



December 1, 2009 (9:30am)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

PRAIRIE ISLAND INDIAN COMMUNITY
LEGAL DEPARTMENT

November 30, 2009

Secretary
US Nuclear Regulatory Commission
Attn: Rulemaking and Adjudications Staff
Washington, DC 20555-0001

VIA EMAIL
Rulemaking.Comments@nrc.gov

Re: Comments Regarding Proposed Rule Amending License and Certificate of Compliance
Terms for Independent Spent Fuel Storage Installations (Docket ID NRC-2008-0361)

Dear Rulemaking and Adjudications Staff:

The Prairie Island Indian Community would like to offer the following comments regarding the Nuclear Regulatory Commission's (NRC) proposed rule regarding changes to the license terms for Independent Spent Fuel Storage Installations (ISFSI), pursuant to the notice in the Federal Register on September 15, 2009 (74 FR 47126). Specifically, the proposed rule would allow site-specific ISFSI licensees the flexibility to request up to 40-year initial and renewal terms.

Community Background

The Prairie Island Indian Community ("Community" or "Tribe") is a federally-recognized Indian tribe organized under the Indian Reorganization Act of 1934. The Tribe is governed under the terms and conditions of the Prairie Island Indian Community's Constitution and By-Laws adopted by tribal members on May 23, 1936, and approved by the Secretary of the Interior on June 20, 1936.

The Tribe's homeland is located on Prairie Island, which is formed at the confluence of the Vermillion and Mississippi Rivers in southeastern Minnesota (approximately 35 miles southeast of the Twin Cities of Minneapolis and St. Paul, Minnesota). The Mdewakanton, "those who were born of the waters," have lived on Prairie Island for countless generations. The size of the Prairie Island Indian Community land base (including both trust and fee lands) has grown through several federal acts and direct purchases by the Tribe, and now totals over 3,000 acres (including both land and water). Approximately 1,986 acres of trust land are located in the immediate vicinity of the Prairie Island Nuclear Generating Plant (PINGP). (See Figures 1 and 2).

