

From: "Kevin Kamps" <kevin@nirs.org>
To: <palisadesEIS@nrc.gov>
Date: Thu, May 18, 2006 10:43 PM
Subject: Comments RE: NUREG-1437, Supplement 27, draft (attached)

2/23/06

71 FR 9383

Dear Palisades EIS Official,

I just sent these very same comments to you, pasted into the body of my email. I am now also sending them to you attached as a Microsoft Word file. Thanks.

12

Kevin Kamps, NIRS

CC: "Robert Shimek" <rshimek@iencarth.org>

RECEIVED

2006 MAY 24 PM 12:53

RULES AND DIRECTIVES
BRANCH
USNRC

SESP Review Complete

Template = ADM-013

ERDS = ADM-03

Call = Bob Pham (bnp)
C. Yuen (cay93)

Mail Envelope Properties (446D30C8.046 : 2 : 70)

Subject: Comments RE: NUREG-1437, Supplement 27, draft (attached)
Creation Date: 5/18/06 10:47PM
From: "Kevin Kamps" <kevin@nirs.org>

Created By: kevin@nirs.org

Recipients

nrc.gov

TWGWPO02.HQGWDO01

PalisadesEIS

iearth.org

rshimek CC (Robert Shimek)

Post Office

TWGWPO02.HQGWDO01

Route

nrc.gov

iearth.org

Files	Size	Date & Time
MESSAGE	214	05/18/06 10:47PM
TEXT.htm	2127	
native section of comments to EIS 5 13 06.doc		89600
Mime.822	127084	

Options

Expiration Date: None
Priority: Standard
Reply Requested: No
Return Notification: None

Concealed Subject: No
Security: Standard

Re: NUREG-1437, Supplement 27

To:

**Chief, Rules Review and Directives Branch
U.S. Nuclear Regulatory Commission
Mail Stop T6-D59
Washington, DC 20555-0001**

Sent via email to: PalisadesEIS@nrc.gov

Comments Re:

**Potential for Native Burial or Other Sites
on Palisades Nuclear Power Plant Property
That Could Be Damaged or Destroyed
During Twenty Year License Extension**

Prepared by

**Kevin Kamps
Nuclear Information & Resource Service (Washington, D.C.)
and Don't Waste Michigan (Kalamazoo Chapter),
6930 Carroll Avenue, Suite 340
Takoma Park, Maryland 20912-4423**

Endorsed by

**Robert Shimek
IEN Mining Organizer
Indigenous Environmental Network (IEN)
IEN national offices
P.O. Box 485
Bemidji, Minnesota 56619**

May 18, 2006

When reviewing Nuclear Management Company, LLC's [NMC, the operator of Palisades, which is owned by Consumers Energy Corporation] "Environmental Report" (ER, published in March, 2005) in preparation for U.S. Nuclear Regulatory Commission [NRC] environmental scoping hearings on July 28, 2005, it became clear that the nuclear utility's conclusion that there are no known Native American cultural resources and archaeological sites on the Palisades property was little more than self-serving, circular logic with no documented basis. In fact, the location of the Palisades property would tend to suggest that Native American resources and sites could very likely be located there.

Section 2.10, "Historic and Archaeological Resources," of NMC's ER is a scant four paragraphs long, taking up less than two-thirds of one page (Page 2-46). In fact, Native American sites on the Palisades property are not explicitly mentioned at all. The closest NMC comes is a euphemistic mention of "archaeological...resources on or near the Palisades site," and then only to dismiss any such notion: "The AEC [Atomic Energy Commission], in the Final Environmental Statement (FES) for Palisades, noted no known archaeological or historical resources on or near the Palisades site."

NMC's choice of words, "no known," seemed suspicious. What if there are "unknown" Native American sites at or near Palisades? Had a comprehensive site-wide archaeological survey ever been conducted at or near Palisades, to prove that no Native American sites are present in this geographical location where their presence would be likely?

