

UNITED STATES COURT OF APPEALS FOR THE  
DISTRICT OF COLUMBIA CIRCUIT

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PRAIRIE ISLAND INDIAN  
COMMUNITY,  
Petitioner,

v.

UNITED STATES NUCLEAR  
REGULATORY COMMISSION  
and the UNITED STATES OF  
AMERICA,

Case No. No.11-1057-ag  
(consolidated with Case Nos. 11-  
1045, 11-1051, 11-056)

Respondents.

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**Nonbinding Statement of Issues**

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Pursuant to this Court's February 17, 2011 Order, the Petitioner Prairie Island Indian Community hereby submits its statement of issues to be raised regarding its challenge to the United States Nuclear Regulatory Commission's ("NRC's") Consideration of Environmental Impacts of Temporary Storage of Spent Fuel After Cessation of Reactor Operation Rule ("Temporary Storage Rule") and affiliated Waste Confidence Decision Update, both issued December 23, 2010. See 75 Fed. Reg. 81,032 (Dec. 23, 2010); and 75 Fed. Reg. 81,037 (Dec. 23, 2010) (together codified at 10 C.F.R. § 51). Without waiving any rights to submit additional issues, Petitioner intends to raise the following issues in support of its challenge:

1. Whether the Temporary Storage Rule and Waste Confidence Decision Update, which rely on a generic determination that spent nuclear fuel can be stored on-site at any nuclear reactor in spent-fuel pools and dry-storage facilities safely and without any significant environmental impacts for sixty years beyond the licensed life of any nuclear reactor, violate the National Environmental Policy Act (“NEPA”), 42 U.S.C. § 4321 *et seq.* by failing to require or make an adequate, individualized, and site-specific analysis of the environmental impacts of such storage.
2. Whether, for the above reasons, the Temporary Storage Rule and Waste Confidence Decision Update violate the Atomic Energy Act (“AEA”), 42 U.S.C. § 2133(d) by permitting the NRC to grant operating licenses to nuclear power plants without adequate assurances that the facilities are not “inimical...to the health and safety of the public.”
3. Whether, for the above reasons, the Temporary Storage Rule and Waste Confidence Decision Update further violate the Administrative Procedures Act (“APA”), 5 U.S.C. § 706(2)(A), or are otherwise arbitrary and capricious, an abuse of discretion, or not in accordance with law.
4. Whether, for the above reasons, the Temporary Fuel Storage and Waste

Confidence Rules violate the federal government's, and NRC's, trust obligations to the Petitioner as a federally recognized Indian tribe by, among other things, failing to evaluate and mitigate the impacts of the Rules on the Petitioner's trust lands and other tribal trust resources as required by NEPA and other federal law.

5. Whether the determination in the Waste Confidence Decision Update that the NRC has "reasonable assurance" that "sufficient" mined geologic repository capacity will be available to dispose of spent nuclear fuel generated in any reactor "when necessary" violates the NEPA, AEA, APA, or is otherwise arbitrary and capricious, an abuse of discretion, or not in accordance with law.

Respectfully submitted,

Dated: April 4, 2011

/s Joseph F. Halloran  
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