

UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA CIRCUIT

PRAIRIE ISLAND INDIAN
COMMUNITY,

Petitioner,

v.

Case No. No.14-1212

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

Respondents.

NONBINDING STATEMENT OF ISSUES

Pursuant to the Court's October 27, 2014 Order, the Petitioner the Prairie Island Indian Community ("Petitioner") hereby states that it intends to raise the following issues in support of its Petition for Review, filed with this Court on October 27, 2014 and in support of its challenge to the United States Nuclear Regulatory Commission's ("NRC's") Final Rule for Continued Storage of Spent Nuclear Fuel ("Continued Storage Rule") and Generic Environmental Impact Statement for Continued Storage of Spent Nuclear Fuels ("GEIS"), both of which were issued on September 19, 2014. See, Fed. Reg. 56, 238 (Sept. 19, 2014) and 79 Fed. Reg., 56,263 (Sept. 19, 2014).

Without waiving any rights to submit additional issues, Petitioner intends to

raise the following issues in support of its challenge:

1. Whether the Continued Storage Rule and the GEIS, which rely on generic determinations that spent nuclear fuel can be stored indefinitely on-site at any nuclear reactor in spent-fuel pools and dry-storage facilities safely and without any significant environmental impacts, 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 Continued Storage Rule and GEIS violate the Atomic Energy Act (“AEA”), 42 U.S.C. § 2133(d) by permitting the NRC to grant and renew operating licenses to nuclear power plants and spent fuel storage facilities without adequate assurances that the facilities are not “inimical...to the health and safety of the public.”
3. Whether, for the above reasons, and by relying upon outdated information and incorrect assumptions, the Continued Storage Rule and GEIS violate the Administrative Procedures Act (“APA”), 5 U.S.C. § 706(2)(A), or are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 the Continued Storage Rule and GEIS are arbitrary and

capricious or not in accordance with law, given that, without limitation, the GEIS – a) miscasts the major federal action triggering NRC’s obligation to perform a NEPA analysis; b) fails to identify and analyze the impacts of continued storage of spent nuclear fuel at reactor sites; c) fails to discuss a reasonable range of alternatives to continued indefinite storage; d) fails to discuss potential mitigation of impacts of continued indefinite storage; e) fails to consider differences in sites, site-specific risk factors and site specific impacts, alternative or mitigation measures; f) relies on unreasonable and unsupported assumptions; and g) fails to respond adequately to comments submitted on the draft GEIS and the draft Continued Storage Rule.

5. Whether, for the above reasons, the Continued Storage Rule and the GEIS violate the NRC’s trust obligations to the Petitioner as a federally-recognized Indian tribe by, among other things, failing to adequately evaluate and mitigate the impacts of the Continued Storage Rule and the GEIS on the Petitioner’s trust lands and other tribal resources as required by NEPA and other federal law.

Respectfully submitted,

Dated: December 1, 2014

/s Joseph F. Halloran

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