NMC went on to report "The FES indicates on the basis of review by the U.S. Department of the Interior and the Michigan State Liaison Officer for Historic Preservation that operation of Palisades would have no effect on significant historic or archaeological sites (AEC 1972, Appendix A)." Such wording by NMC begs the question – do the companies and federal agencies regard Native American burial sites and village sites, for example, as insignificant?

NMC' ER continued "In the Terrestrial Ecological Survey done for Consumers in 1979, it was noted that no significant historical or archaeological resources were known to occur in the study area." Again, what about unknown resources? Was a search ever conducted?

NMC concluded "Communication with the Director of Michigan History Division in October 1979 confirmed the absence of significant historic or archaeological sites in the immediate vicinity of Palisades." Again, did the Director of Michigan History Division simply consider Native sites insignificant?

Thus, a cursory reading of Section 2.10 of NMC's ER would seem to convincingly lay the issue of Native American sites at Palisades to rest. After all, three federal agencies (the National Park Service, National Register of Historic Places, Atomic Energy Commission, and U.S. Department of the Interior), two State of Michigan agencies (Michigan State Liaison Officer for Historic Preservation, and the Director of the Michigan History Division), and a Consumers Power contractor were all cited, seemingly confirming that no Native American sites were present on Palisades property.

However, upon reviewing Attachment C of NMC's Environmental Report, "Cultural Resources Correspondence," such confidence in the absence of Native American sites at Palisades is shown to be false.

Contradictions, omissions, and loopholes big enough to drive a bulldozer through -- in the documents offered as proof that “no significant historical or archaeological resources were known to occur in the study area” -- raised alarm bells.

“Attachment C. Cultural Resources Correspondence” from the ER includes just two letters, the first from Consumers/NMC to the Michigan State Historic Preservation Office, the second from the Department of the Interior to the Atomic Energy Commission.

The letter dated February 11, 2005 from Dan Malone at NMC and Stephen Wawro at Consumers to Ms. Martha MacFarlane-Faes at the Michigan State Historic Preservation Office (MSHPO) begs several questions. The first paragraph reveals that MSHPO has “concern pertaining to possible unreported archaeological properties on, or within the vicinity of, the Palisades site.” Yet, NMC and Consumers fail to include any documentation spelling out these concerns from MSHPO in the companies’ ER, other than that brief mention that concerns exist. Why such a significant development was not mentioned in the main body of the NMC ER, at Section 2.10, but was instead buried in the attachments at page C-2, is not explained. This obscuring of such a significant development is unacceptable.

In the second paragraph, Malone and Wawro state that 20 more years of nuclear activity and operations at the site will not disturb the land, and “[t]herefore, NMC and Consumers do not believe a survey of the project area is necessary, as Federal and state agencies have confirmed on multiple occasions that no historic properties, archeological or architectural, are known to exist on, or in the immediate vicinity of the Palisades site.”

However, as the coalition of dozens of grassroots Michigan environmental groups has contended in its intervention against the license extension, 20 more years of operations at Palisades risks a large-scale radiological accident due to the reactor having the most embrittled pressure vessel in the United States. Even if no accident were to occur, the daily operations of Palisades nuclear power plant release “low” levels (and sometimes, not-so-low levels) of radioactivity into the air, water, and soil (see NIRS pamphlet “Radioactive Releases from Nuclear Power Plants in the Great Lakes Basin: What Are the Dangers?” for more information; note that the photo of liquid discharges shows Palisades itself discharging directly into Lake Michigan.).

It also generates high-level radioactive waste, large quantities of which have already been stored at Palisades for nearly 40 years, and ever-growing quantities of which will continue to be stored on-site for at least several decades to come, even if dumps targeted at Native American lands out West (sacred Western Shoshone Indian treaty land at Yucca Mountain, Nevada; the Skull Valley Goshute Indian Reservation in Utah) are opened. Since the opening of such dumps is ever more doubtful, this means that Palisades’ high-level radioactive waste could remain on-site indefinitely into the future.

The "routine" or "accidental" radioactive contamination caused by 20 additional years of operations at Palisades would be a significant adverse impact upon Native American burial or other sites located there.

