archaeological Reconnaissance Survey was conducted of the entire PINGP property in 2009 to meet the commitment made to PIIC in the 2009 settlement. Application at E-32. These results were shared with PIIC in 2010. Application at EA-3. The Application also notes that "NSPM conducted a Phase I Archaeological Reconnaissance Survey of the ground surface surrounding the PI ISFSI" in 2010 with the purpose of assessing "the nature of previous construction disturbance and determine the potential for the presence of previously undocumented cultural resources." Application at E-32.[7] While this 2010 Phase I survey was conducted subsequent to ISFSI construction, it provides insight into the cultural resources around the ISFSI, which includes the area where any future expansion would take place. The survey identified no prehistoric or diagnostic historic artifacts and concluded that the area in which the ISFSI pad is located is previously disturbed. As a result, the 2010 Phase I survey recommended a determination of No Historic Properties be made for the project area and no additional cultural resource investigations be performed. Application at EA-11. This 2010 Phase I survey report was provided to PIIC for review. Application at EA- 3 – EA-12. As

[7] The 2010 Phase I Archaeological Reconnaissance Survey Report for the Proposed Upgrades to the Independent Spent Fuel Storage Installation (ISFSI) at the Excel Energy Prairie Island Nuclear Generating Plant, Goodhue County, Minnesota is included in its entirety in the Application. Application at EA-7-EA12.

described in the Application, NSPM has implemented the agreed upon activities, as well as a number of NRC-recommended actions to mitigate impacts to cultural resources. Furthermore, PIIC has participated in many of these activities such as providing input into the CRMP, the 2009 limited Phase I archaeological survey, and related procedures, as well as attended training. PIIC has failed to address or even acknowledge these items in the Application, including the actions in the 2009 Settlement Agreement that addressed PIIC's concerns.

For all of these reasons, this Contention must be dismissed.

3. Contention 3: Federal Trust Responsibility

Contention 3 alleges that the federal government has breached its "trust responsibility" to the PIIC. The PIIC's basis for this asserted breach appears to be "the ongoing violation of the Nuclear Waste Policy Act by the two federal agencies [presumably NRC and DOE] tasked with comply [sic] with that Act". Petition at 40. This contention should be dismissed because it does not raise a genuine dispute with the Application and is beyond the scope of and immaterial to an ISFSI license renewal proceeding. Alternatively, this contention should be dismissed as a challenge to the NRC's pending WCD/TSR rulemaking.

The PIIC asserts that NSPM's ER fails to account for the federal trust responsibility. However, PIIC has not identified a single omission, deficiency, or error in NSPM's Application that would prevent the federal government from carrying out its trust responsibility. PIIC spends five pages explaining the federal government's trust obligation. Petition at 36-40. Nowhere in these five pages has PIIC identified a single material issue with the Application. Merely stating that the federal government has a trust obligation to the PIIC without more is not sufficient to meet NRC's strict pleading requirements. NRC's pleading standards require PIIC to show that a genuine dispute exists with the Application, explain why the Application is deficient and identify

which portions of the Application it disputes. 10 C.F.R. § 2.309(f)(1)(vi). PIIC has not met this requirement, and thus this contention must be dismissed.

The PIIC appears to be arguing that the NRC has breached its trust responsibility by violating the Nuclear Waste Policy Act and failing to act on the Yucca Mountain license application. See Petition at 40. To the extent that PIIC is making this argument, it is beyond the scope of an ISFSI license renewal proceeding and must be dismissed. 10 C.F.R. § 2.309(f)(1)(iii). The appropriate forum for PIIC to have challenged NRC's failure to act on the Yucca Mountain license application, would have been to join the very case it cites, In re Aiken County (D.C. Cir. No. 11-1271), rather than attempt to collaterally raise this breach of trust in the context of the instant license renewal application.

The NRC recognizes its federal trust responsibility to Native American tribes and has established protocols for ensuring that it meets this responsibility. Tribal Protocol Manual, Guidance for NRC Employees at 6 (ADAMS Accession No. ML11271A151) (noting that the Federal government has a trust responsibility to Federally recognized tribes and that this trust responsibility applies to all executive departments that deal with Native Americans, including the NRC). This same issue arose in the PINGP license renewal proceeding in response to a contention raised by PIIC. In that proceeding, the NRC Staff explained that the Commission meets its federal trust obligation by complying with its statutory duties. The licensing board in that proceeding noted that PIIC did not dispute the NRC Staff's statement that NRC meets its trust obligations by complying with its statutory duties. Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), Order (Granting Motion for Leave to File New Contentions and Denying Their Admission) (Feb. 25, 2010) at 7 n.31 (unpublished). In other words, the NRC Staff "implements any fiduciary responsibility through assuring that tribal

members receive the same protection from [its] implementing regulations that are available to other persons." Tribal Protocol Manual at 6. "[U]nless there is a specific duty that has been placed on the [Federal agency] with respect to Indians, [the trustee] responsibility is discharged by the agency's compliance with general regulations and statutes not specifically aimed at protecting Indian tribes." Morongo Band of Mission Indians v. FAA, 161 F.3d 569, 574 (9th Cir. 1998). The NRC exercises its trust responsibility in the context of the Atomic Energy Act, the Low Level Radioactive Waste Policy Act, the Nuclear Waste Policy Act, and NEPA. Compare Skokomish Tribe of Indians v. FERC, 121 F.3d 1303, 1309 (9th Cir. 1997)(stating that the Federal Energy Regulatory Commission was required to exercise its trust responsibility in the context of the Federal Power Act and declining to provide the tribe any "greater rights than they otherwise have under [that Act] and its implementing regulations"). In sum, the NRC meets its trust obligation in the context of the Prairie Island ISFSI license renewal proceeding by ensuring that the Application meets the requirements of its regulations for ISFSI license renewals.[8] NSPM has provided all information in its Application that the NRC has required under its regulations and guidance for a license renewal application. The PIIC has failed to identify any omission, deficiency or error to support this contention.

To the extent that PIIC is asserting that NSPM's ER fails to account for the federal trust responsibility because it did not consider the impact of "storing spent nuclear fuel indefinitely," Petition at 41, this contention should be dismissed as a collateral attack on NRC's pending rulemaking for the WCD/TSR. The only issue that PIIC raises in its contention involving both

[8] PIIC claims that the Federal trust responsibility includes "the duty to consult with Indian tribes." Petition at 37. Without conceding that the trust responsibility includes such a procedural requirement, NSPM notes that the NRC has initiated consultation with the PIIC, and that NSPM sought to consult with PIIC during development of its Application. See Letter from L. Camper, Director of Division of Waste Management and Environmental Protection, NRC, to J. Johnson, President PIIC, Initiation of Section 106 Consultation Regarding the Prairie Island Independent Spent Fuel Storage Installation Proposed License Renewal (Docket No. 72-10), June 14, 2012 (ADAMS Accession No. ML120830050), and Application at E-32 and Attachment A.

(1) the assertion of a federal trust responsibility, and (2) the licensing action involving the renewal of the PI ISFSI, is the storage of SNF at the PI ISFSI beyond the 40 year license renewal term. Petition at 40-42. This is a waste confidence issue and therefore the contention must be dismissed.

For all of these reasons, this contention must be dismissed.

4. Contention 4: Environmental Justice

Contention 4 alleges that the "ER fails to consider the disparate impact of the PINGP on the adjacent minority population." Petition at 43. The contention should be dismissed because it fails to present a genuine dispute on a material issue of fact, fails to address material in the Application, fails to provide a documentary basis to support the contention, and includes aspects that are beyond the scope of this proceeding.

The contention fails to meet the standards required of an admissible environmental justice contention. The Commission has made clear that "admissible contentions in this area are those which allege, with the requisite documentary basis and support as required by 10 CFR Part 2, that the proposed action will have significant adverse impacts on the physical or human environment that were not considered because the impacts to the community were not adequately evaluated." Policy Statement on the Treatment of Environmental Justice Matters in NRC Regulatory and Licensing Actions, 69 Fed. Reg. 52,040, 52,047 (Aug. 24, 2004) (emphasis added). In the PINGP license renewal proceeding, the Licensing Board, in response to PIIC's environmental justice contention, pointed out that conclusory statements that an action will have disparate impacts or "appreciably exceed[] the environmental impact on the larger community… hardly amount to 'sufficient information to show that a genuine dispute exists.'" Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), Order (Granting Motion for

Leave to File New Contentions and Denying Their Admissions) (Feb. 25, 2010) at. 8 (unpublished). Nor do these "conclusory statements" provide the "alleged facts or expert opinions" required to support a petitioner's position. Id.

To demonstrate the existence of an environmental justice issue, a petitioner must provide the requisite support to show that an impact, in addition to being disproportionate, has a high and adverse effect upon the applicable minority or low-income community. Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), CLI-02-20, 56 N.R.C. 147, 154 (2002), reconsideration denied, CLI-04-9, 59 N.R.C. 120 (2004) ("the executive order asks agencies to consider environmental justice implications only when disparate environmental effects are 'high and adverse.' Here the EIS found the overall environmental impacts on reservation residents small or 'small to moderate,' a finding not now in dispute before the Board.") (footnotes omitted); see also Environmental Justice: Guidance Under the National Environmental Policy Act, Council on Environmental Quality (Dec. 10, 1997) at 26-27 (available at http://ceq.hss.doe.gov/nepa/regs/ej/justice.pdf) ("When determining whether environmental effects are disproportionately high and adverse, agencies are to consider [among other things] . . . [w]hether environmental effects are significant (as employed by NEPA) and are or may be having an adverse impact on minority populations, low-income populations, or Indian tribes that appreciably exceeds or is likely to appreciably exceed those on the general population or other comparison group"). The Commission has held that environmental justice "only takes into account 'disproportionate adverse effects' of a project that peculiarly affect an environmental justice community and have some nexus to factors properly within the scope of NEPA." System Energy Resources, Inc. (Early Site Permit for Grand Gulf ESP Site), CLI-05-4, 61 N.R.C. 10, 13 (2005).

