UNITED STATES COURT OF APPEALS
DISTRICT OF COLUMBIA CIRCUIT

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Amended 12/15/14

AGENCY DOCKETING STATEMENT

Administrative Agency Review Proceedings (To be completed by appellant/petitioner)

1. CASE NO. 14-1212 2. DATE DOCKETED: 10-27-2014

3. CASE NAME (lead parties only) Prairie Island Indian Comm. v. United States Nuclear Regulatory Comm

4. TYPE OF CASE: ☒ Review ☐ Appeal ☐ Enforcement ☐ Complaint ☐ Tax Court

5. IS THIS CASE REQUIRED BY STATUTE TO BE EXPEDITED? ○ Yes ◉ No
If YES, cite statute

6. CASE INFORMATION:

a. Identify agency whose order is to be reviewed: United States Nuclear Regulatory Commission

b. Give agency docket or order number(s):

c. Give date(s) of order(s): September 19, 2014

d. Has a request for rehearing or reconsideration been filed at the agency? ○ Yes ◉ No
If so, when was it filled? By whom?
Has the agency acted? ○ Yes ○ No If so, when?

e. Identify the basis of appellant's/petitioner's claim of standing. See D.C. Cir. Rule 15(c)(2):
Please see addendum

f. Are any other cases involving the same underlying agency order pending in this Court or any other?
◉ Yes ○ No If YES, identify case name(s), docket number(s), and court(s)
Please see addendum

g. Are any other cases, to counsel's knowledge, pending before the agency, this Court, another Circuit Court, or the Supreme Court which involve *substantially the same issues* as the instant case presents?
◉ Yes ○ No If YES, give case name(s) and number(s) of these cases and identify court/agency:
Please see addendum

h. Have the parties attempted to resolve the issues in this case through arbitration, mediation, or any other alternative for dispute resolution? ○ Yes ◉ No If YES, provide program name and participation dates.

Signature /s/ Joseph F. Halloran Date 12-15-2014

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ATTACH A CERTIFICATE OF SERVICE

Note: If counsel for any other party believes that the information submitted is inaccurate or incomplete, counsel may so advise the Clerk within 7 calendar days by letter, with copies to all other parties, specifically referring to the challenged statement.

UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA CIRCUIT

PRAIRIE ISLAND INDIAN
COMMUNITY,

Petitioner,

-against-

Case No. 14-1212

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

Respondents.

ADDENDUM TO AMENDED AGENCY DOCKETING STATEMENT (U.S.C.A FORM 41): RESPONSES TO ITEMS 6(e)-(g)

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1. Response to item 6(e): "Identify the basis of appellant's/petitioner's claim of standing."

The Prairie Island Indian Community ("Petitioner") seeks judicial review of the Nuclear Regulatory Commission's ("NRC") Generic Environmental Impact Statement of Spent Nuclear Fuel, 79 Fed. Reg. 56,263 (Sept. 19, 2014)(voted on by the Commission on August 26, 2014, C VR 2014-0072) (GEIS), which concludes that continued storage of spent nuclear fuel at nuclear reactor sites indefinitely beyond the operating life of a reactor will have "small" environmental impacts.

Petitioner also seeks judicial review of the NRC's Final Rule for Continued Storage of Spent Nuclear Fuel, 79 Fed. Reg. 56,238 (Sept. 19, 2014) (voted on by Commission on

August 26, 2014) which adopts the GEIS as the basis for making decisions regarding nuclear reactors and on-site waste storage facilities in licensing and relicensing proceedings.

To demonstrate Article III standing, a party filing suit in federal court must demonstrate three elements: (1) injury in fact; (2) causation; and (3) redressability. *See Sierra Club v. EPA,* 292 F.3d 895, 898 (D.C. Cir. 2002). As for the first factor, the alleged injury must be "concrete and particularized." *Allen v. Wright*, 468 U.S. 737, 756 (1984). The injury must also be "actual or imminent." *Whitmore v. Arkansas,* 495 U.S. 149, 155 (1990), *quoting Los Angeles v. Lyons,* 461 U.S. 95, 102 (1983). As for the second factor, a "causal connection" means simply that there is a direct cause between an alleged act and an alleged injury. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992), *quoting Simon v. Eastern Kentucky Welfare Rights Org.,* 426 U.S. 26, 41-42 (1976). And as for the third factor, it must be "likely," as opposed to merely "speculative," that any injury alleged can and will be "redressed by a favorable decision." *Defenders of Wildlife,* 504 U.S. at 560.

