

**Madigan
Dahl &
Harlan P.A.**

Thomas P. Harlan
(612)604-2589 harlan@mdh-law.com
Campbell Mithun Tower
222 South Ninth Street Suite 3150
Minneapolis MN 55402
T (612)604-2000 F (612)604-2599 mdh-law.com

January 30, 2010

Via E-mail: PrairieIslandEIS@nrc.gov

Ms. Elaine Keegan
U.S. Nuclear Regulatory Commission
Office of Nuclear Reactor Regulation
Mail Stop O-11F1
Washington DC 20555-0001

Re: Comments to Draft Generic Environmental Impact Statement for License
Renewal of Nuclear Plants, Supplement 39, Regarding Prairie Island Nuclear
Generating Plant, Units 1 and 2.

Dear Ms. Keegan:

This firm represents the City of Red Wing, Minnesota (the "City"). The purpose of this letter is to provide the United States Nuclear Regulatory Commission (the "NRC") with comments pertaining to the October 2009 Draft Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Supplemental 39, Regarding Prairie Island Nuclear Generating Plant, Units 1 and 2 (the "Draft EIS"). As you may be aware, the City serves as the host city for the Prairie Island Nuclear Generating Plant (the "PINGP") and therefore has substantial and direct stake in this proceeding. As is noted in the Draft EIS, the PINGP is located within the boundaries of the City, directly adjacent to the land owned by the Prairie Island Indian Community (the "PIIC"). It is the City's understanding that the PIIC will also be submitting comments to the Draft EIS seeking to have it address specific issues that are important to the PIIC and its members. The City supports the PIIC's comments and, to the extent they overlap with any of the comments set forth herein, the City incorporates the PIIC's comments as if those were its own.

Overview

The Draft EIS was prepared as part of the NRC's examination of Northern States Power Company d/b/a Xcel Energy's Application to Renew the Operating License for the PINGP, Units 1 and 2, for an additional twenty years. The Draft EIS is essentially two different parts: first, there is a Generic Environmental Impact Statement for the License Renewal of Nuclear Power Plants (the "GEIS"). The purpose of the GEIS is to identify common issues, features and characteristics that are generic to all nuclear power plants and that can be addressed in the GEIS. The NRC has designated these as "category one"

impacts and are characterized as being small. As part of the Draft EIS, these category one or generic characteristics are set forth in Appendix B.

As part of the Draft EIS, both the applicant (Xcel Energy) and the NRC may adopt a conclusion regarding these category one impacts. However, each is to evaluate whether there is new and significant information that may cause the conclusions to fall outside of those identified in the GEIS. If so, these items are now identified as being category two and must be examined through the plant specific Draft EIS.

As the NRC may know, coordinate with Xcel Energy's filing of its Application to Renew the Operating License of the PINGP, it applied for a Certificate of Need before the Minnesota Public Utilities Commission (the "PUC") requesting, among other things, additional dry cask storage and an extended power uprate to increase the electricity generated by the PINGP. The purpose behind the Certificate of Need for the additional dry cask storage was to support Xcel Energy's anticipated renewal of its Operating License for the PINGP before the NRC. It requested a number of additional casks to support these continued operations, including the issuance of new casks in order to store the enlarged assemblies that were necessary for the extended power uprate. However, the Certificate of Need did not request any casks associated with the commissioning of the plant.

As part of the determination of the Certificate of Need, the PUC ordered that a contested hearing be conducted to examine a number of factors associated with Xcel Energy's Application. The City intervened in that contested hearing and participated offering pre-filed testimony from its witnesses and exhibits attached to the same as well as fully participating in the evidentiary hearing which went for six days.

As part of the pre-filed testimony and during the testimony elicited during the contested hearing, numerous issues were raised relative to the Emergency Response Plan for the PINGP and whether the City would be able to continue to meet the same.

The City presented uncontroverted evidence that due to a significant loss of revenue it no longer had the means to support the necessary public safety services to fulfill its obligations under the Emergency Response Plan. Currently, the City of Red Wing is the primary responder to any incident at the PINGP, radiological or non-radiological.