The contention identifies a number of alleged past risks and costs that PIIC asserts that its members have borne as a result of its proximity to PINGP and the Prairie Island ISFSI. Petition at 45-49. However, it fails to identify any genuine issue with the ISFSI license renewal application with respect to these topics, and fails to provide any documentary or expert support showing that the proposed action, i.e., ISFSI license renewal, will cause a significant, high and adverse impact on PIIC. As one example of these past risks and costs, PIIC alleges "destruction and desecration of sacred burial mounds and other culturally and historically significant sites." Petition at 45. The ER clearly states that no refurbishment or construction is planned as part of the ISFSI license renewal request. Application at E-47. Furthermore, the ER discusses past surveys and investigations conducted by NSPM to assess cultural and historic resources. As discussed in the response to Contention 2, several of these activities were performed to address concerns that PIIC raised in the PINGP license renewal proceeding. See Application at E-31 – E-32. In addition, the 2009 Settlement Agreement committed NSPM to create a CRMP to protect significant historical, archaeological, and cultural resources that may exist at the PINGP site. NSPM developed the CRMP, with advice and counsel from PIIC, to ensure that NSPM's activities will not adversely affect cultural resources. 2009 Settlement Agreement at 2. Furthermore, the ER notes that NSPM consulted with the Minnesota State Historic Preservation Officer ("MSHPO") and PIIC regarding the project's impacts on cultural and historic resources prior to submittal of the Application. Application at E-32, EA-2 and EA-25. The MSHPO responded that "no properties listed in or eligible for listing in the National Register of Historic Places (NRHP) would be affected by the PI ISFSI renewal." Id. PIIC has not responded to NSPM's request to provide information regarding the project's impacts to cultural resources. PIIC's contention does not address any of the information in the Application regarding cultural

resources and provides no evidentiary support showing significant, high and adverse disparate impact to the PIIC's cultural resources as a result of the ISFSI license renewal.

The PIIC points, without citation or support, to past "unfulfilled promise of jobs and opportunities for our Community members" and "no infrastructure improvements" as disparate impacts, but does not show how extending the license term of the ISFSI has any disparate impact on PIIC jobs or infrastructure improvements. Petition at 45. PIIC has not provided any basis for a claimed jobs or opportunities promise, let alone one that was unfulfilled. Furthermore, "the essence of an environmental justice claim, in NRC practice, is disparate environmental harm." Private Fuel Storage, CLI-02-20, 56 N.R.C. at 153 (footnote omitted). The NRC's environmental justice policy and NEPA generally "do not call for an investigation into disparate economic benefits." Id. at 154. PIIC has not identified any manner in which extending the ISFSI license term would have a significant impact on job opportunities or infrastructure for PIIC. Furthermore, as the ER points out, as a result of a 2003 Settlement Agreement between NSPM and PIIC, which addresses PIIC's belief that it should receive reasonable compensation and reimbursement for the storage of spent fuel at the PINGP, (hereinafter "2003 Settlement Agreement" and attached as Exhibit 1), NSPM allocates funds to PIIC each year to address a variety of tribal concerns, including an annual sum for "construction of community infrastructure, movement of transmission line," "expenses associated with a health study," and "emergency management activities." Exhibit 1 at ¶ 1. This Agreement is in place as long as the PINGP is operational, although certain provisions of the agreement end prior to that time. NSPM has paid $20,375,000 to PIIC through 2012 and will pay a total of $52,975,000 by the end of the current PINGP operating license. PIIC fails to acknowledge or address the 2003 Settlement Agreement in its contention, or the substantial benefits that it has received as a result.

The PIIC also alleges that "[t]he plant is allowed to discharge radiation into the air and surface waters," and that "thermal pollution [is] raising water temperatures and causing heat shocks in the Mississippi River and Sturgeon Lake," Petition at 45, but does not show how extending the ISFSI license results in these alleged impacts or disparately impacts PIIC. The ISFSI has no discharges and the ER states that there are no impacts to surface and groundwater, aquatic resources and air resources with respect to the ISFSI or its license renewal. Application at E-59. PIIC does not challenge these statements and fails to acknowledge information in the Application which states that there are no discharges from the ISFSI and therefore no impacts. Since there are no impacts to these resources, there cannot be a disparate impact which is significant, high and adverse to the PIIC. Private Fuel Storage, CLI-02-20, 56 N.R.C. at 153-54.

The PIIC asserts that there are adverse environmental, health and safety risks from the "nuclear waste that sit[s] just 600 yards" away from its members' homes (Petition at 45-46) as well as "radiological leaks", "spent fuel pool risks" and "high-voltage power lines" (Petition at 46), but fails to address the ER, which states that "there have been no operational accidents, including spills, releases, or accidental discharges during the period of the PI ISFSI operation." Application at E-11. PIIC provides no other evidentiary support for its conclusory statement. PIIC also fails to show how ISFSI license renewal will impact the high voltage transmission lines (which PIIC had the opportunity to have moved as part of the 2003 Settlement Agreement) and thus disparately impact PIIC. Likewise, PIIC has failed to show how spent fuel pool risks are impacted by the ISFSI or by its license renewal, and thus has failed to provide any information demonstrating that license extension of the ISFSI disparately impacts the PIIC in a significant, adverse and high manner.

PIIC asserts that "nuclear waste will be stranded on Prairie Island and under the constant threat of Mississippi River floods forever." Petition at 46. To the extent that PIIC asserts impacts beyond the proposed license extension, i.e., "forever," this contention should be dismissed as a challenge to the ongoing WCD/TSR rulemaking. License renewal does not change the risk of floods, which in any event were addressed in the original ISFSI application and reviewed and approved by the NRC in issuing the ISFSI. See Safety Evaluation Report for the Prairie Island Independent Spent Fuel Storage Installation (July 1993) at 2-2 (describing the flood evaluation in the ISFSI Safety Analysis Report ("SAR") and finding that the probable maximum flood would not cause overpressure to be applied to the seals, the cask to tip over, or to slide). (ADAMS Accession No. 9311010119) ("SER").

PIIC also asserts that "[t]he expanded nuclear waste storage will increase the cumulative radiation 'skyshine' exposure beyond acceptable lifetime cancer limits." Id. First, the proposal under consideration does not include "expanded nuclear waste storage." To the extent that PIIC is challenging impacts due to ISFSI expansion, as explained in response to Contention 2, this challenge is beyond the scope of this proceeding. Second, the Contention fails to identify the "acceptable lifetime cancer limits" which will allegedly be exceeded, or provide a basis for the assertion that these unspecified "limits" will be exceeded. Third, the Application shows that exposure to the public will remain within the regulatory limits set forth in 40 C.F.R. § 190 even when combined with the dose from the operating power plant and would remain so for the duration of the proposed license extension. See Application at E-51. The analysis presented in the ER includes impacts from skyshine and uses population data that includes the PIIC, and thus, includes an evaluation of the impacts to PIIC. Application at E-50 (referencing population data

in SAR Table A7.5-1). PIIC does not challenge this evaluation, and therefore, presents no issue of genuine material fact or law with the Application.

PIIC also asserts that "[e]xisting environmental monitoring at Prairie Island is inadequate to protect the public health-safety and the environment." Petition at 46. This conclusory statement cannot support an environmental justice contention. It is not supported by any documents or expert opinion and raises no issues with information in the Application. Furthermore, PIIC fails to even attempt to point out any alleged inadequacy, let alone one that disparately impacts PIIC in a significant way. The PIIC's claims concerning monitoring technology were recently addressed in a proceeding before the Minnesota Public Utility Commission ("MPUC"), a proceeding in which PIIC participated. Based on the evidentiary record in that proceeding, the Administrative Law Judge found:

> Xcel Energy has a comprehensive radiation environmental monitoring program in place at the Prairie Island Plant that meets the NRC's radiation monitoring requirements. Xcel, the MDH [Minnesota Department of Health], and the Wisconsin Department of Health Services perform extensive radiation monitoring in and around the Prairie Island Plant. The [Prairie Island Indian] Community proposed that additional radiation monitoring be conducted as a condition of approval of Xcel's applications. The equipment proposed for this monitoring is less sensitive than that used in Xcel's monitoring program. There is no reasonable basis for conducting less sensitive monitoring than is already conducted around the Prairie Island Plant.

In the Matter of Northern States Power Co., MPUC Docket Nos. E-002/CN-08-509, E-002/CN-08-510, & E-002/CN-08-690, Findings of Fact, Conclusions of Law and Recommendations (Oct. 21, 2009) at 85-86 (Conclusion 33)[9]. The MPUC accepted and adopted the Administrative Law Judge's findings, conclusions and recommendations. In the Matter of Northern States Power Co., MPUC Docket Nos. E-002/CN-08-509, E-002/CN-008-510, & E-002/CN-008-690, Order

[9] This document may be retrieved at http://www.puc.state.mn.us/puc/index.html , by entering Document ID # 200910-43138-01 in Search E-Dockets.

Accepting Environmental Impact Statement, and Granting Certificates of Need and Site Permit with Conditions (Dec. 18, 2009).[10]

The PIIC also asserts that it is disparately impacted financially by an increased need for emergency preparedness and emergency response capabilities, Petition at 47, but fails to acknowledge information in the ER addressing the 2003 Settlement Agreement between PIIC and NSPM, which addresses these financial concerns. As described above, PIIC entered into a settlement agreement with NSPM which requires NSPM to allocate funds to address a variety of tribal concerns including an annual sum for a number of radiological emergency preparedness activities and supplies. NSPM provides the PIIC with up to $2.25 million per year as part of the 2003 Settlement Agreement. 2003 Settlement Agreement at ¶ 1. A portion of this amount is designated for a health study, emergency management activities, and other PIIC purposes. Id.[11]

PIIC also claims that "[t]he operation of the plant, tritium leaks, radiological emissions, reports of safety violations, the high-voltage power lines running alongside our reservation, and the storage of spent nuclear fuel in such close proximity to the tribal members' homes has caused and will continue to cause anxiety, fear, stress, and other mental health damages to the PIIC's current members and future generations." Petition at 47. Similarly, PIIC suggests that "uncertainty related to an incident at the PINGP or PI ISFSI…is most directly felt by PIIC" and may be associated with "socio-psychological impacts that will disproportionately impact PIIC members." Petition at 48-49. Aside from the complete lack of basis and support for these

[10] This document may be retrieved at http://www.puc.state.mn.us/puc/index.html , by entering Document ID # 200912-45206-03 in Search E-Dockets.

[11] NSPM is not aware whether the PIIC has used this money to conduct the health studies as allowed for within the Settlement Agreement. However, the Minnesota Department of Health ("MDH") has conducted a study of cancer rates in Goodhue County, the county where the PINGP, the Prairie Island ISFSI, and the PIIC are located. Cancer Occurrence in Goodhue County, MCSS Epidemiology Report 2000:2 (Dec. 2000). The study concluded that cancer incidence and mortality rates in Goodhue County were at or below statewide averages and that the rate of childhood cancers is also at or below the average. Id. at vii. The study supports the conclusion of the MDH that there is no significant additional cancer risk associated with living near Prairie Island. Id.

claims, anxiety, fear, stress, and other mental damages cannot form the basis of an environmental justice contention. "The basis for admitting EJ contentions in NRC licensing contentions stems from the agency's NEPA obligations" and such contentions "are only considered when and to the extent required by NEPA." 69 Fed. Reg. at 52,046-47. Psychological stress issues such as those raised by PIIC have long been held to be outside the scope of a NEPA analysis. Metropolitan Edison Co. v. People Against Nuclear Energy, 460 U.S. 766 (1983).