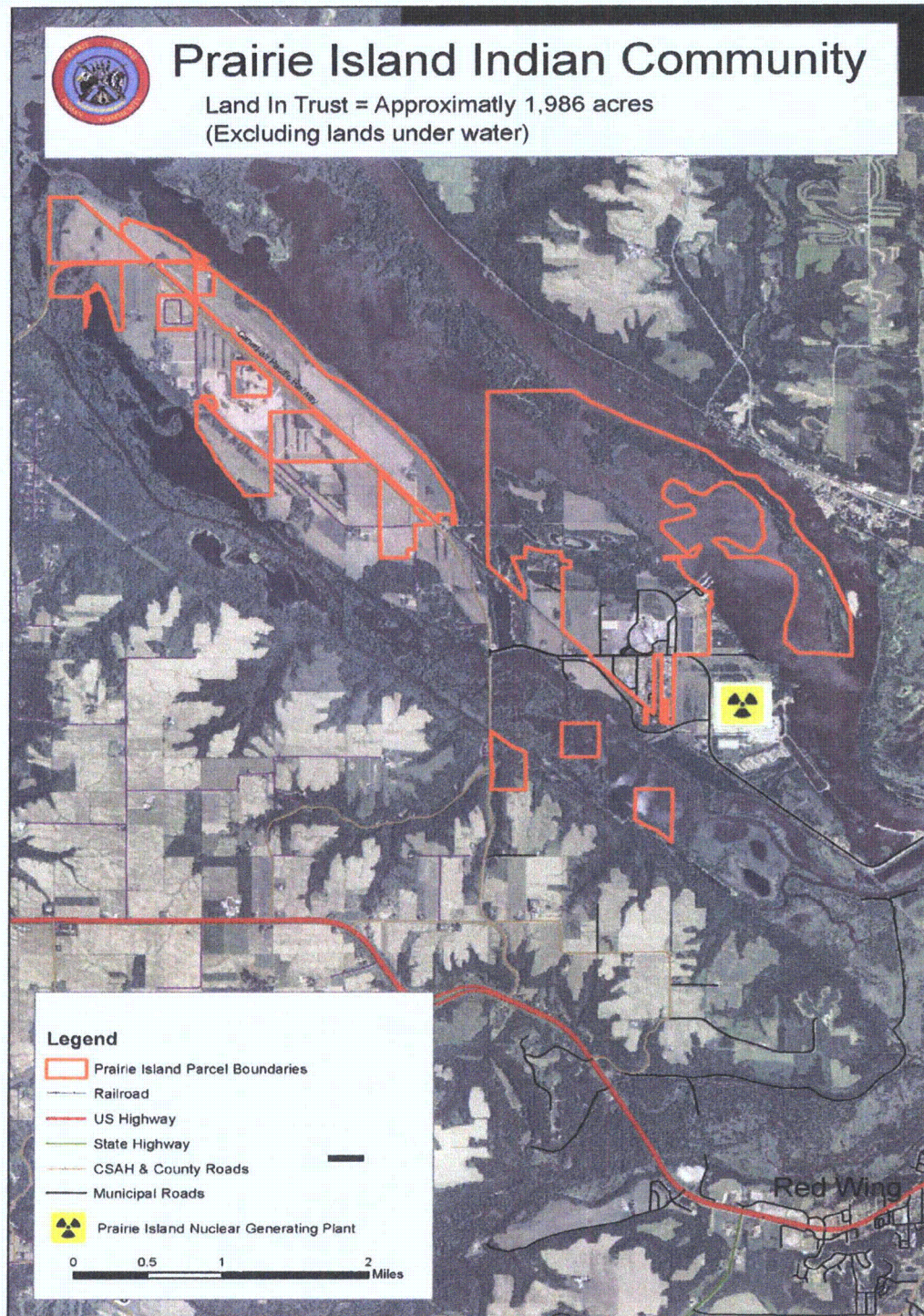


Figure 1

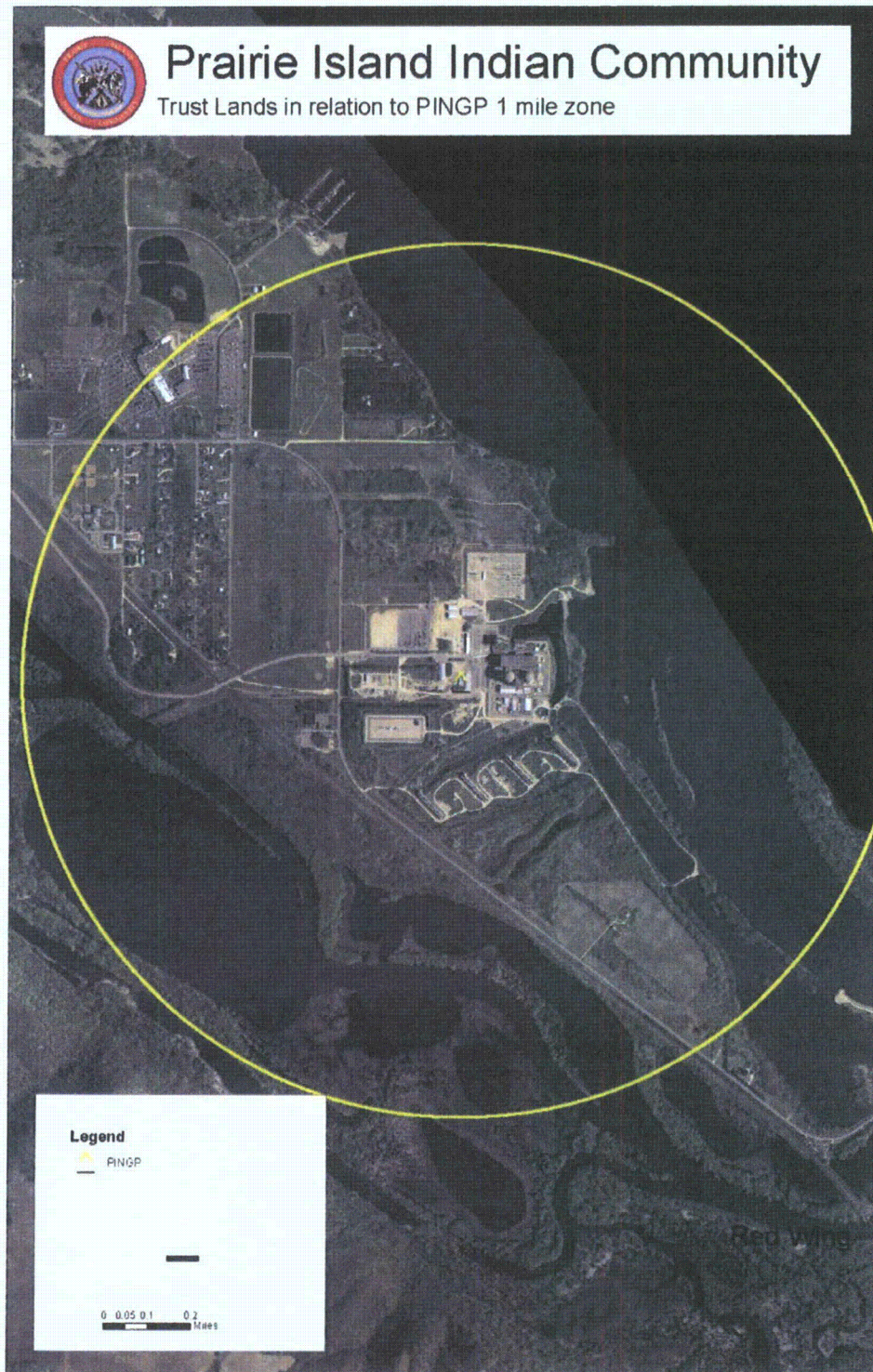


Figure 2

Nuclear Waste on Prairie Island

The PINGP, which is located immediately adjacent to our homeland, is currently licensed by the NRC to store spent fuel in up to 48 dry casks at an Independent Spent Fuel Storage Installation (ISFSI) on plant property approximately 600 yards away from the nearest residence. (See Figure 1 and 2). The owner of the PINGP and ISFSI, Northern Sates Power (NSP), anticipates needing to expand the ISFSI to accommodate 98 casks over the plant's lifetime to support license extension and decommissioning.

This proposed revision to the rule, if approved, would negatively and directly impact our Community. The Prairie Island ISFSI is located adjacent to the Mississippi River and is just 600 yards away from our community—our homes, our business, our sacred areas, our hunting areas, and our recreational areas. We do not support extending site-specific ISFSI licenses for 40 years. If this rule change is implemented, it will mean that the Prairie Island ISFSI will be licensed to operate for a minimum of 60 years, almost the entire lifetime of one of our Community Members.

The current 20-year initial or renewal term should remain unchanged. The 20-year term allows the NRC to evaluate the effectiveness of the cask in use, assess the licensee's handling of the casks, evaluate aging management concerns within a shorter interval, and evaluate current policy relative to the National repository program. A 20-year term facilitates a more timely implementation of better storage and monitoring technologies and improvements to better protect the public.

During the initial licensing processes in the early 1990s, we expressed our concerns regarding the long-term storage of spent fuel in dry casks and the possibility that the waste would never leave Prairie Island. We were assured at that time that the ISFSI was to be an *interim* or *temporary* solution until the national repository, Yucca Mountain, could begin accepting waste. The proposed revision of this rule, like the proposed revision of the Waste Confidence Rule, validates the concerns we expressed during the initial licensing process and exposes the false assurances that the ISFSI is an interim or temporary solution. Unfortunately, it's becoming increasingly clear that the waste will not be removed from Prairie Island during the lifetime of those Tribal members and leaders who initially fought against interim or temporary storage.