As you are aware, every two years, Homeland Security and the NRC, along with other federal and state agencies, evaluate the effectiveness of the Emergency Response Plan for the PINGP. The last evaluation, in the form of a drill, occurred in 2008 with the City, and other associated entities, receiving a satisfactory grade. Since that time, the City has been requested twice to execute certain documents affirming that it can meet the requirements under the Emergency Response Plan. In both instances, the City has refused – most recently in December 2009. Regarding the detail of why the City cannot

fulfill its obligations under the Emergency Response Plan, I am attaching as Exhibits A and B the testimony of Marshall Hallock and Roger Hand, respectively, submitted as part of the contested hearing. Please note that due to the size or length of these documents I am not including all of the exhibits attached to the same or any modifications or supplements that were made to the same. The surrebuttal testimony identified in the attachments represents testimony in response to issues raised by other participants—mainly Xcel Energy and the Minnesota Department of Commerce—Office of Energy Security.

In response to the arguments raised by the City, Xcel Energy has indicated these issues, as it related to the PUC proceeding, were irrelevant. Moreover, Xcel Energy argued that the City either (i) received enough money from ongoing revenues; (ii) would receive a significant amount or increase of revenues when the extended power uprate and other improvements were in place (iii) did not have any significant incremental costs sufficient to warrant any additional revenues associated with the Certificate of Need Applications.

The City, in turn, addressed each of these arguments. Regarding revenues, the City identified that there had been a significant drop in revenue and that this would continue into the future. With respect to additional revenue, this amount was not set at the increased amount and, over time, the revenue would go decrease due to a combination of depreciation, obsolescence and the continued use by Xcel Energy of Minnesota's pollution control exemption. Finally, with respect to incremental cost, Xcel Energy simply missed the mark: it is not a matter of incremental costs but rather essential pieces such as personnel, equipment and facilities that are necessary to support the Emergency Response Plan. Regardless of whether the plant continued to operate for an additional twenty years or whether there was one or a hundred additional dry casks, the City was not receiving enough tax revenue from Xcel Energy to support the necessary and critical public safety services to meet its obligations under the Emergency Response Plan.

The Minnesota Department of Commerce – Office of Energy Security and the Public Utilities Commission both noted this issue. However, due to perceived limitations and jurisdiction and other items, the Department of Commerce recommended, and the PUC ordered, that Xcel Energy provide a report to the PUC identifying the status of its Emergency Response Plan and arrangements with outside entities such as the City of Red Wing.

To date, Xcel Energy has taken no steps to cure any issues that it may have with the City. Instead, it has filed with the NRC a Corrective Action Plan relative to the deficiencies in the Emergency Response Plan. It is the City's understanding that this Corrective Action Plan also remains open and unresolved.

Due to the great uncertainty regarding the Emergency Response Plan, the only pertinent analysis by the NRC in looking at certain issues and criteria is to assume that the

Emergency Response Plan will not provide an effective or timely response to any event at the PINGP and will apply the same to both non-radiological and radiological events. As noted below, this has a material impact on the Draft EIS in a number of significant ways.

Analysis

With respect to the Draft EIS, the City has the following specific comments and suggested modifications. However, in making these suggestions, the City believes that the Draft EIS should also reflect the overall general policy concerns set forth above as well as those set forth by the PIIC and its Draft EIS comments.

1. On page 2-28, Section 2.2.3.2, as well in a number places leading up to that section, the DEIS references tritium and the monitoring that is or will take place. During the contested hearing as part of the Certificates of Need, Xcel Energy's witnesses testified that Xcel Energy had a practice of dumping or discharging sump water (collected from the collection sumps) within the PINGP directly into what is referred to as the landlocked area just outside of the plant. Coincidentally, this also is near the wells where the elevated levels of tritium have been detected. This practice should be identified and evaluated within the DEIS and Xcel Energy, as a matter of plant operation, should be prohibited from continuing this practice. In addition, the Groundwater Monitoring Program referenced should be required.
2. On page 2-44, Section 2.2.8, there is a general reference to and brief discussion of the socioeconomic factors that are evaluated as part of the application to relicense the PINGP for an additional 20 years. Part of this evaluation should include a more robust analysis of the impact that this will have on the City in the form of taxes. While it is presented that there will be an increase in taxes following the upgrades that will occur at the PINGP, *there is nothing presented that the taxes will stay at those levels.* In fact, the opposite is true: Xcel Energy, in its ER submitted as part of the relicensing, acknowledged that the taxes paid to the City, even after relicensing and the extended power uprate, would decrease. *See ER, Exhibit E, 2-26 and 2-27.* This fact is verified by the testimony of Marshall Hallock in Exhibit A attached hereto. Thus, the draft DEIS should evaluate these factors accordingly.
3. By implication, the DEIS should also evaluate how this drop in revenues to the City will impact its ability to continue to provide the essential public safety services to support the PINGP and its Emergency Response Plan. While it is acknowledged that the Xcel Energy does not have to establish that it satisfies 10 CFR 50.47, it must, as a matter of its continued operation, maintain an operational Emergency Response Program. It cannot be disputed