The PIIC's allegations that "PIIC members will receive slightly higher exposure levels and doses than communities at a greater distance" and that "[c]ommunity members are disproportionately exposed to long-term low-level skyshine radiation from the Prairie Island ISFSI," Petition at 47, fail to meet the standard for an environmental justice contention. This aspect of the contention cannot support its admission because PIIC fails to provide data or expert opinion that shows that it will experience a significant or "high and adverse impact" from skyshine or any other form of radiation. Private Fuel Storage, CLI-02-20, 56 N.R.C. at 154. Furthermore, PIIC itself states that its members will receive only "slightly higher exposure levels". Petition at 47 (emphasis added). An allegation of "slightly higher exposure levels" does not rise to the level of significant, high and adverse impact necessary to support an environmental justice contention. Private Fuel Storage, CLI-02-20, 56 N.R.C. at 154. PIIC provides no data demonstrating that the analysis in the ER is deficient in its conclusion that impacts from doses to the public, including PIIC, are small. To the extent that PIIC's claim is based on the dose from 98 casks rather than the dose from the currently licensed 48 casks, Petition at 46, the contention should be dismissed as outside of the scope of the proceeding, as discussed in response to Contention 2. NSPM has not submitted an application for an ISFSI

expansion, and thus, analysis of the dose associated with any such expansion is beyond the scope of this proceeding.

Finally, PIIC's reliance on the National Academy of Sciences ("NAS") report to support its contention, Petition at 48 and n.133, is essentially a challenge to NRC's rules regarding acceptable public dose limits, and as such, this contention should be dismissed. PIIC requests that the ISFSI license renewal be delayed "pending the results of the NAS' study of potential long-term adverse health impacts." Petition at 48. PIIC is essentially asserting that the future NAS study will result in more stringent dose limits than those currently in effect, or higher predicted health impacts than those already predicted, and that those more stringent requirements or asserted greater impacts should be imposed on and attributed to the ISFSI. This assertion is speculating that there will be a particular outcome of the NAS study. PIIC provides no basis for this speculation. In addition, this is a collateral attack on a Commission rule and is not appropriate for litigation and must be rejected. 10 C.F.R. § 2.335; Seabrook, LBP-82-106, 16 N.R.C. at 1656 (a contention which "advocate[s] stricter requirements than those imposed by the regulations" is "an impermissible collateral attack on the Commission's rules" and must be rejected). Furthermore, the NAS report that PIIC relies on to challenge NSPM's dose analysis is no more than a planning document, i.e., it provides recommendations to the NRC on how to carry out a future study of cancer risks. Analysis of Cancer Risks in Populations Near Nuclear Facilities: Phase I, National Academy of Sciences (2012) at 1 ("[t]he focus of . . . Phase 1 . . . is to identify scientifically sound approaches for carrying out an assessment of cancer risks associated with living near a nuclear facility" and will be used to design a study to be carried out in Phase 2). The cited NAS report provides no data to challenge NSPM's evaluation of dose to

the public, and therefore, does not present a genuine issue of material dispute with the Application.

For all of these reasons, this contention must be dismissed.

5. Contention 5: ISFSI Pressure Monitoring System

Contention 5 alleges that the failure of the renewal application to address the ISFSI Pressure Monitoring System in the AMP is a "significant omission." The contention, as a contention of omission, should be dismissed because it fails to address information in the application. The contention should also be dismissed because it is outside the scope of this proceeding, and fails to raise a material issue.

The PIIC avers that the Pressure Monitoring System should be within the scope of license renewal because it "should be classified as 'important to safety' or at the very least, as not Important to Safety but its failure could prevent fulfillment of a function that is important to safety, or its failure as a support SSC could prevent fulfillment of a function that is important to safety." Petition at 50. This claim ignores information in the Application describing the current licensing and design basis for the Prairie Island ISFSI, which forms the basis for the license renewal scoping analysis.

The Pressure Monitoring System monitors the helium pressure between the inner and outer seals of the storage casks used at the Prairie Island ISFSI. Prairie Island ISFSI SAR at 1.3-1 and A1.3-1.[12] The space between the inner and outer seals is pressurized above the pressure inside the cask (and also above atmospheric pressure) so that monitoring the pressure between the seals

[12] The Prairie Island ISFSI uses two types of casks – the TN-40 and the TN-40HT. Because the use of the TN-40HT was approved in a license amendment, for convenience, the SAR was updated with an Addendum A describing the TN-40HT design and licensing basis. Thus, SAR references preceded by the letter "A", e.g., "A1.1-1," refer to pages or sections of the SAR describing the TN-40HT design and licensing basis.

will determine whether either the inner or outer seals are leaking. Id. As stated in the SAR, the Pressure Monitoring System has no safety function and is classified as commercial material or not important to safety. See Prairie Island ISFSI SAR, sections 4.5.4 and A4.5.4.

Furthermore, analyses in the SAR demonstrate that the failure of the pressure monitoring system will not prevent fulfillment of a function that is important to safety. The licensing basis for the TN-40 cask includes evaluation of a loss of power to the cask pressure monitoring system instrumentation. Prairie Island ISFSI SAR at 8.1-1. This evaluation concludes that loss of power to the Pressure Monitoring System instrumentation has no safety or radiological consequences because it will not affect the integrity of the storage casks, jeopardize the safe storage of the fuel, or result in radiological releases. Id. at 8.1-2. The licensing basis for the TN-40HT includes two analyses of the failure of the Pressure Monitoring System to operate: (1) combined with seal leakage at the technical specification test rate; and (2) with a latent seal failure. Id. at A7A.8-7 and A7A.8-12. These analyses demonstrate that failure of the Pressure Monitoring System would not prevent fulfillment of a function that is important to safety because there is more than sufficient time to identify and correct the failure before 10 C.F.R. § 72.106(b) release limits are exceeded. Id. at A7A.8-13.

The design bases for the TN-40 and TN-40HT were reviewed and accepted by the NRC. See Safety Evaluation Report for the Prairie Island Independent Spent Fuel Storage Installation (July 1993) at 7-5 (reviewing NSPM's analysis of loss of electrical power to the ISFSI and stating that the NRC Staff did not evaluate dose from this event because of the double O-ring system, which will prevent any leakage of the cask contents) and Safety Evaluation Report for the Prairie Island Independent Spent Fuel Storage Installation, Special Nuclear Material License No. 2506 License Amendment Request (August 2010) at 32-33 (stating that the NRC Staff confirmed NSPM's

calculations and that the doses are within acceptable limits). PIIC's contention fails to address the long standing design and licensing basis provided in the Application. Because the contention ignores the substantial amount of directly relevant and available information on the docket, the contention should be dismissed. 10 C.F.R. § 2.309(vi); Millstone, CLI-01-24, 54 N.R.C. at 358 (citing 54 Fed. Reg. at 33,170) (a petitioner must "read the pertinent portions of the license application, including the Safety Analysis Report and the Environmental Report, state the applicant's position and the petitioner's opposing view"); Palo Verde, CLI-91-12, 34 N.R.C. at 156 ("the standard requir[es] that petitioners explain the basis for the contention and read the relevant parts of the license application and show where the application is lacking." (citing 54 Fed. Reg. at 33,179)).

Additionally, PIIC's assertion that the Pressure Monitoring System should be classified as "important to safety" or "not important to safety but its failure could prevent fulfillment of a function important to safety" is outside the scope of this proceeding because adopting such a classification would be a change to the Prairie Island ISFSI design and licensing basis. In describing the scoping evaluation used to identify SSCs within the scope of license renewal, the NRC guidance for ISFSI license renewal (guidance on which the contention relies) provides that the license renewal process is not intended to be the process for changing the licensing or design basis. Standard Review Plan for Renewal of Spent Fuel Dry Cask Storage System Licenses and Certificates of Compliance, Final Report, NUREG-1927 (March 2011) at 9 (stating that "NRC bases a license or COC [Certificate of Compliance] renewal on the continuation of existing licensing basis throughout the period of extended operation and on the maintenance of the intended functions of the SSCs important to safety. The NRC does not intend a license renewal to be a vehicle for imposing new regulatory requirements. If new safety-related deficiencies are

discovered, they must be addressed through the license or COC amendment process"). A challenge to the licensing basis classification for an SSC would impose new regulatory requirements and must be addressed outside the license renewal process. While both the contention (see Petition at 50-51) and the supporting Declaration of John T. Greeves (Declaration at ¶ 16) reference and rely on NUREG-1927, neither recognizes that NUREG-1927 guidance is tied to the existing licensing basis. And neither the contention nor the Greeves Declaration recognizes the existing licensing basis for the Pressure Monitoring System as set forth in the docketed information described above, nor do they challenge that licensing basis.

The license renewal scoping process relies on the classification and evaluation of SSCs that are provided in the current design and licensing basis. This conclusion is further supported by the list of source documents NRC reviewers are directed to rely on in evaluating the applicant's scoping process. NUREG-1927 at 10 (identifying the documents that define a licensee's design and licensing basis, e.g., SARs, technical specifications, operating procedures, and SERs). Additionally, NUREG-1927 points out that SSCs that "are not important to safety, **but according to the licensing basis**, their failure could prevent fulfillment of a function that is important to safety, or their failure as support SSCs could prevent fulfillment of a function that is important to safety " should be included in the scope of license renewal. Id. at 12 (underlined emphasis in original; bold emphasis added). This definition makes clear that classification and inclusion of SSCs within the scope of license renewal is dependent upon the analysis provided in the current design and licensing basis. The PIIC relies on the NUREG-1927 reference to NUREG/CR-6407, Classification of Transportation Packaging and Dry Spent Fuel Storage System Components According to Importance to Safety, to support its assertion that the Pressure Monitoring System should be important to safety. The PIIC fails to acknowledge NUREG-

1927's above-quoted caution that the facility's licensing and design basis govern, where that may be different than the classification provided in the NUREG/CR-6407.

As discussed above, the Prairie Island ISFSI licensing basis classifies the Pressure Monitoring System as "not important to safety" and shows that its failure would not prevent fulfillment of a function that is important to safety. Changes to this design and licensing basis are outside the scope of this proceeding and must be pursued through a separate license amendment process. PIIC has not challenged NSPM's reliance on NUREG-1927 nor its licensing and design basis. PIIC and its expert, Mr. Greeves, do not address the information in the Application, nor NSPM's response to an NRC Observation in its April 26, 2012 letter regarding classification of the Pressure Monitoring System. Letter from NSPM to NRC, Responses to Observations – Prairie Island Independent Spent Fuel Storage Installation (ISFSI) License Renewal Application (TAC No. L24592) (Apr. 26, 2012) (ADAMS Accession No. ML121170406).[13] They simply point to guidance documents, such as NUREG/CR-6407,[14] to argue that the Pressure Monitoring System should be within the scope of license renewal without acknowledging any part of the NSPM analysis contained in the SAR.