It was irresponsible for NMC and Consumers to state so flippantly in the ER that no "survey of the project area is necessary" when they, and federal and state agencies, appear to have done little if any such surveying in the past. In fact, NRC itself later admitted in its draft Environmental Impact Statement (NUREG-1437, Supplement 27, on page 4-26) that "[t]he NRC staff's independent review of records on file at the SHPO [Michigan State Historic Preservation Office] did not locate records related to project-specific archaeological surveys conducted at Palisades for ground-disturbing activities." NRC continued "However, Consumers Energy did locate in its records one such report that documented a cultural resource field visit to the Palisades site by archaeologists in 1982 for three proposed projects." So Palisades has only a single cultural resource "field visit" documented in nearly 40 years of construction and operations?

Such an admission undermines the relevance of the only documentation NMC and Consumers give in their Environmental Report to support their claims: a letter dated April 7, 1972 from the U.S. Department of the Interior (DOI) to the U.S. Atomic Energy Commission (the predecessor to today's NRC, in terms of nuclear power plant regulation). In that letter, reproduced from Pages C-5 to C-9 of NMC's ER, DOI states "It does not appear that the existing plant should directly affect any existing or proposed unit of the National Park System, nor any site eligible for registration as a national historic, natural or environmental education landmark; however, the final statement should contain evidence of consultation with the State Historic Preservation Officer concerning the effects of the power station on places on or being considered for nomination to the National Register of Historic Places."

Given that no documented cultural resource assessment whatsoever was conducted until a decade later, such "evidence" as the 1972 DOE to AEC letter seems to completely ignore the possibility that Native American burial sites, former village sites, etc. could potentially be present on the power plant site or along its transmission line corridors.

It is interesting that consultation with the Michigan State Historic Preservation Officer is mentioned, because when Kevin Kamps of NIRS spoke with Martha MacFarlane-Faes at MSHPO by phone on August 30, 2005, it was clear that very little consultation had taken place between her office and the companies involved, and in fact, she admitted, that the "ball may have been dropped" on these important matters, apparently referring to her own state agency. Needless to say, "dropping the ball" when it comes to the preservation of Native American burial sites, and other ancient Native sites, is not acceptable. Besides the moral and ethical responsibilities, there are also federal laws, such as the Native American Graves Protection and Repatriation Act, and the National Historic Preservation Act, that require legal enforcement. To not protect Native American burial sites and other sites at Palisades is, in fact, a violation of the law.

Ms. MacFarlane-Faes told Kevin Kamps at NIRS that she would review her files on this matter and get back to him. Other than a single voice mail, perhaps, that her files revealed no more information, there was no further follow up from Ms. MacFarlane-Faes to Mr. Kamps. This was quite disconcerting.

It seems clear that the companies, as well as the state and federal agencies, have allowed this license extension proceeding to progress to this very advanced stage without adequately addressing the potential impacts to Native American sites, rights, and values.

In its Feb. 2005 letter to the Michigan State Historic Preservation Office, NMC and Consumers also mention that: "A May 19, 1972 letter from the Michigan State Liaison Officer for Historic Protection to the AEC (Atomic Energy Commission) confirmed the DOI's determination and stated that Palisades would not 'adversely affect known historical or archaeological resources of the State of Michigan.'" "

They go on to state that a "Terrestrial Ecological Survey" conducted 26 years ago by a private contractor paid by Consumers "found no significant historical or archaeological resources were known to occur on the Palisades site" and that these findings were confirmed by the Director of the Michigan Department of State's Michigan History Division, which verified that "no significant historical or archaeological sites had been found in the immediate area of Palisades."

How "significant" and "immediate" are defined by these profit-driven private companies, and by these state agencies, is not clear. Are Native American sites such as burials or villages being considered as insignificant? It is especially troubling that NMC's "evidence" that no Native American sites are present at Palisades is 25 to 40 years old – Native American burial sites, especially, were less respected, morally and legally, at that time by the dominant culture than they are today, after many decades of hard work by Native American tribes to protect their ancestors' graves, and to demand legally-binding respect from the dominant culture.

It seems imperative that an updated, comprehensive, independent site survey be conducted, in close consultation with affected tribes, before Palisades is granted a license to perform nuclear and other activities on this site for another 20 years.