that this is one of the core responsibilities of a reactor owner and operator like Xcel Energy but that it is also is one of the cornerstones of the NRC. As noted above, the City, which is the primary responder for any incident at the PINGP, radiological or non-radiological, no longer can meet its obligations under the current Emergency Response Program. The continued loss of revenue from Xcel Energy has and will continue to result in the erosion of the personnel, equipment and facilities necessary to meet the Emergency Response Program.

4. On page 2-50, Section 2.2.8.4, and on pages 2-62-63. Section 2.2.8.7, the DEIS analyzes taxes and the payment of the same to Goodhue County, the City and the Red Wing School District. In doing so, it evaluates certain historical data regarding these payments over time and concludes that there is no adverse effect. This conclusion, and the underlying facts supporting it is flawed for a number of reasons. First, under the definitions used by the NRC to evaluate the relevance or materiality of any one factor, the taxes paid to the City and the loss of the same during the last 10 years is *large*. There has been a decrease of over 25% of the tax base in the City. Second, in its discussion on pages 2-62 and 2-63, the DEIS, in citing Xcel Energy's ER, does not analyze or update any of these facts with information from 2006. This needs to be done in order to reflect the continued erosion of the revenues paid to the City by Xcel Energy since that time. The following is an excerpt from the City's Initial Post-Hearing Brief filed following the conclusion of the contested hearing. The references contained in the citation refer to the record in that matter. The Initial Post-Hearing Brief and the exhibits or evidence referenced in the citation can be found at the PUC's website, under the 08-510 Docket Number, which is the Docket for the Application for Additional Dry Cask Storage. The Docket for the Extended Power Uprate is 08-509.

Xcel Energy's contributions to the City's tax base have eroded and, from the City's perspective, the responsibility for these tax revenues have shifted to the non-PINGP citizens of the City and the State of Minnesota. See Exhibit MH-4-6 attached to Exhibit 303 (*Direct Testimony of Marshall Hallock*). In fact, the property taxes paid by Xcel Energy on the PINGP have decreased from approximately \$23.4 million dollars in 1996 to \$10.5 million dollars today. See Exhibit 303, p. 7 (*Direct Testimony of Marshall Hallock*).

Recent events have led the City to believe this erosion will continue. First, in 2006, effective calendar years 2008, 2009 and 2010, the Minnesota Department of Revenue established amended rules regarding how the PINGP's property and equipment would be assessed and valued for property tax purposes. *Id.* at 6-7. The result of these amended set of rules

provided Xcel Energy with a tax break for its power generating facilities, including the PINGP. *Id.* This, in turn, resulted in a significant decrease in PINGP's contribution to the local tax base. *Id.* To address the deficiency created by the Department of Revenue changes, the State has passed a measure called Utility Valuation Transition Aid. The sole purpose of this statute is to make up of the deficiency between the amounts that would have been paid under the old Department of Revenue rules and those that are now being paid utilizing the changes. *Id.* What is interesting to note is that this amount is paid by the State of Minnesota out of its general fund, not by Xcel Energy's ratepayers.

Coupled with, or actually preceding the change in Department of Revenue rules, was Xcel Energy's continued and expanded use pollution control property tax exemptions. These exemptions have resulted in many of the improvements, replacements and upgrades to the PINGP being exempt from property taxes. See *Exhibit 304, pgs. 9-10, 15-16 (Surrebuttal Testimony of Marshall Hallock)*. Since the exemption is primarily carbon driven (i.e.-if the improvement reduces or does not emit carbon as a by-product of operations it can be exempt from tax), this is of particular concern for the PINGP. It omits no carbon. Indeed, it is possible for Xcel Energy to declare all of the spent fuel casks as being pollution control equipment and therefore exempt from property taxation. *Tr. Trans., v.4, p. 239 (Cross-Examination of Joseph Rheinberger)*. Regardless of this designation, the City would still be obligated to participate and maintain the necessary public safety response capacity and readiness for the spent nuclear fuel with no contribution to the cost of maintaining the same from Xcel Energy.