The PIIC also claims that the Pressure Monitoring System "should be included within the scope of the NSPM ISFSI Aging Management Program" (Petition at p. 52), but neglects to consider that the Pressure Monitoring System is an active system, which is not subject to aging management plans, and is already subject to daily technical specification required surveillance, making this challenge immaterial to a licensing decision. As NSPM pointed out in its April 26,

[13] In its April 26, 2012 letter, NSPM responded to an NRC Observation requesting justification for excluding the Pressure Monitoring System from the scope of license renewal. NSPM responded that the Pressure Monitoring System is not classified as Safety Related or Important to Safety in the ISFSI SAR and its failure would not prevent the fulfillment of a function that is important to safety. Letter from NSPM to NRC at 3.

[14] Note that NUREG/CR-6407 is not an NRC document, but was prepared by a contractor (Idaho National Engineering Laboratory) for the NRC Staff.

2012 response to the NRC, the Pressure Monitoring System is an active system. While the guidance for ISFSI license renewals does not specifically provide that the Aging Management Review applies only to passive systems, the NRC intended the ISFSI license renewal process guidance to parallel the plant license renewal process guidance. See SECY-04-0175 at 4. The plant license renewal process guidance, NUREG-1800, Standard Review Plan for Review of License Renewal Applications for Nuclear Power Plants, provides that SSCs subject to an Aging Management Review are passive components, i.e., those without moving parts or without a change in configuration or properties. NUREG-1800 at 2.1-1. Aging Management Programs are intended to apply to passive systems. PIIC has not addressed NSPM's letter stating that the Pressure Monitoring System is an active system not subject to aging management review and therefore, has failed to address information in the application.

Furthermore, the Pressure Monitoring System is checked on a daily basis as part of a Technical Specification required surveillance. See Prairie Island Independent Spent Fuel Storage Installation Technical Specifications, Cask Interseal Pressure SR 3.1.5.1 (requiring NSPM to "verify cask interseal helium pressure ≥ 30 psig" every 24 hours) (ADAMS Accession No. ML110740182). This daily surveillance is intended to, and would, alert NSPM to any anomalies with the pressure monitoring system or the seals. Additionally, the Technical Specification requires that the pressure switch and transducer which provide input for a remote alarm are tested annually. Id. at SR 3.1.5.2. This required surveillance makes an Aging Management Program superfluous for the Pressure Monitoring System. Since the Pressure Monitoring System is checked on a daily basis, any failure of the system would be disclosed within a day of the failure. No aging management plan would provide more protection. Including the Pressure Monitoring System in the Aging Management Program therefore lacks logic and purpose. Even

if PIIC were to prevail, there would be no improvement to safety. Therefore, this issue is not material to this licensing decision because it would not make a difference to the outcome of the proceeding. 54 Fed. Reg. at 33,172.

For all of these reasons, Contention 5 must be dismissed.

6. Contention 6: High Burnup Fuel

Contention 6 alleges that NSPM's ISFSI license renewal application is deficient because it has not addressed asserted gaps in technical information related to storage of high burnup fuel. The contention should be dismissed because it fails to address information in the application, lacks adequate basis, and is not within the scope of this proceeding. To the extent that the contention addresses issues beyond the 40 year ISFSI renewal term, the contention raises a Waste Confidence issue and should be dismissed.

The PIIC alleges that NSPM has failed to demonstrate that it meets the requirements of 10 C.F.R. § 72.122 "to protect spent fuel from significant deterioration during the proposed extended storage period." Petition at 54. PIIC's basis for this assertion is that NSPM failed to address technical issues pointed out in three reports whose purpose was to identify gaps in technical information needed to support extended storage beyond 120 years. Petition at 52 nn. 140-142. These issues surround potential degradation mechanisms of high burnup fuel during extended storage for which there may be limited data available. See Petition at 52-53. PIIC fails to address information on these issues in the Application and thus has failed to show that a genuine dispute exists with the applicant on a material issue of fact or law. 10 C.F.R. § 2.309. The Prairie Island ISFSI Application addresses aging management of high burnup fuel in Section 3.3.3, Aging Effects Requiring Management. Application at 3-12. Section 3.3.3 states that NSPM relied on NRC developed guidance, ISG-11 Rev. 3, which provides the acceptance

criteria for providing reasonable assurance that the spent fuel is maintained in the configuration that is analyzed in the storage Safety Analysis Report. Id. ISG-11, Rev. 3, Cladding Considerations for Transportation and Storage of Spent Fuel (ADAMS Accession No. ML033230335). This guideline recognizes the need to limit hydriding effects and addresses creep during extended storage. ISG-11 at 2. ISG-11 provides that to ensure integrity of cladding material for high burnup fuel the following criteria should be met:

1. "[T]he maximum calculated fuel cladding temperature should not exceed 400°C (752°F) for normal conditions of storage and short-term loading operations (e.g., drying, backfilling with inert gas, and transfer of the cask to the storage pad)."
2. "During loading operations, repeated thermal cycling (repeated heatup/cooldown cycles) may occur but should be limited to less than 10 cycles, with cladding temperature variations that are less than 65°C (117°F) each."
3. "For off-normal and accident conditions, the maximum cladding temperature should not exceed 560°C (1058°F)."

Id. at 2-3. These criteria are discussed in the Application (Application at 3-11) and the design basis analyses in the SAR show that these criteria are met. Prairie ISFSI SAR at A3.3-12-A3.3-13 (stating that the maximum fuel cladding temperature is well below the temperature limit considered for normal conditions of storage as well as for accident conditions given in ISG-11).

In addition to the discussion of this issue in the Application itself, NSPM responded to an NRC "Observation," explaining that maintaining the high burnup fuel cladding temperature below the 752°F limit provided in ISG-11 minimizes the likelihood of the high burnup fuel being subjected to these degradation mechanisms because it will limit cladding hoop stresses and limit

the amount of soluble hydrogen available to form radial hydrides. Letter from NSPM to NRC, Responses to Observations – Prairie Island Independent Spent Fuel Storage Installation (ISFSI) License Renewal Application (TAC No. L24592) *(*Apr. 26, 2012) at 2 (ADAMS Accession No. ML121170406). PIIC does not discuss, distinguish or reference these statements from the Application and correspondence in the Prairie Island ISFSI docket. Therefore, the contention should be dismissed for failure to show the existence of a genuine dispute as to a material issue of fact. 10 C.F.R. § 2.309 (vi).

The PIIC is claiming that NSPM's Application is deficient because it did not address "potential deficiencies, problems and uncertainties, or any of the pertinent studies, in its license application." Petition at 54. As previously discussed, the basis for PIIC's assertions are reports by the NRC, Department of Energy ("DOE"), and the Nuclear Waste Technical Review Board ("NWTRB"). Petition at 52-53. Each of these reports was developed for the purpose of identifying issues that need further study to support extending the time frame for onsite storage to greater than 60 years, and thus are not relevant to the current license application.

PIIC correctly states that NWTRB has noted "that the most significant potential degradation mechanisms affecting the fuel cladding during extended storage are expected to be those related to hydriding effects, creep, and stress corrosion cracking," and that "[i]nsufficient information is available on high burnup fuels to allow reliable predictions of degradation process during extended dry storage." Petition at 53 (emphasis added). Extended storage is defined in the NWTRB report as storage greater than the currently licensed periods of up to 60 years. See Evaluation of the Technical Basis for Extended Dry Storage and Transportation of Used Nuclear Fuel, United States Nuclear Waste Technology Review Board (December 2010) at 7 n.1. The purpose of the NWTRB report is to identify technical concerns related to "extending safe dry

storage and then transportation of CSNF [commercial spent or used nuclear fuel] over the long-term, which for purposes of [the] report is defined to be 60 to 120 years, and very long-term, a storage period of 120 years and longer." Id. at 17 (emphasis added). Furthermore, the NWTRB report concluded that current technical information "demonstrates that used fuel can be safely stored in the short term and then transported for additional storage, processing, or repository disposal without concern. However, additional information is required to demonstrate with similarly high confidence that used fuel can be stored in dry-storage facilities for extended periods." Id. at 15 (emphasis added). Similarly, the DOE report cited by PIIC documents data and modeling needs to develop "the desired technical bases to enable extended storage" of spent fuel. Gap Analysis to Support Extended Storage of Used Nuclear Fuel, Rev. 0, Used Fuel Disposition Campaign (January 2012) at v (emphasis added). Finally, the purpose of the NRC report that PIIC cites in support of this contention is to address technical needs to support continued storage of SNF over periods beyond 120 years. Draft Report for Comment Identification and Prioritization of the Technical Information Needs Affecting Potential Regulation of Extended Storage and Transportation of Spent Nuclear Fuel (May 2012) at iv. This report identifies, evaluates and prioritizes the need for additional technical data to help determine whether current NRC Staff regulations and guidance are sufficient for use in longer term storage. Id. at 1-2. This report included a review of the DOE and NWTRB studies that PIIC also cites. Id. at 3-1. Because the contention fails to show that the three cited documents are relevant to the 40 year license renewal period, the contention is beyond the scope of this proceeding, lacks adequate basis, and must be dismissed.[15] 10 C.F.R. §§ 2.309(f)(1)(iii) & (v). Furthermore, to the extent that PIIC is asserting that issues impacting extended storage beyond

[15] The Greeves Declaration provides no independent basis to support this contention. The only relevant portion of the Declaration (¶ 21) is conclusory and provides no support for its assertions.

the proposed 40 year license renewal must be considered in this proceeding, this is a challenge to the NRC's pending WCD/TSR rulemaking and must be dismissed.

For all of these reasons, this Contention must be dismissed

7. Contention 7: Operational Radiological Effluent Releases

Contention 7 alleges that NSPM's ISFSI license renewal application is deficient because it dismisses the possibility of effluent releases from the ISFSI storage casks resulting from degraded materials and seals of the ISFSI "over the extended period of storage that is proposed here." Petition at 55. The contention should be dismissed because is not supported by a basis that demonstrates a genuine issue of material fact and it fails to address information in the application.