But it appears from the lack of supporting documentation that neither the AEC nor the DOI ever did a careful survey of the Palisades site or adjoining transmission lines. In the ER, NMC and Consumers seem unconcerned about the potential presence of unknown Native American burial sites or other cultural resources.

Yet, given the presence of creeks just north and south of the Palisades nuclear power plant site, it seems all the more likely that Native American villages or encampments might have been located there. And given the forested, large dunes surrounding the Palisades nuclear power plant, it seems possible that even burial sites might be located there, especially considering the great beauty of the area, and the remarkable view to the west (the direction the deceased travel on their way to the spirit

world in many Great Lakes Native American cultures) over Lake Michigan. One definition for “palisade,” after all, is “a line of bold cliffs.” (Webster’s New Collegiate Dictionary) Apparently the hundred-year-old Palisades Park summer resort community with 200 cottages immediately south of the Palisades nuclear power plant took its name from the “cliffs,” or tall forested sand dunes, on the site. And Palisades nuclear plant took its name from the Palisades Park community, much to the chagrin of the residents, many of whom have opposed the nuclear reactor since before it was built in the late 1960s.

NMC and Consumers go on in their letter to state that adequate protections are in place to safeguard cultural resources on the site. They write “Examples of activities requiring an Environmental Review include disturbance of 1 or more acres of previously undisturbed land, any earth change within 600 feet of water, wetland and waterway activities, and structural interference with landforms, lakes and streams, among others.” But, given the decades of apparent lack of concern, perhaps it should not be surprising that such “protections” actually contain huge loopholes. For example, a good deal of Palisades nuclear power plant property – including much of the forested dunes – is more than 600 feet from Lake Michigan, streams and wetlands. In addition, Native American burial sites could occupy an area of land much smaller than even one acre. Thus, even such “protections” could still allow for overlooking or ignoring burial sites during construction or renovation projects, threatening those sites with damage or complete destruction, whether intentional or unintentional.

Malone and Wawro go on to assure the State of Michigan official that no major refurbishment activities are planned for the 20 year license extension period, so no disturbance to even unknown Native sites could occur. However, they fail to mention that as early as the summer of 2007, a major refurbishment activity is planned – the replacement of the reactor pressure vessel head, involving the movement of very heavy loads, and its barge transport up the Lake Michigan shoreline to Muskegon. In addition, administrative and legal challenges launched by the anti-license extension coalition to the dry cask storage pads at Palisades could require their replacement by new pads elsewhere on the site. This would certainly represent a major refurbishment activity. And with the age-related degradation in coming years and decades at the already 40 year old Palisades plant, it is hard to believe that no refurbishment activities will be required, activities that could disturb, damage, or destroy unknown or unreported Native sites on the Palisades property.

The nuclear companies state repeatedly throughout the Environmental Report that “NMC does not plan to undertake any major refurbishment activities,” an admission that itself has dire implications, given the deteriorated state of the reactor and its safety systems. But then again Consumers never envisioned in the early 1970s that it would need to install dozens of 20 foot tall, 132 ton concrete and steel silos to store high-level radioactive waste just 150 yards from the waters of Lake Michigan. And yet, 20 years later, that is exactly what they did. So who knows, really, what projects the companies will need or want to perform on the site over the course of the next 20 years? Besides, Consumers Energy has put Palisades up for sale, so how can it be guaranteed that a future owner would abide by the previous owner’s decisions and pledges?

In addition to the ever growing stockpile of high-level radioactive waste stored on-site, in 2008 the so-called "low" level radioactive waste dump at Barnwell, South Carolina -- where Palisades has sent large quantities of atomic trash for decades -- will no longer accept such wastes from Palisades. It is very possible that Palisades would thus expand on-site "storage" for "low" level radioactive wastes as well, some of which is actually intensely radioactive, despite the euphemistic "low-level" label.