As we are painfully aware, the deadline for receiving spent fuel at the Yucca Mountain Repository has been slipping away and continues to be extended. Indeed, it now appears that Yucca Mountain may possibly be abandoned all together and that the process for a new disposal facility will begin anew. Yucca Mountain won't be scrapped because of technical infeasibility but because of a lack of political will and societal support. Until the political and societal objections are addressed, no waste will be moved from its current, at-plant location.

The Proposed Revisions to Part 72 Requirements for Site-Specific and General ISFSI Licensees and Certificates of Compliance

The Commission's proposed response to the reality that nuclear waste will not be removed from

Prairie Island (and other ISFSIs around the country) is to simply streamline approvals for extending the term that spent fuel can be stored at either onsite or offsite ISFSIs. Under these circumstances, the Community believes that regulatory requirements should be further enhanced rather than relaxed.

Environmental Review

The proposed rule provides guidance relative to aging management program requirements, aging analyses, and other technical documents that the licensee would be required to submit to the NRC to determine whether the casks could be safely used for the 40-year license renewal period. These factors should be evaluated for a 20-year license renewal term.

It is not clear, however, whether the licensee would be required to submit an Environmental Report (ER), identifying potential environmental impacts related to a 40-year license renewal or how the NRC would meet the requirements of the National Environmental Policy Act (NEPA). We are concerned about whether there will be any level of public environmental review associated with a 40-year license renewal application.

In discussing 20-year ISFSI license renewals with NRC staff (Office of Federal and State Materials and Environmental Management Programs/Division of Waste Management and Environmental Protection/Environmental Review Branch), it is our understanding that there is no public environmental review process for ISFSI renewals. That is, while an Environmental Assessment is prepared to evaluate the proposed action, the public is not able to review the draft and to provide comments. We urge the NRC to ensure that ISFSI renewals have, at a minimum, a public environmental review process that would include a draft Environmental Assessment, available for public review and comment. To allow 40-year license renewals without public involvement would be a mistake.

In Minnesota, the process to initially approve the ISFSI was highly contentious and divisive. The MN PUC has just approved the use of an additional 35 casks at the Prairie Island ISFSI; the Minnesota Legislature must now approve the project. It is expected expansion of the ISFSI will again be contentious, as the prospects for a National repository are diminishing and permanent on-site storage appears to be likely.

When originally proposed in Minnesota, on-site storage was packaged as a temporary solution that would allow the PINGP to operate until Yucca Mountain was licensed and operational. The deadline for opening the National repository at Yucca Mountain—1998—has come and gone. In spite of the requirements of the Nuclear Waste Policy Act, the Administration appears to be abandoning Yucca Mountain. This proposed rule, allowing for 40-year ISFSI license renewals, coupled with the proposed changes to the Waste Confidence Rule and the scrapping of Yucca Mountain, is sending a strong signal to the Prairie Island Indian Community and the public that the new National policy for spent fuel storage is permanent on-site, at-reactor storage. We cannot support such a policy.

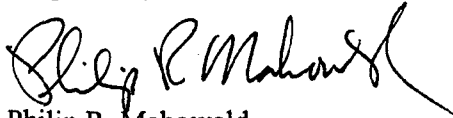
November 30, 2009

Page 6

We would like to point out to the Commission that these ISFSIs are not located in remote parts of the country. Many are located near population centers. In our case, the ISFSI is located right next to us, 600 yards away from our homes, community center and business. As we mentioned earlier, Prairie Island is our only homeland, the land promised to us by the United States government. We cannot simply relocate to another place away from a nuclear waste dump.

We appreciate this opportunity to provide comments to the NRC on this important issue.

Respectfully,

A handwritten signature in black ink, appearing to read "Philip R. Mahowald", written in a cursive style.

Philip R. Mahowald
General Counsel

Rulemaking Comments

From: Phil Mahowald [pmahowald@piic.org]
Sent: Monday, November 30, 2009 9:02 PM
To: Rulemaking Comments
Subject: Comments Re Docket ID NRC-2008-0361
Attachments: 0194_001.pdf

Greetings:

Attached please find the Comments of the Prairie Island Indian Community regarding the proposed rule amending license and certificate of compliance terms for Independent Spent Fuel Storage Installations (Docket ID NRC-2008-0361).