PIIC alleges that "it can reasonably be anticipated that over a 60-year license period one or more TN casks will experience confinement failure." Petition at 55. Based on this unsupported assertion, PIIC claims that the license application is deficient because it fails to address "effluent releases resulting from degraded materials and seals from normal operation of the ISFSI over the extend period of storage." Id. Although the contention states that there is a "history of defects that have caused leaks to occur in TN casks"(Petition at 55), the contention cites nothing to support this statement. The only basis that the contention cites is the NWTRB report (Petition at 56 n. 145 (citing NWTRB report p. 69, item d)). The NWTRB report refers to a single instance where a single cask at the Peach Bottom ISFSI "was found to be leaking helium from its main outer lid seal." The NWTRB report does not say there was a loss of confinement with respect to the SNF or that there was any release of radiation. The NRC inspection report states that the inner seal was functional. Peach Bottom Atomic Power Stations – NRC ISFSI Inspection Report 05000277/2010010 at 2 (ADAMS Accession No. ML111890441). Thus, this occurrence did not

involve any leak from the cask, let alone any radioactive effluent release. See also Exelon, Submittal of Independent Spent Fuel Storage Installation (ISFSI) Cask Event Report (Dec. 1, 2010) at 2 (reporting the discovery of leakage from the "the main lid outer closure seal," which had "no actual safety consequences" and involved "no actual loss of the ability to confine the contents of the cask") (ADAMS Accession No. ML110060275). Although not mentioned in this contention, the Greeves Declaration (¶ 17) mentions a second helium leak. As with the Peach Bottom cask, this event did not involve a loss of confinement. See NRC Inspection Report No. 72-002/2000-06 at Executive Summary & p. 2 (ADAMS Accession No. ML003738176) (describing a leak in the cask lid secondary seal at the Surry ISFSI noting that "the primary seal continued to perform its intended function and there was no leakage from the cask cavity" and reporting that the leak was identified by "a low pressure alarm"). Because the incidents that PIIC relies on as support for its contention do not demonstrate that the TN casks will experience a confinement failure, PIIC has failed to provide sufficient information showing that a genuine issue of fact or law exists with the application.

The PIIC also fails to address the current licensing basis as documented in the Prairie Island ISFSI SAR. PIIC alleges that the design basis accident dose limit does not apply to "loss of confinement [that] occurs as a result of degradation and wear of engineering materials over a long period of time, and can be reasonably anticipated during the term of the license." Petition at 55. This assertion fails to address information in the application, which adopts accepted standards for defining events considered to be "accidents." The Prairie Island ISFSI SAR evaluates two types of events: "off-normal events" and "accidents" using an accepted industry

standard, ANSI/ANS 57.9.[16] SAR at 8.1-1 and A8.1-1. An off-normal event is a Design Event II as defined in ANSI/ANS 57.9. Id. A Design Event II is one that "although not occurring regularly, can be expected to occur with moderate frequency or on the order of once during a calendar year of ISFSI operation." Id. In the PI ISFSI SAR, the offsite dose acceptance criteria for off-normal events are those in 10 C.F.R. § 72.104. SAR at A7A.8-10 (evaluating off-normal dose conditions for the TN-40HT seals leaking at the test rate and stating that the results demonstrate that the criteria of 10 CFR § 72.104 are met under off-normal conditions). Accidents are Design Events III and IV, as described by ANSI/ANS 57.9, and their dose acceptance criteria are those specified in 10 C.F.R. § 72.106. Design Event III consists of events that "could reasonably be expected to occur during the lifetime of the ISFSI and Design Event IV are events that are postulated because their consequences may result in the maximum potential impact on the immediate environs." SAR at 8.2-1 and A8.2-1. Thus, even accepting PIIC's unsupported allegation that "it can reasonably be anticipated that over a 60-year license period one or more casks will experience confinement failure" (Petition at 56), which, as discussed above, is unfounded, such an event would still be considered an accident as it would fit the definition of a Design III event. Since PIIC alleges that a confinement failure would occur on a frequency that defines a Design III event, which is subject to 10 C.F.R § 72.106 accident dose limits, PIIC has shown no genuine issue of law or fact with the application and therefore, this contention must be dismissed.

[16] NUREG-1927 defines off-normal events as "[t]he maximum level of an event that, although not occurring regularly, can be expected to occur with moderate frequency and for which there is a corresponding maximum specified resistance, limit of response or requirements for a given level of continuing capability (similar to Design Event II of American National Standards Institute/American Nuclear Society 57.9, Design Criteria for an Independent Spent Fuel Storage Installation (Dry Type)." NUREG-1567, Standard Review Plan for Spent Fuel Dry Storage Facilities (Mar. 2000) at xxx, also adds to this definition that off-normal events are considered to include "anticipated occurrences" as used in 10 C.F.R. Part 72. One can conclude from this guidance that an anticipated occurrence, as used in 10 C.F.R. § 72.104, is an event that occurs on the order of once during a calendar year - not an event that can occur over the life of an ISFSI, as suggested by PIIC.

Furthermore, the NRC has reviewed and accepted NSPM's accident definition and its application to "seal leakage" and "loss of confinement" events. Since the NRC's licensing of the ISFSI in 1993,[17] the ISFSI licensing basis has considered seal leakage and loss of confinement as "accidents" rather than normal operations or anticipated operational occurrences. July 1993 Safety Evaluation Report for the Prairie Island Independent Spent Fuel Storage Installation at 11-1. The NRC's Safety Evaluation Report ("SER") supporting the issuance of the initial ISFSI license noted that "[a]ccidents are of two types: infrequent events that could reasonably be expected to occur during the lifetime of the ISFSI and events that are postulated because their consequences may result in the maximum potential impact on the immediate environs." Id. at 11-1. The SER listed cask seal leakage and loss of confinement barrier as accident events. Id. Furthermore, the SER provided that the dose criteria in 10 C.F.R. § 72.106(b) applied to these accident events. Id. The NRC also concluded in its SER that "[g]aseous activity release is not considered credible under normal operations and postulated off-normal events." Id. at 7-5. The NRC Staff did not evaluate dose from normal and off-normal events because the double O-ring system prevents any leakage.[18] Id. The NRC Staff equates "off-normal events" with "anticipated occurrences" as used in 10 C.F.R. § 72.104(a). Id. at 7-1. PIIC has failed to acknowledge this information or to explain why it is incorrect. PIIC provides no basis for its

[17] The PI ISFSI SER was issued while affiant Greeves was an NRC employee and none of his responsibilities as described in his Declaration related to ISFSI licensing or regulation. See Greeves Declaration at ¶ 5 (describing his experience as "management, treatment, and commercial disposal of low-level nuclear waste (LLW), high level waste disposal (HLW) and material facility and power reactor decommissioning").

[18] The licensing basis for the TN-40HT, which has also been accepted by the NRC, provides a somewhat different analysis of cask seal leakage and loss of confinement events. The loss of confinement analysis for the TN-40HT includes both "off-normal" events, which are compared to the limits in 10 C.F.R. § 72.104(a), and "accident events," which are compared to the limits in 10 C.F.R. § 72.106. See SAR at A7A.8-7- A7A.8-13. However, the basic definition of "off-normal" and "accident" has remained unchanged and an event that "can reasonably be anticipated to occur during the term of the license" would be an "accident" in light of the design basis for either the TN-40 or the TN-40HT.

rejection of the meaning of the terms employed by the NRC Staff, NRC guidance documents, and national standards setting bodies.

PIIC asserts that the "applicant essentially dismisses, without any basis for doing so, the possibility of effluents resulting from degraded materials and seals from normal operation of the ISFSI over the extended period of storage that is proposed here." Petition at 55. This assertion ignores information in the Application describing that the design of the cask, which provides that during operations there are no credible radioactive release paths. The ISFSI SAR, which is the current licensing basis, provides that

> "[t]he storage casks feature redundant seals in conjunction with an extremely rugged body design. Additional barriers to the release of radioactivity are presented by the sintered fuel pellet matrix and the Zircaloy cladding which surrounds the fuel pellets. Furthermore, the interseal gaps are pressurized in excess of the cask cavity. As a result, no credible mechanisms that could result in leakage of radioactive products have been identified."

SAR at 8.2.-4 and A8.2-5. The Prairie Island ISFSI's current licensing basis provides that there are no credible release scenarios. See, e.g., SAR Table 4.2-1, Compliance with General Design Criteria (providing that "no radioactive releases are considered credible at the ISFSI"); A7A.8.4, Monitoring of System Confinement ("leakage from the cask cavity past the higher pressure of the OP system is physically impossible."); 7.1.2, Design Considerations ("Gaseous releases are not considered credible"). PIIC has not addressed the extensive information in the Application that loss of confinement will not occur and has provided no basis for the assertion that loss of confinement "can be reasonably anticipated during the term of the license," Petition at 55, particularly where PIIC cites to no such losses of confinement.[19]

[19] Notwithstanding the SAR's extensive explanation of why loss of confinement is not credible (and PIIC's failure to address this information), the SAR contains an analysis assuming various failures leading to leakage. The design basis for the TN-40 evaluated a complete failure of the inner seal, the overpressure system, and the outer seal, i.e., a complete loss of confinement capability. See SAR Section 8.2.9 at 8.2-12. Such a complete failure is "far

Contention 7 also alleges that a cask leak is not a design basis accident for which the 5 rem 10 C.F.R. § 72.106(b) limit applies because "there is no initiating event," and argues from this that the appropriate dose limits are the operational release limits of Parts 20 and 72. Petition at 55-56. PIIC's analysis is flawed and does not support an admissible contention. Neither the contention nor the Greeves Declaration cites anything in support of its argument. NSPM agrees that there is no credible initiating event that would cause a complete failure of the cask confinement. Nonetheless, as discussed above, NSPM evaluated the doses in its Application for this highly unlikely event. The fact that there is "no initiating event," however, does not translate a noncredible event into an operational occurrence for which 10 C.F.R. § 72.104 dose limits apply. NSPM used accepted industry standards for identifying "accidents," and PIIC has provided no support, other than a conclusory statement, to contradict this accepted standard.

Finally, to the extent that PIIC is asserting that "degradation and wear of engineering materials over a long period of time" will result in this otherwise non-credible event becoming an operational occurrence (Petition at 55, Greeves Declaration at ¶ 20), PIIC fails to recognize that NSPM evaluated this degradation and wear of materials, as well as the cited historical events, in its Application as part of its Aging Management Review. The purpose of an Aging Management Review and the AMP is to address these aging effects that could affect the ability of an SSC to perform its intended function. 76 Fed. Reg. 8,872, 8,875 (Feb. 16, 2011). As required by 10 C.F.R. § 72.42(a)(2), the Prairie Island ISFSI Application includes an Aging Management

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beyond the capability of natural phenomena or man-made hazards to produce." This analysis shows that the resulting dose is well within the 5 rem criterion given in 10 C.F.R. § 72.106(b). This criterion is appropriately applied to an accident scenario involving an event that is far beyond the capability of natural phenomena or man-made-hazards. The design basis for the TN-40HT cask included evaluation of a "latent seal failure" by itself and in combination with a failure of the over pressurization system due to an accident. The design basis analysis shows that, in both of these cases, there will be more than sufficient time to detect the failure before any dose limits would be exceeded. For example, in the case where the overpressurization system has failed due to an accident and there is a latent seal failure, the time frame before 10 C.F.R. § 72.106(b) limits would be exceeded range from 59 days to 6145 days depending on the size of the leakage. See SAR at A7A.8-13.