Lastly, NMC and Consumers state in the last paragraph that their letter, and a copy of the response to it from the Michigan Historic Preservation Office, would be included in the Environmental Report. No such response is included in the ER. This begs the question, who dropped the ball? NMC/Consumers, or MSHPO? Or both? It is encouraging that MSHPO has expressed concerns, apparently, in the past. But it is discouraging that milestones such as the August 8, 2005 deadline for intervening/requesting licensing hearings and the August 22, 2005 deadline for environmental scoping comments have come and gone, with no action regarding the potential for Native American impacts from this proposal being adequately addressed by the companies nor by the federal or state agencies.

On July 13, 2005 NRC sent letters to the following tribes: Citizen Potawatomi Nation, Oklahoma; Hannahville Indian Community Council; Grand Traverse Band of Ottawa and Chippewa Indians; Nottawaseppi Huron Pottawatomi; Little River Band of Ottawa Indians; Little Traverse Bay Bands of Odawa Indians; Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians; Miami Tribe of Oklahoma; Ottawa Tribe of Oklahoma; Pokagon Band of Potawatomi Indians of Michigan; Saginaw Chippewa Indian Tribe of Michigan. The letters invited the tribes to submit comments regarding the environmental scoping for the proposed 20 year license extension at Palisades. However, a single letter from NRC does NOT constitute sufficient government-to-government consultation on the part of the U.S. federal government concerning such an important matter.

The very late date of NRC's letter gave tribes insufficient time to consider intervening by the August 8, 2005 deadline for filing a petition to intervene and contentions against the 20 year license extension to the NRC's Atomic Safety and Licensing Board (ASLB). It also gave the tribes insufficient time for taking part in NRC's July 28, 2005 environmental scoping public meeting in South Haven, Michigan, as well as for submitting environmental scoping comments to NRC by the August 22, 2005 deadline. Despite the coalition's formal requests to NRC, both orally on July 28 and in writing on August 19, to extend the public comment deadline so that -- among others -- tribes could be notified and involved in the proceedings, NRC refused to grant any such extension.

In addition, NRC failed to even send a letter to a number of tribes with ties to the Lake Michigan shoreline, and thus a potential interest and stake in the Palisades license extension. Some examples would include: the Forest County Potawatomi in Crandon, Wisconsin, as well as other tribes on the Wisconsin shoreline of Lake Michigan; the

Prairie Band Potawatomi Nation in Mayetta, Kansas, as well as other Potawatomi diaspora tribes and bands currently located outside the Great Lakes Basin; tribes and bands in Michigan's Upper Peninsula, including the Bay Mills Indian Community, the Keewenaw Bay Indian Community, and the Sault Sainte Marie Tribe of Chippewa Indians. Why were tribes and bands in the northern lower peninsula of Michigan written by NRC, but not these tribes in Michigan's Upper Peninsula? And what about other tribes, such as the Sak and Fox Tribe of Oklahoma, which also have ties to the Lake Michigan shoreline? Why was it not notified and consulted?

But, one of the many contentions filed by the coalition of environmental groups (including NIRS) and concerned citizens (including fifty NIRS members) on August 8, 2005 regarding the license extension at Palisades was the negative impacts on Native American sites potentially on the property. The coalition also raised this Native American sites contention/concern orally at the NRC's July 28, 2005 environmental scoping hearing, and again in its August 22, 2005 written comments on NRC's environmental scoping.

Under its August 8, 2005 contention that "Environmental justice [is being] denied by the continuing operations of Palisades," the environmental coalition stated "Palisades' license extension application also has inadequately addressed the adverse impacts that 20 additional years of operations and waste generation would have on the traditional land uses, spiritual, cultural, and religious practices, and treaty rights of various federally-recognized tribes in the vicinity of the plant and beyond, as well as effects upon non-federally recognized tribes governed by international law..."

