

EDO Principal Correspondence Control

FROM: DUE: 05/08/08

EDO CONTROL: G20080266
DOC DT: 04/14/08
FINAL REPLY:

Ronald Johnson
Johnny Johnson
Lu Taylor
Victoria Winfrey
Shelley Buck-Yeager
Prairie Island Indian Community

TO:

Lee, NRR

FOR SIGNATURE OF :

** GRN **

CRC NO:

Wiggins, NRR

DESC:

Cooperating Agency Participation
(EDATS: SECY-2008-0307)

ROUTING:

Reyes
Virgilio
Mallett
Ash
Ordaz
Cyr/Burns
Caldwell, RIII

DATE: 04/18/08

ASSIGNED TO:

CONTACT:

NRR

Wiggins

SPECIAL INSTRUCTIONS OR REMARKS:

Template: EDO-001

E-RIDS: EDO-01

EDATS

Electronic Document and Action Tracking System

EDATS Number: OEDO-2008-0307

Source: OEDO

General Information

Assigned To: NRR

OEDO Due Date: 5/8/2008 5:00 PM

Other Assignees:

SECY Due Date: NONE

Subject: Cooperating Agency Participation

Description:

CC Routing: Region III

ADAMS Accession Numbers - Incoming: NONE

Response/Package: NONE

Other Information

Cross Reference Number: G20080266

Staff Initiated: NO

Related Task:

Recurring Item: NO

File Routing: EDATS

Agency Lesson Learned: NO

Roadmap Item: NO

Process Information

Action Type: Letter

Priority: Medium

Signature Level: NRR

Sensitivity: None

Urgency: NO

OEDO Concurrence: NO

OCM Concurrence: NO

OCA Concurrence: NO

Special Instructions:

Document Information

Originator Name: Ronald Johnson, et al.,

Date of Incoming: 4/14/2008

Originating Organization: Prairie Island Indian
Community

Document Received by OEDO Date: 4/17/2008

Addressee: Sam Lee, NRR

Date Response Requested by Originator: NONE

Incoming Task Received: Letter

Ronald Johnson
President

Lucy Taylor
Secretary



Johnny Johnson
Vice President

Victoria Winfrey
Treasurer

Shelley Buck-Yeager
Assistant Secretary/Treasurer

April 14, 2008

Mr. Sam Lee
Acting Director
Division of License Renewal
Office of Nuclear Reactor Regulation
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

VIA FACSIMILE
(301) 415-2002 &
FEDERAL EXPRESS

RE: Request for Cooperating Agency Status

Dear Mr. Lee:

On behalf of the Prairie Island Indian Community, we wanted to thank the NRC staff for devoting the time to meet with Community representatives on February 27, 2008, to discuss the anticipated application from the Xcel Corporation to renew the license for the Prairie Island Nuclear Generating Plant (PINGP). We particularly appreciate the efforts of Ms. Rosetta Virgilio in arranging these meetings. As noted in Mr. P.T. Kuo's letter of March 21, 2008, we also appreciate the willingness of the NRC to have the Community's environmental specialist accompany the NRC staff during its environmental site audit of the PINGP. By this letter, we are also formally requesting that the Community be invited to participate as a "cooperating agency" in the preparation of the environmental impact statement on the anticipated license renewal application for the PINGP. As requested in the letter of March 21, 2008, we are providing information on the factors the NRC should consider in determining whether to invite a governmental entity to be a cooperating agency (see attached).

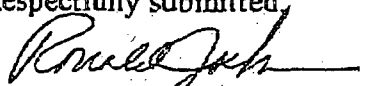
The Prairie Island Indian Community in the State of Minnesota (also known as the Prairie Island Mdewakanton Dakota Community) is a federally recognized Tribe organized under 25 U.S.C. § 476, and is governed under the terms of the Constitution and Bylaws adopted by the Tribal Members on May 23, 1936, and approved by the Secretary of the Interior on June 20, 1936, as amended. Article IV, Section 1 of the Constitution provides that the Community Council (sometimes referred to as the Tribal Council) shall be the

governing body for the Prairie Island Indian Community. Pursuant to Article V of the Constitution, the Tribal Council has the authority to, among other things: consider various legal matters that fall within the authority of a federally recognized Indian tribe; safeguard and promote the peace, safety, morals, and general welfare of the Community; and protect and preserve the property, wildlife and natural resources of the Community.

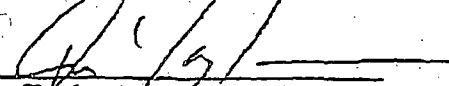
By way of background, the Council on Environmental Quality (CEQ) regulations in 40 CFR 1501.6 provide for early and significant involvement by cooperating agencies in the preparation of an EIS. The CEQ regulations permit a federal agency to invite other agencies and governments to assume a cooperating agency role. The NRC regulations in 10 CFR Part 51 recognize the role of cooperating agencies. In a January 20, 2002, memorandum to federal agency heads, including the NRC, CEQ Chairman James Connaughton cited the many benefits of using cooperating agencies and encouraged agencies to make greater use of cooperating agency arrangements.

We are hopeful that the NRC will invite the Community to participate as a cooperating agency. We believe that our environmental staff could contribute significantly to your review, both on issues unique to the Community, and also on broader environmental issues. Our environmental staff has a longstanding knowledge of local environmental conditions which could greatly enhance the collection and analysis of information required for your environmental review. In addition, we believe that cooperating agency status would be an expeditious and convenient way for the NRC to implement the agency's obligations for government-to-government consultation, as reflected in Executive Order 13175. As the only federally recognized tribal entity in close proximity to an NRC-licensed reactor, cooperating agency status for the Community would be entirely appropriate. We have reason to believe that Xcel will submit its application for the renewal of the PINGP license within the next few weeks. We believe that involvement of the Community as early as possible in the NRC review of the Xcel application will make the most productive use of the cooperating agency designation. Consequently, we would appreciate your expedited consideration of our request.