Review and an AMP. This review evaluated potential cask degradation, including aging impacts on the seals and other cask subcomponents.[20] For example, the Application (1) identified that "[t]rending of the in-service dry fuel storage casks interseal helium pressures has revealed no issues with the seals or age related issues with the pressure monitoring system leak-tight integrity on any of the 29 in-service casks" (Application at 3-4); (2) considered industry operating experience associated with cask degradation and included lessons learned into PI ISFSI maintenance procedures (see, e.g., consideration of Surry ISFSI License Renewal application which identified corrosion of their Transnuclear TN-32 lid bolts and outer metallic lid seals, as well as issues with bolt torqueing methodology, Application at 3-4 - 3-5.); and (3) specifies that the casks will be subject to interseal pressure monitoring to ensure that the pressure boundary, i.e., confinement, is maintained (Application at A-4).[21] PIIC does not address this Aging Management Review, which included the industry operating events relied on by PIIC, or the AMP, and thus fails to raise a material issue with the Application. 10 C.F.R. § 2.309(f)(1)(vi); Millstone, CLI-01-24, 54 N.R.C. at 358 (the petitioner "must show that a 'genuine dispute' exists with the applicant" and "read the pertinent portions of the license application . . . state the applicant's position and the petitioner's opposing view.").

For all of these reasons, this contention must be dismissed.

C. Petition for Waiver of 10 C.F.R. § 51.23(a)

The PIIC has alleged that "special circumstances have superseded the rationale for the provisions in 10 CFR Section 51.23(a)," and therefore, it seeks a waiver of application of this

[20] See, e.g., SAR Table 3.2-1, which provides the results of the aging management reviews and identifies the aging effects and associated mechanisms that require management, including mechanisms that could result in a loss of "pressure boundary" or confinement.

[21] Pressure monitoring is performed continuously, checked daily for alarms, and "provides a means to detect metallic O-ring seal degradation due to potential loss of material and confirm that the intended function is not compromised." Application at A-6.

rule to the Prairie Island ISFSI license renewal pursuant to 10 C.F.R. § 2.335. Petition at 57-58. In particular, PIIC seeks to require that NSPM's ISFSI license renewal application, particularly the Aging Management Review and AMP, include evaluations for a time period greater than the 40 year license extension request.

10 C.F.R. § 2.335(b) provides that a party may petition to waive application of a Commission rule or regulation in a particular proceeding provided that the party makes a showing that "special circumstances with respect to the subject matter of the particular proceeding are such that the application of the rule or regulation (or provision of it) would not serve the purposes for which the rule or regulation was adopted." The alleged special circumstances that PIIC asserts are (1) NRC, DOE, and NWTRB reports that identify uncertainties with storage of spent fuel after 120 years; (2) the Court of Appeals remand of the WCD/TSR; (3) the time for NRC to develop a generic EIS responding to the Court of Appeals decision; (4) "no hope" for a repository or interim storage; and (5) "no reasoned scheme" for DOE to prioritize moving spent fuel. Petition at 58-59. None of these circumstances supports a waiver of NRC rules in this proceeding.

Since the rule that PIIC is petitioning to waive has been vacated by the Court of Appeals, there is no rule to petition to waive. New York, 681 F.3d at 483. PIIC's petition is therefore moot. The Commission cannot waive a rule that no longer exists. To the extent that PIIC might argue that it is seeking a waiver as to whatever rule the Commission might promulgate to replace the rule that the D.C. Circuit vacated, such a petition is premature. PIIC cannot petition to waive something that does not yet exist.

Even if a petition requesting a waiver were appropriate, PIIC has failed to meet the tests for such waivers. The Commission has established a four factor test applying 10 C.F.R.§ 2.335(b).

"The waiver petitioner must meet all four factors, demonstrating that: (i) the rule's strict application would not serve the purpose for which it was adopted; (ii) there are 'special circumstances' that were 'not considered, either explicitly, or by necessary implication, in the rulemaking proceeding leading to the rule sought to be waived'; (iii) those circumstances are unique to the facility, rather than 'common to a large class of facilities'; and (iv) a waiver of the rule is necessary to reach a 'significant safety problem.'" Entergy Nuclear Generation Co. (Pilgrim Nuclear Power Station), CLI-12-06, 75 N.R.C. ___ (Mar. 8, 2012)(slip op. at 14-15) (rejecting Petitioner's request to waive portions of 10 C.F.R Part 51 setting forth NRC's generic findings for certain environmental impacts during license renewal, specifically the regulations pertaining to environmental impacts of spent fuel storage) (footnote omitted).

PIIC's waiver request fails to meet the NRC criteria and must be denied. In particular, none of the alleged special circumstances raised by PIIC is unique to the Prairie Island ISFSI. First, PIIC alleges as special circumstances information in the NRC, DOE, and NWTRB reports cited in the Petition at 58, footnotes 150[22], as outlining technical areas where additional data is needed to support "spent fuel storage after a period of 120 years." Petition at 58. These reports do not identify any circumstance unique to the Prairie Island ISFSI. Rather, these reports identify generic issues related to extended storage. The purpose of these reports is to identify and prioritize technical issues that must be studied to support extended storage at any facility and any future changes to current NRC's rules to support extended storage i.e., storage beyond 120 years. See e.g. NRC Draft Report, Identification and Prioritization of Technical Information Needs Affecting Potential Regulation of Extended Storage and Transportation of Spent Nuclear Fuel (May 3, 2012) (ADAMS Accession No. ML120580143) at iv ("in expectation of continued use

[22] The Petition has three separate footnotes numbered 150, one each for the NRC, DOE and NWTRB reports. Petition at 58.

of dry storage for extended periods of time, the NRC Staff is examining the technical needs and potential changes to the regulatory framework that may be needed to continue licensing of SNF storage over periods beyond 120 years"). Likewise, the facts that the Court of Appeals vacated the WCD/TSR and that the Commission has announced that it plans to develop a generic EIS addressing the Court's concerns, are in no way unique to the Prairie Island ISFSI. The fact that the NRC is addressing these issues generically belies any assertion that these are issues unique to the Prairie Island ISFSI. Similarly, the construction of a repository, centralized interim storage, and DOE's scheme for prioritizing the movement of spent nuclear fuel are all generic policy issues that are not unique to the Prairie Island ISFSI. Because none of PIIC's asserted special circumstances is unique to the Prairie Island ISFSI, PIIC's waiver must be denied.[23]

Additionally, PIIC's asserted special circumstances regarding the Court of Appeals' decision and long term onsite storage will be explicitly considered in the pending rulemaking. The Commission has directed the NRC Staff to develop a generic EIS and revised WCD/TSR addressing the particular issues remanded by the Court of Appeals. Staff Requirements-COMSECY-12-0016 at 1 (directing the NRC Staff to develop an EIS that uses "analyses in the 2010 Waste Confidence Decision to the extent possible and should primarily focus any additional analyses on the three deficiencies identified in the D.C. Circuit's decision."). Since the pending rulemaking will explicitly address the Court of Appeals' concerns and develop a revised WCD/TSR, PIIC's petition must be denied.

[23] It should also be pointed out that PIIC is incorrect when it states that "DOE has no reasoned scheme on how priorities will be set for moving spent fuel from operating reactors like PINGP." Petition at 59-60. The mechanism for setting priorities for DOE to accept spent fuel was established in 1983 in the Standard Contract for Disposal of Spent Nuclear Fuel and/or High-level Radioactive Waste, 10 C.F.R. Part 961, into which NSPM and all other utilities with nuclear power plants have entered. These provisions have been judicially scrutinized in numerous judicial decisions. See, e.g., Yankee Atomic Elec. Co. v. United States, 536 F.3d 1268 (Fed. Cir. 2008).

Finally, the Commission has made clear that a site specific analysis (which arguably would replace reliance on the rule that PIIC seeks to waive) is appropriate "only in rare circumstances in which there is an exceptional or compelling need" and then, only after the NRC Staff has presented an information paper to the Commission describing the issues requiring completion of a site specific analysis and what other possible remedies could address these issues. Staff Requirements - COMSECY-12-0016 at 2. The NRC Staff has not identified in an information paper to the Commission compelling circumstances requiring a site-specific analysis.

For all of these reasons, PIIC's petition must be denied.

V. SELECTION OF HEARING PROCEDURES

Commission rules require that the Atomic Safety and Licensing Board designated to rule on the Petition "determine and identify the specific procedures to be used for the proceeding" pursuant to 10 C.F.R. § 2.310. The regulations state: "Except as determined through the application of paragraphs (b) through (h) of this section, proceedings for the . . . renewal . . . of licenses subject to part[] . . . 72 of this chapter may be conducted under the procedures of subpart L." 10 C.F.R. § 2.310(a). The PIIC did not address the selection of hearing procedures in its Petition and accordingly, any hearing arising from the PIIC's Petition should be governed by the procedures of Subpart L.

VI. CONCLUSION

For the reasons stated above, the Petition should be denied.

Respectfully Submitted,

/Signed electronically by Jay E. Silberg/

_____

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Counsel for Northern States Power Company

Dated: September 25, 2012

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of	)	
	)	Docket No. 72-10-ISFSI-2
Northern States Power Company	)	
	)	ASLBP No.
(Prairie Island Independent Spent Fuel Storage Installation)	)	12-922-01-ISFSI-MLR-BD01

CERTIFICATE OF SERVICE

I hereby certify that copies of Northern States Power Company's Answer to the Prairie Island Indian Community's Petition to Intervene, dated September 25, 2012, were provided to the Electronic Information Exchange for service on the individuals listed below, this 25th day of September, 2012.

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/Signed electronically by Kimberly A. Harshaw/

Kimberly A. Harshaw

EXHIBIT 1

SETTLEMENT AGREEMENT

RECITALS

WHEREAS, Northern States Power Company ("NSP") is a party to an Agreement with the State of Minnesota dated, May 20, 1994 ("the 1994 Agreement"); and

WHEREAS, the Prairie Island Indian Community in the State of Minnesota, also known as the Prairie Island Mdewakanton Dakota Community at Prairie Island, a federally recognized Indian Tribe, ("Tribal Community") is an intended third party beneficiary of the 1994 Agreement; and

WHEREAS, the Community believes it is in the best interests of the Community to have an alternative to living next to the Prairie Island nuclear plant and that the Community receive reasonable compensation and reimbursement for the storage of spent nuclear fuel at the Prairie Island plant; and

WHEREAS, NSP believes it is in the best interests of the Company and its customers to settle potential outstanding disputes and associated uncertainties such that it could continue to cooperate the Prairie Island nuclear plant beyond 2007; and

WHEREAS, NSP and the Tribal Community desire to enter into a new relationship governed by the terms set forth below ("the Agreement") and to settle and resolve their respective rights under the 1994 Agreement.

NSP and the Tribal Community (together "the Parties") enter into this Agreement.

1. NSP agrees to pay the Tribal Community as follows:

    i. Commencing on January 1, 2004, $1,000,000 each year during Prairie Island plant operations;
    ii. Commencing on January 1, 2004, $450,000 each year for the placement of storage casks at the Prairie Island generating plant ;
    iii. Commencing on January 1, 2004, $700,000 each year for Community expenses associated with acquisition of land to be taken into trust by the United States of America for the benefit of the Tribal Community, construction of Community infrastructure , movement of a transmission line or other Community purposes;
    iv. Commencing on July 1, 2003, $100,000 each year for expenses associated with a health study, emergency management activities or other Community purposes.