The coalition's August 22, 2005 written submission to NRC regarding environmental scoping added:

"...Despite the Michigan State Historic Preservation Office's concern pertaining to possible unreported archaeological properties present on, or with the vicinity of, the Palisades site (see Page C-2, Cultural Resources Correspondence of the Environmental Report), NMC and Consumers persist in opposing a survey of the project area as unnecessary. But, if unreported Native American archaeological sites are present at or near the Palisades nuclear power plant (which is very possible, given the very close proximity of a large creek in Van Buren State Park just to the north of the power plant, as well as the very close proximity of Brandywine Creek just to the south of the power plant in Palisades Park – rivers and creeks being common sites for encampments and villages amongst the indigenous peoples of Michigan since time immemorial), then 20 additional years of nuclear operations, radioactive waste generation, and daily radiation emissions would have a significant and severe adverse impact on Native American cultural and religious values at those sites, values which strive to protect sacred areas from such degradation... Given the sovereignty of these tribes and bands, and the treaty rights that exist between them and the United States federal government, the NRC has a government-to-government responsibility to consult with these tribes and bands on such significant federal actions as granting the Palisades reactor an additional 20 years of operations. An archaeological survey must be conducted before NRC grants a 20 year

license extension to assure that Native American archaeological sites are not negatively impacted by future Palisades reactor operations. Such impacts as harm to lake sturgeon – sacred to some Great Lakes tribes – must also be evaluated. It is interesting and telling that NMC's Environmental Report assigns no "importance" to lake sturgeon (in Table 2.3-1, Page 2-47), despite its State of Michigan Threatened Status, and its sacred status in the cultures and traditions of various Great Lakes Native American Tribes, not to mention its importance to the natural history of Lake Michigan as an ancient indigenous species in the ecosystem. This is an indication that NMC/Consumers is not acknowledging or addressing environmental justice impacts of 20 more years of operations at Palisades on Native Americans."

The coalition's full contention on this issue, as well as its full written environmental scoping comments on this issue, can be viewed at <http://www.nirs.org/reactorwatch/licensing/080805intervenorssubmissionsnrcnativeamericanimpacts.pdf>.

(Note that NIRS and the coalition's claim that NRC wrote only three tribes was mistaken. NIRS could only locate three such letters on NRC's ADAMS document system at that time, in late July/early August, 2005, and thus assumed that only three tribes had been written. But in fact, an additional eight letters had been sent by NRC to other tribes. NIRS and the coalition did not learn of this until ASLB hearings in early November 2005 in South Haven, Michigan when NRC counsel raised this fact orally.)

On August 30 and 31, 2005, NIRS sent letters to the following tribes regarding this issue: Gun Lake Tribe, Grand River Band of Ottawa Indians of Michigan, Grand Traverse Band of Ottawa and Chippewa Indians, Little River Band of Ottawa Indians, Little Traverse Bay Bands of Odawa Indians, Nottawaseppi Huron Potawatomi, Pokagon Band of Potawatomi Indians, and the Saginaw Chippewa Indian Tribe.

The letter to the Gun Lake Tribe can be viewed at <http://www.nirs.org/reactorwatch/licensing/083005ltrtogunlaktribemiketennenbaum.pdf>. Letters to the other tribes were similar or even identical.

On March 7, 2006 the NRC Atomic Safety and Licensing Board (ASLB) ruled that this Native American contention, and all other contentions NIRS and the coalition had filed, were inadmissible and denied any further hearings on the matter. On March 17, NIRS and the coalition appealed this ruling to the five-member NRC Commission. Although the NRC Commission has yet to rule on the appeal, the NRC Commission has never overruled any of the dozens of licensing board approvals for reactor license extensions.

Ironically, the NRC staff had just published, in February 2006, its Draft Supplemental Environmental Impact Statement (DSEIS) on the Palisades 20 year license extension (NUREG-1437, Supplement 27) a couple weeks prior to the licensing board ruling. In it, the NRC staff largely confirmed what NIRS and the coalition had contended, which NRC's licensing board nonetheless summarily dismissed. Such a contradiction

between NRC's ASLB ruling and its staff's admissions in the DSEIS have never been explained by NRC to NIRS and the coalition. In fact, it is very troubling that NRC staff and NRC counsel argued against NIRS and the coalition contention having to do with Native American sites on the Palisades property, while at the very same time, NRC staff were admitting in the DSEIS that NIRS and coalition contentions and comments were correct on this subject. Even if NRC's argument is that only aging issues can be heard by an ASLB, it must be pointed out that as systems, structures and components at Palisades age, they'll need replacing. Such refurbishment activities could disturb the land on the property, potentially destroying unknown or unreported Native sites.