The State's financial crisis has also led the City to believe that there will be significant cuts in Local Government Aid, which, in part, have already come to pass. Under the current configuration, the City receives two general forms of Local Government Aid from the State: the first, which is referred to as local government aid, is an amount that is generally paid to cities throughout the State as a general support for its operations. See *Exhibit 303, p.9 (Direct Testimony of Marshall Hallock)*. The second is Utility Valuation Transition Aid, which has been discussed above. See *Exhibit 303, pgs. 7-8 (Direct Testimony of Marshall Hallock)*. The City believes that both forms of aid will be cut thereby leaving the City with another hole in its already significant deficit. To date, the City has been informed that its local government aid has been cut by approximately \$750,000.00. This cut came as part of the first of what is to be expected many cuts under the Unallotment process currently being exercised by Governor Pawlenty.

Based on these events, the City has projected a number of scenarios under which there would be a loss of personnel to the police, fire, and ambulance services. *Tr. Trans., v.5, pgs. 132-40 (Cross-Examination of Marshall Hallock)*. This would have a direct impact on the Emergency Response Plan and the ability of the City to maintain the same. *Id.; Exhibit 303, p. 12 (Direct Testimony of Marshall Hallock)*. This plan, which has been already put in place, has the City taking numerous steps to offset the projected loss of revenue including but not limited to not filling empty positions, limiting overtime, and suspending certain expenditures and acquisitions. It also will eventually require the reduction of positions in public safety services including cuts to the police, fire and ambulance services and the elimination of equipment that are associated with the same.

These plans to cut, limit, or otherwise suspend positions and the acquisition of equipment and other items related to public safety services are in opposite to the 2008 Public Services Report. The 2008 Public Services Report recommended the expansion of essential public safety services by the City in order to meet its obligations. The recommendations included the addition of two fire stations and all attendant equipment to operate the same as well as up to thirty-four fulltime firemen. *Exhibit 304, pgs. 3-4 (Surrebuttal Testimony of Marshall Hallock)*. The City, as part of its budget projections, did not completely incorporate those recommendations but did believe that it was necessary to include the fire stations and a portion of the personnel to operation the same. *Id.* With the projected loss of revenue the City believes that it will not only be unable to expand to meet the recommendations of the 2008 Public Services Report but will be cutting its public safety services. *Id.*

Initial Post-Hearing Brief of the City, pages 15-19, Document No. 200908-41094-02. This is a more accurate recitation of the current events and implications of the payments, or lack thereof, by Xcel Energy. In fact, since that time, while there have been no further Unallotments of Local Government Aid, the amounts to be paid under the Utility Valuation Transition Aid has been reduced by over 50%. Accordingly, the DEIS should be amended to reflect this situation.

5. By implication, this is or should have a material impact on the evaluation under the DEIS if there is not a sufficient or operable Emergency Response Plan. Again, citing to the City's Initial Post-Hearing Brief, the City contended that the lack of an effective Emergency Plan would result in a delay or an inability to effectively suppress, contain and mitigate any incident at the PINGP, radiological or non-radiological. It should be noted that the Xcel Energy exhibit cited by the City in

the excerpt below is Xcel Energy's ER submitted as part of its Application to Renew the Operating License now pending before the PUC.

In addition, Xcel Energy, in Chapter 10 of its Applications for the Certificate of Need, identifies what it considers to be other benefits to society that satisfy the balancing of the socioeconomic and environmental criteria. *See Exhibit 100 at Chapter 10.* These benefits include, but are not limited to, jobs, economic development, and tax benefits. *See Exhibit 100, Sections 10.7, 10.8, and 10.9.* Xcel Energy contends that these benefits, together with a low cost energy and no greenhouse gas emissions, provide a greater benefit to society if the Certificates of Need are granted.