2. The payments in paragraph 1 (i) shall continue during any year in which the Prairie Island generating plant (either Unit 1 or Unit 2) operates.

3. The payments in paragraph 1 (ii) shall continue until such time as NSP removes all spent nuclear fuel stored in dry casks that were placed on the pad and filled at the Prairie Island generating plant during the operational life of the plant. This payment provision shall terminate upon removal of the spent nuclear fuel described above. This provision shall not apply to spent nuclear fuel placed and stored in dry casks and placed on the site after operations have ceased and preparation for decommissioning of the facility has begun.

4. The payments in Section 1(iii) shall terminate as of December 31, 2013.

5. The payments in Section 1(iv) shall terminate as of December 31, 2012.

6. NSP agrees to pay $25,000 to the Tribal Community so it may conduct a preliminary engineering study or for other activities to help facilitate construction of an overpass over the railroad that crosses Sturgeon Lake Road.

7. NSP further agrees to use its best efforts in cooperation with the Tribal Community to secure $4,000,000 in State and/or Federal funding for the railroad overpass by July 1, 2004.

8. NSP shall move the 345 kV transmission lines located on the site of the Prairie Island generating facility as described in Attachment A hereto, provided that (1) the Tribal Community pays NSP for the cost of moving the power lines; (2) all necessary regulatory approvals to move such transmission lines are obtained; and (3) the timing of construction is allowed to be scheduled as part of ongoing work consistent with Good Utility Practice. NSP shall use all reasonable efforts to obtain all regulatory approvals and to use all reasonable efforts to manage the cost of the project under $2,000,000 . The Parties agree to enter a service agreement that details performance and payment responsibilities.

9. NSP shall not store any waste from any other nuclear generating facility at its Prairie Island generating facility site.

10. The Parties shall support the Agreement before the Minnesota Legislature as a just and reasonable resolution of outstanding issues and defend the Agreement against any legislation that directly or indirectly attempts to expand, narrow or would otherwise have the effect of changing its terms.

11. The Parties shall support and defend legislation in the form described in Attachment B before the Minnesota Legislature. The Parties agree to work cooperatively to respond to legislative developments as they arise.

12. The Tribal Community agrees that any position it may take, if any, on an application to relicense the Prairie Island generating facility will be limited to intervention and advocacy of its position before the Nuclear Regulatory Commission and agrees not to intervene, advocate or otherwise participate in any

state administrative or state legislative decision-making process or state judicial proceeding related to relicensing or authorizing additional dry cask storage at the Prairie Island generating facility through the relicensing period.

13. This Agreement is effective as of the date of execution.

14. Paragraphs 1(i)-(iii), 2, 3, 4, 12, 15 (b) and (c) and 16 are contingent upon and shall become effective only upon: enactment of a law in the 2003 Minnesota legislative session that: (a) allows for sufficient dry cask storage at the Prairie Island generating facility to support continued operation of the Prairie Island generating facility through at least the end of its current license, without further state approvals under a Certificate of Need proceeding or a regulatory proceeding following the same procedures; (b) allows for full and timely cost recovery of the costs associated with this Agreement from ratepayers through an automatic adjustment of charges provision pursuant to or consistent with the terms of Minn. Stat. 216B.1645; and (c) does not materially alter the terms of this Agreement including provisions for compensation to be paid to the Tribal Community for acquisition of land to be taken into trust for the Tribal Community by the United States of America

15. Payments shall be made to the Tribal Community as follows:

    a. The first payment under Paragraph 1(iv) and the payment under Paragraph 6 shall be due July 1, 2003.
    b. All payments for the year 2004 shall be due on January 1, 2004.
    c. All subsequent payments under the Agreement shall be made on a quarterly basis on January 1, April 1, July 1, and October 1, beginning in 2005.

16. To the extent that legislation that satisfies the contingencies enumerated in Paragraph 14 becomes law, all provisions of this Agreement are in full force and effect, and the Tribal Community will not challenge or otherwise contest either the termination or modification of the 1994 Agreement between NSP and the State of Minnesota and this Agreement will be a full and final settlement of all rights the Tribal Community may have under the 1994 Agreement.

17. This Agreement applies to each of the Parties and shall be binding on the successors and assigns of the Parties and any transferee or subsequent owner of a material portion of the Prairie Island nuclear generating facility. This Agreement shall not be assigned by any party to another party without the consent of the non-assigning party, which consent shall not be unreasonably withheld. This Agreement shall not be deemed to constitute an admission by any Party that any allegation or contention is true and valid except as to the terms provided for in the Agreement.

18. Each of the provisions of this Agreement is in consideration for each and every other provision.

19. NSP represents that it has full authority to enter into this Agreement and that the Agreement is binding upon NSP.

20. The Tribal Community represents that it has full authority to enter into this Agreement and that the Agreement is binding upon the Tribal Community.

21. The provisions of this Agreement are not severable.

22. Any legal proceeding to contest or enforce provisions of this Agreement shall be venued in District Court in the State of Minnesota. In order to effectuate this provision in the event that NSP alleges a material breach of the Agreement by the Tribal Community, NSP as its exclusive remedy shall first give written notice to the Tribal Community of the alleged breach. If the parties cannot resolve the dispute within 15 days or any other period agreed to by the parties, NSP shall notify the Tribal Community in writing that it will withhold funds that may be due under the Agreement and that the Tribal Community can then sue to enforce the Agreement in state court.

23. Nothing in this Agreement shall be construed or interpreted to effect a waiver of the Tribal Community's sovereign immunity, nor shall the Agreement be interpreted or construed to subject NSP to the jurisdiction of the Tribal Court.

24. This Agreement may be executed in identical counterparts with the same effect as if a single copy were executed.

25. Nothing herein is or may be construed to be a waiver, abrogation or settlement of any actual or potential claim of the Tribal Community or any individual Tribal member against NSP, any federal, state or local government or any other party except as specifically set forth in Paragraph 16.

Northern States Power Company
(Minnesota)

