

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

In the Matter of

Northern States Power Company

Docket No. 72-10-ISFSI-2

ASLBP No. 12-922-ISFSI-MLRBD01

(Prairie Island Nuclear Generating Plant,
Plant, Independent Spent Fuel Storage)

DECLARATION OF PHILIP R. MAHOWALD

1. My name is Philip R. Mahowald. I am General Counsel for the Prairie Island Indian Community in the State of Minnesota.
2. Approximately 250 enrolled Community Members reside on or near the Reservation.
3. Attached to this Declaration as Exhibit A is an aerial photo which shows the portions of the Prairie Island Indian Community Reservation within a one-half (1/2) and one-mile (1 mi.) radius of the Prairie Island Independent Spent Fuel Storage Installation.
4. 10 CFR 2.335 provides for a challenge to a regulation by way of a petition requesting a “waiver” or exception to the regulation on the sole ground of “special circumstances”, i.e., because of special circumstances with respect to the subject matter of the proceeding, application of the regulation would not serve the purposes for which the regulation was adopted. PIIC is petitioning for a waiver of 10 CFR Section 51.23(a) based on the decision of the United States Court of Appeals for the District of Columbia Circuit in *New York v. NRC*, 681 F.3d 471 (D.C. Cir. 2012). The Circuit Court of Appeals for the District of Columbia struck down the revised Waste Confidence Decision and revised Temporary Storage Rule, concluding that the NRC did not conduct a sufficient analysis of the environmental risks,¹ failed to evaluate the probability and consequences of failing to establish a permanent common repository, and

¹*New York*, 681 F.3d at 483.

appeared to have no plan other than “hoping for a geologic repository” despite what the Court described as “societal and political barriers to selecting a site.”²

5. Based on this decision, PIIC believes that the necessary safety and environmental review for an ISFSI license renewal would be artificially truncated by application of the Continued Storage Rule and its Generic Environmental Impact Statement. Furthermore, there is no hope on the horizon for the siting, licensing, construction, and operation of either an interim centralized storage facility for spent fuel or a repository to dispose of the fuel. Although the Blue Ribbon Commission has made a number of recommendations relative to the development of storage and disposal facilities, there has been no action by the responsible government agencies or the Congress to move forward with implementing the BRC recommendations. Furthermore, even if a storage or disposal facility was on the horizon, the DOE has no reasoned scheme on how priorities will be set for moving spent fuel from operating reactors like PINGP.

6. For all of these reasons, PIIC petitions the Commission to allow the safety and environmental review of the NSPM license renewal application to fully consider the requisite time frame in which deficiencies in the storage of spent fuel may be revealed.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 20th day of October, 2014, at Welch, Minnesota.

Signed (electronically) by Philip R. Mahowald

Philip R. Mahowald

Prairie Island Indian Community
State of Minnesota
County of Goodhue

²*Id.* at 478-79.



Prairie Island Indian Community

Independent Spent Fuel Storage Installation with 1/2 Mile and 1 Mile proximities.



Legend

-  Independent Spent Fuel Storage
-  1 Mile
-  1/2 Mile