Respectfully submitted,



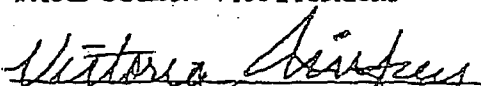
Ronald Johnson
Tribal Council President



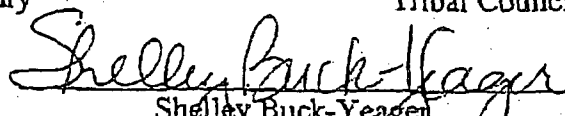
Lu Taylor
Tribal Council Secretary



Johnny Johnson
Tribal Council Vice President



Victoria Winfrey
Tribal Council Treasurer



Shelley Buck-Yeager
Tribal Council Assistant Secretary/Treasurer

Attachment: Cooperating Agency Factors - Prairie Island Indian Community

cc: Luis Reyes, EDO, NRC
Bruce Mallett, DEDO, NRC
Martin Virgilio, DEDO, NRC
James Wiggins, NRR, NRC
Charles Miller, FSME, NRC
Bill Borchardt, NRO, NRC
Chairman Klein, NRC
Commissioner Lyons, NRC
Commissioner Jacksco, NRC
Commissioner Svinicki, NRC
Chairman Connaughton, CEQ

PRAIRIE ISLAND INDIAN COMMUNITY ("COMMUNITY") DISCUSSION OF FACTORS TO BE CONSIDERED IN THE UNITED STATES NUCLEAR REGULATORY COMMISSION ("NRC") DETERMINATION ON WHETHER TO INVITE COOPERATING AGENCY STATUS IN REGARD TO THE PREPARATION OF THE ENVIRONMENTAL IMPACT STATEMENT (EIS) ON THE APPLICATION TO RENEW THE LICENSE FOR THE PRAIRIE ISLAND NUCLEAR GENERATING PLANT

1. Jurisdiction by Law

Not Applicable.

2. Special Expertise

"Special expertise" provides a broad opportunity for cooperating agency status, recognizing the relevant capabilities or knowledge that a tribal government can contribute to the preparation of an EIS. The CEQ regulations in 40 CFR 1508.5 specifically addresses tribal eligibility, specifying that tribes are eligible "when the effects [of a proposed action] are on a reservation." This criterion has been broadly applied to include effects on tribal "interests." The Community has the expertise on the issues that the NRC will have to consider to meet its obligations under the National Environmental Policy Act. These issues include the effects of the proposed action on unique tribal cultural interests, the relationship of Tribal planning objectives to State, regional, and local government land use and energy plans, as well the effects of the proposed action on tribal economic interests. Our environmental expert has been with the Community for many years and is cognizant of Community resources and information, and also experienced in the preparation of environmental review documents relevant to the Community. The Community's environmental expert has full access to any of the Community's information that may be relevant to the preparation of the NRC EIS.

The Community has had environmental monitoring programs in place for many years. With support from the US Environmental Protection Agency (EPA), the Community has developed a Land and Environment Department, responsible for all aspects of environmental quality. The Community has also retained the services of environmental consulting firms to conduct special investigations, such as a plant and bird inventory on Prairie Island. The Community has an Engineer, Emergency Manager, legal staff, and community members (cultural experts) who are ready to assist the tribe in the development of the environmental documents for the relicensing proceeding.

3. Understanding of Cooperating Agency Status

The Community is fully aware of the roles and responsibilities of a cooperating agency and the Tribal Council possesses the requisite authority to enter into an agreement with the NRC as a cooperating agency.

4. Participation during scoping

The Community is fully prepared to participate effectively throughout the entire process of preparing the EIS, including scoping. The Tribal Council has authorized the participation of Community staff in the EIS process fully recognizing the resources that may be required to meet its responsibilities as a cooperating agency.

5. Timely action

The Community believes that it can identify significant environmental issues, identify minor issues to eliminate from further study, alert the NRC to previous studies that are relevant to the EIS, and identify the proposed action's relationship to the Community's long range plans, as well as the relationship to the plans of other governmental entities. In fact, without the Community's participation as a cooperating agency, it would be difficult for the NRC to develop this type of comprehensive information in a timely manner.

6. Assistance in preparation

The Community is fully prepared to assist in preparing portions of the review. In fact, if the cooperating agency status is provided, the Community would suggest for NRC consideration, that the Community staff prepare the portion of the analysis on the impacts of the proposed action on Community cultural interests. The Community fully anticipates providing any assistance necessary fully consistent with the NRC schedule.

7. Provision of resources to support scheduling and critical milestones

The Community will provide all of the necessary resources to support the NRC schedule and milestones. The Community's environmental expert will coordinate all necessary analysis and data gathering in support of the Community's portion of the EIS. The Community will provide all funds for travel assistance for Community personnel participating in the preparation of the EIS under the cooperating agency agreement.

8. Adequate lead time

The Community is fully able to consistently participate in meetings and document review in a timely fashion given reasonable notice.

9. NRC final decision-making authority

The Community accepts the fact that the NRC is the final decision-making authority on the scope of the analysis, including the authority to define the purpose and need for the proposed action.

10. Provision of data

Any conclusions offered by the Community will be based on a rationale and analysis provided in support of those conclusions.

11. Pre-decisional information

The Community is not required under state or Tribal law to release any pre-decisional data. Any release of information shall not be done in a manner that undermines or circumvents the agreement to work cooperatively before publishing draft or final analyses or documents.

12. Misrepresentation

The Community will act with the highest degree of integrity in implementing cooperating agency status. Nothing will be misrepresented.