Please feel free to contact me with any questions.

Sincerely,

Philip R. Mahowald
General Counsel
Prairie Island Indian Community
5636 Sturgeon Lake Road
Welch, Minnesota 55089
Phone: 651.267.4006
800.554.5473 ext. 4006
Fax: 651.385.4140
E-mail: pmahowald@piic.org

The information contained in this email message is privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone at 800-554-5473, ext. 4136 or by email to legal@piic.org. Thank you.

Received: from mail1.nrc.gov (148.184.176.41) by OWMS01.nrc.gov
(148.184.100.43) with Microsoft SMTP Server id 8.1.393.1; Mon, 30 Nov 2009
21:00:36 -0500

X-Ironport-ID: mail1

X-SBRS: 3.2

X-MID: 8837404

X-fn: 0194_001.pdf

X-IronPort-AV: E=Sophos;i="4.47,317,1257138000";
d="pdf?scan'208,217";a="8837404"

Received: from ph.piic.org (HELO barracuda.piic.org) ([205.196.129.71]) by
mail1.nrc.gov with ESMTP; 30 Nov 2009 21:00:18 -0500

X-ASG-Debug-ID: 1259632811-7361003a0000-mXG9HZ

X-Barracuda-URL: http://10.10.10.111:8000/cgi-bin/mark.cgi

Received: from PIMAIL01.piic.org (localhost [127.0.0.1]) by barracuda.piic.org
(Spam & Virus Firewall) with ESMTP id 78CAFDCA6C for
<Rulemaking.Comments@nrc.gov>; Mon, 30 Nov 2009 20:00:11 -0600 (CST)

Received: from PIMAIL01.piic.org (mail.piic.org [10.10.10.53]) by
barracuda.piic.org with ESMTP id SLx0sCJvx7XEufKe (version=TLSv1
cipher=AES128-SHA bits=128 verify=NO) for <Rulemaking.Comments@nrc.gov>; Mon,
30 Nov 2009 20:00:11 -0600 (CST)

X-Barracuda-Envelope-From: pmahowald@piic.org

Received: from PIMAIL01.piic.org ([10.10.10.53]) by PIMAIL01.piic.org
([10.10.10.53]) with mapi; Mon, 30 Nov 2009 20:01:33 -0600

From: Phil Mahowald <pmahowald@piic.org>

X-Barracuda-BBL-IP: 10.10.10.53

X-Barracuda-RBL-IP: 10.10.10.53

To: "'Rulemaking.Comments@nrc.gov'" <Rulemaking.Comments@nrc.gov>

Date: Mon, 30 Nov 2009 20:01:32 -0600

X-ASG-Orig-Subj: Comments Re Docket ID NRC-2008-0361

Subject: Comments Re Docket ID NRC-2008-0361

Thread-Topic: Comments Re Docket ID NRC-2008-0361

Thread-Index: AcpyKY0i5JW8DtFSQ3W2enjpGMH3swAADrpQ

Message-ID: <17D724AC6FC265488091AF7994F7260801214E55B0DB@PIMAIL01.piic.org>

Accept-Language: en-US

Content-Language: en-US

X-MS-Has-Attach: yes

X-MS-TNEF-Correlator:

acceptlanguage: en-US

Content-Type: multipart/mixed;

boundary="_004_17D724AC6FC265488091AF7994F7260801214E55B0DBPIMAIL01pii_"

MIME-Version: 1.0

X-Barracuda-Connect: mail.piic.org[10.10.10.53]

X-Barracuda-Start-Time: 1259632812

X-Barracuda-Encrypted: AES128-SHA

X-Barracuda-Virus-Scanned: by Barracuda Spam & Virus Firewall at piic.org

X-Barracuda-Spam-Score: -1001.00

X-Barracuda-Spam-Status: No, SCORE=-1001.00 using global scores of TAG_LEVEL=2.0

QUARANTINE_LEVEL=2.5 KILL_LEVEL=4.0

Return-Path: pmahowald@piic.org