No matter how these benefits are characterized, they do not outweigh the potential adverse impact of not having an effective Emergency Response Plan. An Emergency Response Plan is a cornerstone of the safety requirements of the NRC. *See Exhibit 141.* It represents the coordinated effort between the NRC and the appropriate local, county, state, and federal authorities. *See Exhibit 300, pgs. 3-4 (Direct Testimony of Roger Hand); Tr. Trans., v.2, pgs. 175-77; Exhibit 141.* An effective Emergency Response Plan will suppress, contain and mitigate any incident at the PINGP and prevent it from expanding into an incident of greater proportions that may challenge or impact the PINGP as a whole. *See Exhibit 300, pgs. 3-4; FEIS, Chapter 2, pgs. 22, 29, 33-35.* This will, in turn, serve to minimize the socioeconomic and environmental impact that any incident may have on the immediate area. Without an effective Emergency Response Plan, there is the potential for an adverse impact. *See FEIS, Chap. 2, pgs. 22, 29, 33-35.*

From the State of Minnesota's perspective, an effective emergency response plan is an economic issue because it mitigates the externality costs associated with an incident. *See Tr. Trans., v.5, pgs. 191-92 (Testimony of Dr. Steve Rakow); Exhibit 518.* Since it is undisputed that the Emergency Response Plan mitigates externality costs that may be associated with an incident at the PINGP, the Commission appropriately has authority over the economic aspects of the same.

Here, the City has presented undisputed evidence that it may no longer be able to support the Emergency Response Plan at its current level. *See Exhibits 300 and 303 (Direct Testimony of Roger Hand and Marshall Hallock); Exhibit 305, pgs. 3-4 (Surrebuttal Testimony of Marshall Hallock).* This is not a conclusion that came easily for the City. For over 40 years ago, the City has agreed to and has hosted the PINGP, and that support has not wavered. In return for hosting the PINGP, the City was promised and did receive property

taxes sufficient to provide the necessary and critical support public services needed to meet its Emergency Response Plan.

As noted, the State of Minnesota, in its Final EIS for the Certificates of Need, included an analysis of the lack of an effective Emergency Response Plan. The conclusion reached in the State's EIS is that the lack of an effective Emergency Response Plan would have a significant impact in the event of an incident at the PINGP. The State's EIS can also be found on the PUC's website.

6. The resultant lack of an effective Emergency Response Plan will have the most severe impact on the immediate area which is owned or held in trust for the PIIC and its members. As discussed by the PIIC throughout many of its submissions to this Commission, the PIIC has and continues to suffer many different forms and degrees of environmental injustice or racism. It sits immediately adjacent to the PINGP, its reactors and the casks on the ISFSI which stores the spent fuel from the same. Yet, the PIIC receives no benefit-not even power from PINGP's operations. Any injustice would be fully realized in the event of an incident and an inability to respond to the same by the City due to a lack of funding from Xcel Energy. Indeed, as part of its plans to upgrade the plant, Xcel Energy has indicated that it will spend over \$750 million in order to continue to operate the plant for another 20 years and push more power out of the same. Yet, not one additional cent is being spent to address the concerns of the PIIC or to assist the City and make sure that it has sufficient resources to fulfill its obligations under the Emergency Response Plan.
7. On page 4-25, Section 4.9, the DEIS references that a number of the socioeconomic issues raised are properly considered by the GEIS. These include, but are not limited to, issues regarding public services, public safety, social services, tourism and recreation. In light of the discussion above, these factors should not be considered category 1 factors disposed of by the GEIS but rather should be considered plant specific and evaluated as category 2. The information contained above regarding the City's inability to provide an effective Emergency Response Plan is "new and significant information" justifying such a re-characterization and appropriate analysis.
8. On pages 4-27-28, Section 4.9.4, the analysis of the tax situation regarding the City should be included and modified accordingly.
9. Section 5.0, and all of the analysis under that Section regarding SAMAs, needs to be amended. There is a base assumption that the PINGP has in place an effective Emergency Response Plan to suppress, contain and mitigate any incident and therefore minimize the impact on the surrounding environment, natural and human. With the removal of this assumption, the DEIS needs to re-evaluate any

Ms. Elaine Keegan
January 30, 2010
Page 10

accident or incident at the PINGP and report the results accordingly. This should also include an analysis on the impact that it would have on the environment.

CONCLUSION

In light of the information that has been provided above, as well as the detailed information contained in the record that was created as part of the Certificates of Need applied for by Xcel Energy with the PUC, the DEIS must be modified. I thank you for your considerations in this matter. If I may provide you with any additional information or be of any other service, please do not hesitate to contact me.

Very truly yours,

MADIGAN, DAHL & HARLAN, P.A.



Thomas P. Harlan

cc: City of Red Wing
Prairie Island Indian Community