NRC's DSEIS (NUREG-1437, Supplement 27, published Feb., 2006) contains numerous very significant admissions concerning Native American sites on or near the Palisades property.

On page iii of the Abstract, NRC admits that it "concludes that the significance of the potential environmental impacts of renewal of the OL [operating license] would be SMALL, except for historic and archaeological resources for which the potential impact would likely be SMALL, but could be MODERATE." NRC defines moderate impact on page xvii in the Executive Summary as "Environmental effects are sufficient to alter noticeably, but not to destabilize, important attributes of the resource." Note that out of the scores of environmental impacts examined in NRC's DSEIS, only the potential impact on archaeological resources rises to this level of potentially "MODERATE" impact. It is, however, difficult to understand how any noticeable alteration of Native American burial sites, for example, would not destabilize important attributes of that "resource."

Kevin Kamps from NIRS pointed out, during his public comments at the April 5, 2005 NRC DSEIS meeting in South Haven, Michigan, that NRC staff had contradicted itself regarding historic and archaeological resources. On a large poster on the wall in the back of the meeting room above NRC's informational hand outs table, NRC staff stated that even for historic and archaeological resources, a license extension at Palisades would have a "SMALL" impact. Yet, on page iii of the Abstract at the very beginning of its hardcopy DSEIS, NRC staff reported that there could be "MODERATE" impact upon historic and archaeological resources. NRC official Rani Franovich, one of the main NRC spokespersons at that April 5 public meeting, approached Kevin Kamps later and said to him that the listing of potentially "MODERATE" impact upon historic and archaeological resources was a mistake, and that it would be corrected in the final SEIS. This is suspicious and unsettling. Why, if NRC staff determined that a 20 year license extension could potentially inflict a "MODERATE" impact upon historic and archaeological resources at or near the Palisades site or along its transmission lines, would NRC suddenly backpedal on that determination when the issue was raised publicly?

Significantly, at page 2-62 of the DSEIS, NRC reports that "15 archaeological sites with 1 mi [mile] of the Palisades site and transmission line rights-of-way" have been identified. One is a prehistoric village site, Pell Village. Two are prehistoric sites of

“undetermined function,” one just 0.3 mi south of the Palisades site (thus likely in the vicinity of Brandywine Creek in Palisades Park Resort Community), and the other “just outside the Palisades site’s eastern boundary.” If the prehistoric sites are of “undetermined function,” is it possible that they are burial sites, village sites, or encampment sites, or related to such sites? If so, do they not deserve legal protection under federal and state law against the disturbance or destruction that could occur during a 20 year license extension at Palisades?

On page 2-63, NRC admits that “Intact archaeological sites could be present within the remaining undeveloped areas as well as in soils below the depth of ground disturbance in most areas of the site.” It goes on to admit that **“no archaeological field surveys have been conducted either at the Palisades site or for original transmission line construction or maintenance. The cultural resource assessment, which was undertaken in 1979, concluded that *without accurate knowledge of the cultural resources present at the Palisades site, it must be assumed that power plant construction has the potential to adversely impact significant resources that may exist on the plant site. The report recommends that an intensive survey be undertaken of the undisturbed portions of the site.*”** [emphases added]

NMC had stated in its Environmental Report at page 2-46 that “In the Terrestrial Ecological Survey done for Consumers in 1979, it was noted that no significant historical or archaeological resources were known to occur in the study area.” NMC and Consumers Energy seem to have only selectively revealed what its own contractor reported in 1979, thus misleading the public, tribes, and even state and federal agencies on this very significant matter of Native sites on or near the Palisades property. Where NMC reported “no significant historical or archaeological resources known,” it failed to report “power plant construction has the potential to adversely impact significant resources that may exist on the plant site.”