By: _____
Title: Chairman, President and Chief Executive Officer
Date: 5-22-03

Mdewakanton Dakota Tribal Community
at Prairie Island

By: _____
Title: President
Date: 5-19-03

ATTACHMENT A

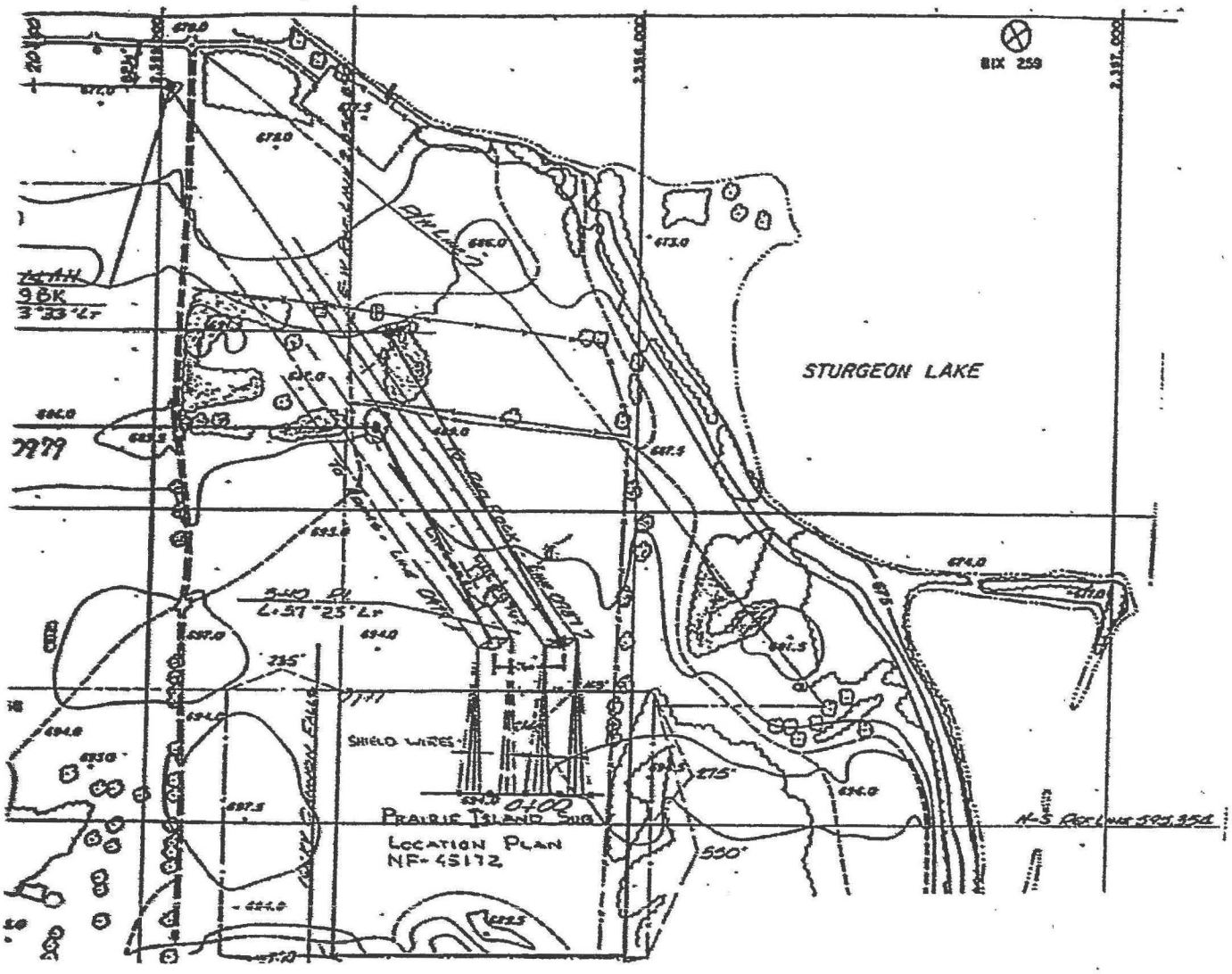


EXHIBIT "A" Dated 03/012/2003

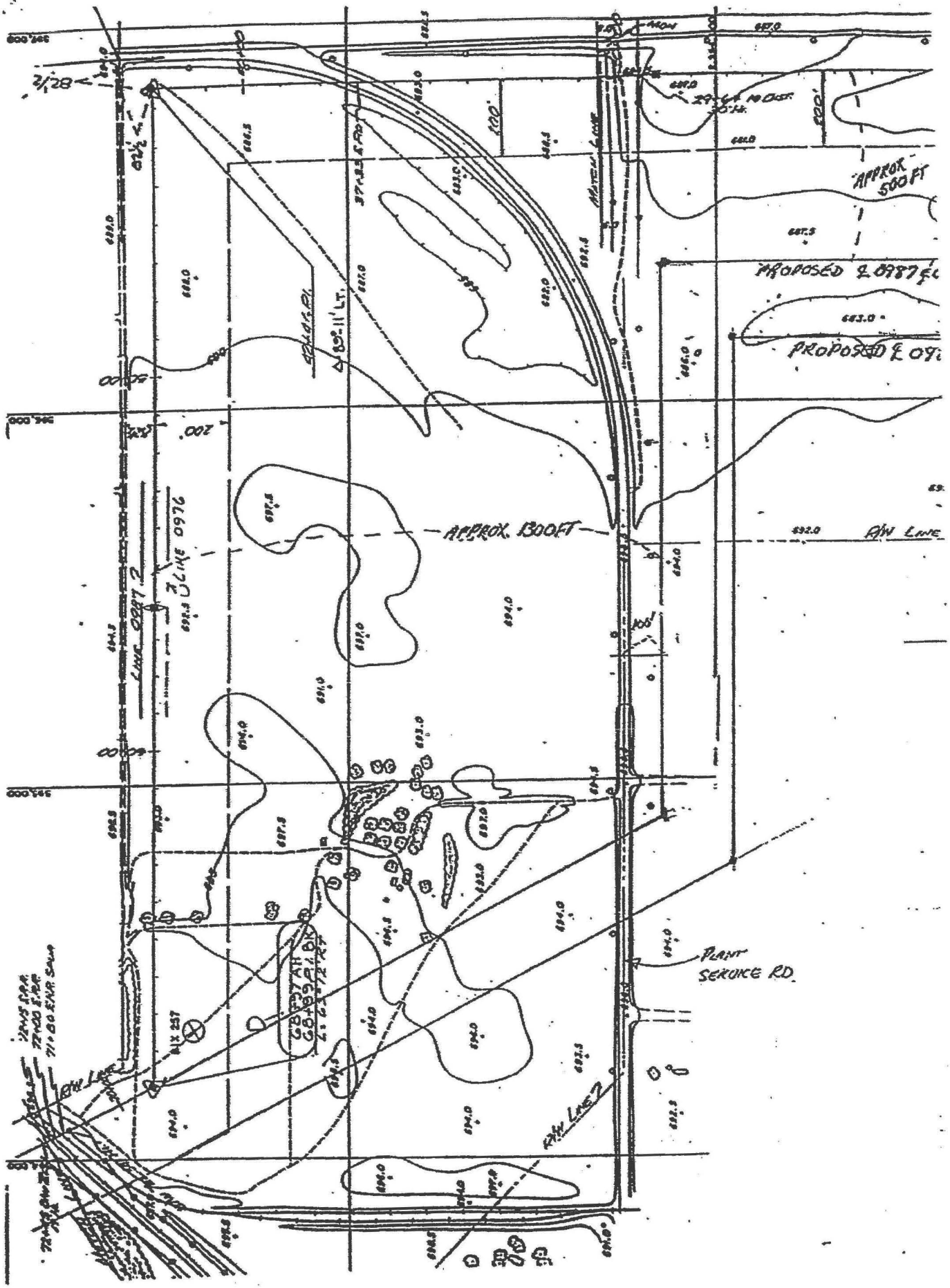
Proposed Relocation - 2 Double Circuit 345kv Tower Lines at Prairie Island

Proposed Reroute Description:

The northerly most line Lines # 0987 & 0976, starting at the Southwest corner of the PI site and extending on the existing transmission line centerline, a distance of approximately 1600ft and to a point 100 feet east of the plant service road, then turning north paralleling the service road and extending to a point a distance of approximately 1500 ft, the turning east a distance approximately 1500 ft, then turning south easterly to terminate at the substation a distance of approximately 750ft.

The proposed route of the second double circuit line # 0986 & 0979 would parallel the above described double circuit line to the south and east at a 200ft centerline-to-centerline distance.

Note: Tower locations may change for construction Outage planning requirements for any of the 345kv circuits involved.


APPROX. 500 FT
PROPOSED ℄ 0987 ℄
PROPOSED ℄ 09
APPROX. 1300FT
℄ LINE 0976
LINE 0987.2
PLANT SERVICE RD.
RIGHT OF WAY LINE
RIGHT OF WAY LINE
RIGHT OF WAY LINE
MIX 257

KEY: ~~stricken~~ = old language to be removed
underscored = new language to be added

NOTE: If you cannot see any difference in the key above, you need to change the display of stricken and/or underscored language.

Authors and Status ■ List versions

H.F No. 775, as introduced: 83rd Legislative Session (2003-2004) Posted on Mar 10, 2003

A bill for an act

relating to energy; amending the definition of a radioactive waste management facility; specifying the applicability of the renewable development fund; authorizing sufficient dry cask storage capacity to allow the nuclear reactors at the Prairie Island nuclear generation facility to operate until the end of their current licenses; requiring a public utility that owns a nuclear generation facility to seek commission approval for additional storage capacity for spent nuclear fuel; amending Minnesota Statutes 2002, sections 116C.71, subdivision 7; 116C.779; 216B.1645, subdivision 2; proposing coding for new law in Minnesota Statutes, chapter 116C.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2002, section 116C.71, subdivision 7, is amended to read:

Subd. 7. [RADIOACTIVE WASTE MANAGEMENT FACILITY.] "Radioactive waste management facility" means a geographic site, including buildings, structures, and equipment in or upon which radioactive waste is retrievably or irretrievably disposed by burial in soil or permanently stored. An independent spent fuel storage installation located on the site of a Minnesota nuclear generation facility for dry cask storage of spent nuclear fuel generated solely by that facility is not a radioactive waste management facility.

Sec. 2. Minnesota Statutes 2002, section 116C.779, is amended to read:

116C.779 [FUNDING FOR RENEWABLE DEVELOPMENT.]

Subdivision 1. [APPLICABILITY.] This section applies only to the first 12 casks filled and placed at the Prairie Island independent spent fuel storage installation.

Subd. 2. [RENEWABLE DEVELOPMENT FUND.] (a) The public utility that ~~operates~~ owns the Prairie Island nuclear generating plant must transfer to a renewable development account $500,000 each year for each dry cask containing spent fuel that is located at the independent spent fuel storage installation at Prairie Island after January 1, 1999. The fund transfer must be made if waste is stored in a cask for any part of a year in which the plant is in operation. Funds in the account may be expended only for development of renewable energy sources. Preference must be given to development of renewable energy source projects located within the state.

(b) Expenditures from the account may only be made after approval by order of the public utilities commission upon a petition by the public utility.

Sec. 3. [116C.83] [AUTHORIZATION FOR ADDITIONAL DRY CASK STORAGE.]

(a) Subject to the cask storage limits of the federal license for the independent spent fuel storage installation at Prairie Island, the public utility that owns the Prairie Island nuclear generation plant has authorization for sufficient dry cask storage capacity at that installation to allow:

(1) the unit 1 reactor at Prairie Island to operate until the end of its current license in 2013; and

(2) the unit 2 reactor at Prairie Island to operate until the end of its current license in 2014.

(b) Notwithstanding any law to the contrary:

(1) except as provided in paragraph (a), authorization of any future nuclear storage facility or dry casks at either nuclear generation facility in this state is limited to approval by the public utilities commission pursuant to section 216B.243 and the commission's certificate of need rules;

(2) in any proceeding pursuant to clause (1), the commission may make a decision that could result in a shut down of a nuclear generation facility; and

(3) the storage of spent nuclear fuel in the pool and in dry casks at the Prairie Island nuclear generating plant must be managed to facilitate the shipment of waste out of state to a permanent or interim storage facility as soon as feasible in a manner that allows the continued operation of the plant consistent with sections 116C.71 to 116C.83 and 216B.1645, subdivision 2.

Sec. 4. Minnesota Statutes 2002, section 216B.1645, subdivision 2, is amended to read:

Subd. 2. [COST RECOVERY.] The expenses incurred by the utility over the duration of the approved contract or useful life of the investment and expenditures made pursuant to section 116C.779 and agreements with the Mdewakanton Dakota Tribal Council at Prairie Island regarding the provisions of Laws 1994, chapter 641, article 1, section 4, shall be recoverable from the ratepayers of the utility, to the extent they are not offset by utility revenues attributable to the contracts, investments, or expenditures. Upon petition by a public utility, the commission shall approve or approve as modified a rate schedule providing for the automatic adjustment of charges to recover the expenses or costs approved by the commission, which, in the case of transmission expenditures, are limited to the portion of actual transmission costs that are directly allocable to the need to transmit power from the renewable sources of energy. The commission may not approve recovery of the costs for that portion of the power generated from sources governed by this section that the utility sells into the wholesale market.

Sec. 5. [EFFECTIVE DATE.]

Sections 1 to 4 are effective the day following final enactment.

Sec. 2.

Subdivision 1 [APPLICABILITY] This section applies only to the first 17 casks filled and placed at the Prairie Island independent spent fuel storage installation.

Subd.2 [RENEWABLE DEVELOPMENT FUND]
(a) The public utility that operates owns the Prairie Island nuclear generating plant must transfer to a renewable development account $500,000 each year for dry cask containing spent fuel that is located at the independent spent fuel storage installation at Prairie Island after January 1, 1999. The fund transfer must be made if waste is stored in a cask for any part of a year in which the plant is in operation.

Funds in the account may be expended only for (1) payment by the public utility under a settlement agreement with the Mdewakanton Dakota Tribal Council at Prairie Island, a federally recognized Indian tribe, such payments to be made for resolving outstanding disputes and to be used for, among other purposes, acquiring land in the state of Minnesota for placement in trust; and (2) development of renewable energy source projects located within the state. Payments from the fund in any year shall first be made to satisfy the terms of the settlement agreement described in (1) above.

(b) Expenditures from the account for the purposes of the development of renewable energy source projects may only be made after approval by order of the public utilities commission upon petition by the public utility.

Sec. 4

Subd. 2 The expenses incurred by the utility over the duration of the approved contract or useful life of the investment and expenditures made pursuant to section 116C.779 and expenditures under an agreement dated March __, 2003 and agreements with the Mdewakanton Dakota Tribal Council at Prairie Island regarding the provisions of Laws of Minnesota 1994, chapter 641, article 1, section 4, to the extent that funds collected pursuant to Section 116C.779 in any given year are insufficient to cover these settlement costs, shall be recoverable from the ratepayers of the utility, to the extent they are not offset by utility revenues attributable to the contracts, investments or expenditures. Upon petition by a public utility, the commission shall approve or approve as modified a rate schedule providing for the automatic adjustment of charges to recover the expenses or costs approved by the commission, which, in the case of transmission expenditures, are limited to the portion of actual transmission costs that are directly allocable to the need to transmit power from the renewable sources of energy. The commission may not approve recovery of the costs for that portion of the power generated from sources governed by this section that the utility sells into the wholesale market.