Wawro and Malone, on behalf of Consumers and NMC, also deceptively wrote MacFarlane-Faes at the State of Michigan State Historic Preservation Office that “NMC and Consumers do not believe a survey of the project area is necessary, as Federal and state agencies have confirmed on multiple occasions that no historic properties, archeological or architectural, are known to exist on, or in the immediate vicinity of the Palisades site.” (NMC ER, Page C-2) How could Wawro and Malone make such a misleading statement to the State of Michigan, knowing that Consumers’ own cultural resource assessment concluded that land disturbance “has the potential to adversely impact significant resources that may exist on the plant site,” and the recommendation that “an intensive survey be undertaken of the undisturbed portions of the site”? Were Wawro and Malone attempting to deceive the State of Michigan into officially approving the 20 year license extension at Palisades, despite the State’s “concern pertaining to possible unreported archaeological properties present on, or within the vicinity of, the Palisades site”?

More troubling still, on page 4-26 NRC reports that “During the site audit, the NRC staff expressed concerns about the NMC procedures not requiring a qualified

archaeologist to survey the proposed ground disturbance area for archaeological resources prior to construction. In addition, the NRC staff noted that “the procedure did not specify the training, experience, or credential requirements for the site’s Environmental Coordinator to recognize archaeological materials or assess the potential significance of historic or archaeological resources.”

Although NRC goes on to assure that Palisades has now revised its procedures, and that no major refurbishment activities are planned between 2011 and 2031, how can the mere words and assurances of NRC or Palisades be trusted? NRC and the nuclear utility must be required, in compliance with the Native American Graves Protection and Repatriation Act and the National Historic Preservation Act, among other federal laws, as well as in compliance with treaties entered into with affected tribes – treaties being the highest law of the land, as recognized by the U.S. Constitution – to protect Native American burial sites, village sites, encampment sites, and other significant sites to the fullest extent of the law.

NRC seems to be concluding, in essence, that Consumers Energy and NMC can be trusted to protect Native American sites that might be stumbled upon during construction or refurbishment activities. But companies that have concealed relevant information relating to such issues, as described above, cannot be trusted to protect currently unknown or unreported Native American sites on the Palisades property. The laws must be enforced by the federal and state agencies.

It should also be pointed out that NRC’s statement on page iii of the SDEIS Abstract, that “The NRC staff determined that information provided during the scoping process did not identify any new issue that has a significant environmental impact,” is difficult to believe, given what has been described above. In the SDEIS Appendix B, “Contributors to the Supplement,” three contributors whose “Function or Expertise” is listed as “Cultural Resources” were listed; these three experts on cultural resources came from three different government agencies, the NRC, Argonne National Lab, and Lawrence Livermore National Lab. Reviewing the environmental impact statements for the five most recently approved license extensions – at Cook (just 30 miles south of Palisades, on the Lake Michigan shore), Point Beach (on the Lake Michigan shore of northern Wisconsin), Millstone (itself near Native reservations in Connecticut), Arkansas Nuclear One, and Farley, only one “Cultural Resources” contributor took part in each of those EISs. It seems that comments provided by NIRS and the coalition of environmental organizations intervening against and commenting upon the 20 year license extension at Palisades raised a new and important issue – potential Native American sites on the property – that had not been addressed in four decades at Palisades. In fact, the licensee, NMC and Consumers, had nearly completely downplayed this issue in its Environmental Report. NRC then turned to three cultural resource specialists to address this important issue.

It is legally and morally incumbent upon the companies and federal and state agencies involved that a comprehensive site survey of the Palisades property be required and performed, and that it be carried out in close consultation and cooperation with

affected tribes on a legally sufficient, government to government basis. If Native American burial sites or other significant sites are discovered during the comprehensive site survey, then appropriate actions must be taken to protect these sites against 20 more years of radiological and physical disruption and damage. All this, before a license extension can legally be granted for Palisades.

It cannot be overly reinforced and re-emphasized that there should be meaningful consultations not only between the impacted tribes and the Palisades nuclear plant owner and operator, but also government to government consultations between tribes and relevant and involved federal government regulators and agents, including NRC. A letter or a phone call does not constitute legally sufficient government to government consultation.