As a result of the NRC's GEIS and Continued Storage Rule, operators of nuclear reactors will be permitted to store spent nuclear fuel at nuclear generating facilities indefinitely beyond the licensed life of the facility without undergoing safety and environmental reviews. The Petitioner challenges these decisions on the grounds that the GEIS fails to account for site specific impacts of indefinite continued storage on the Petitioner and its homeland and it fails to evaluate reasonable alternatives to indefinite continued storage or consider appropriate mitigation measures. For these reasons, among others, the Petitioner contends that the NRC acted arbitrarily, abused its discretion, and violated both the National Environmental Policy Act, the Atomic Energy Act, the

Administrative Procedures Act, and the federal government's fiduciary obligation to protect tribal trust resources.

The Petitioner has standing to challenge the NRC's decisions. The Petitioner is a federally recognized, sovereign, self-governing Indian tribe, organized under the Indian Reorganization Act of 1934. It is governed by a Constitution and Bylaws adopted by the resident members of the Community on May 23, 1936 and approved by the Secretary of the United States Department of the Interior on June 20, 1936. The Petitioner has a government-to-government relationship with the federal government. The federal government owes a trust obligation to the Petitioner that is characterized by a fiduciary obligation of the highest solemnity.

Both injury in fact and causation are demonstrated by the proximity of the Prairie Island Nuclear Generating Plant ("PINGP") immediately adjacent to the Petitioner's homeland, and the potential for irreparable damage to the Petitioner, should anything go wrong under the Continued Storage Rule. The Prairie Island Reservation is located at the confluence of the Vermillion and Mississippi Rivers, which has been the ancestral home of the Petitioner for centuries. Approximately 1,900 acres of the Petitioner's reservation are located in the immediate vicinity of the PINGP, which itself is located adjacent to the Petitioner's core residential area. The PINGP is currently licensed for up to 48 "dry cask" spent fuel storage units at an Independent Spent Fuel Storage Installation ("ISFSI"), which is located approximately 600 yards from the nearest tribal member residences. To date, 38 dry casks have been loaded and placed on the ISFSI, and the owner of the PINGP anticipates needing to expand the ISFSI to accommodate a total of 98 dry casks over the PINGP's

lifetime - 64 dry casks through the proposed 20-year license renewal plus an additional 34 dry casks if the PINGP is decommissioned after the current renewal period.

The NRC's decisions directly and adversely affect the Petitioner's members by indefinitely extending the storage of high-level radioactive material directly next to the Petitioner's residents, hundreds of burial sites, ancient village sites, and culturally significant areas until beyond the licensed life of the PINGP. The Petitioner's homeland, moreover, is fixed as a result of the federal reservation policy, so that relocating from the land and the threats posed by storage of high level nuclear waste at the PINGP is impossible.

Furthermore, spent fuel storage is susceptible to radiological release from a wide variety of conditions and the environmental and human impacts of such releases would be catastrophic to the Petitioner and its members, threatening health and natural resources.

Finally, the Petitioner's injury is directly redressable by this Court. This Court can address the Petitioner's injury by requiring the NRC to devise a storage plan that meets the requirements of the AEA, NEPA, and the federal trust responsibility to the Petitioner.

The Nuclear Regulatory Commission Atomic Safety and Licensing Board (ASLB) has also found the Community had standing in the PINGP and ISFSI relicensing proceedings. *See, e.g., In the Matter of Northern States Power Company (Formerly Nuclear Management Company, LLC)*, (Prairie Island Nuclear Generating Plant, Units 1 and 2), Docket Nos. 50-282-LR, 50-306-LR (ASLBP No. 08-871-01-LR), 68 N.R.C. 905, 912-13 (Dec. 5, 2008); *In the Matter of Northern States Power Company*, (Prairie Island Nuclear Generating Plant, Independent Spent Fuel Storage Installation), Docket No. 72-10-ISFSI-2 (ASLBP No. 12-922-01-ISFSI-MLR-BD01), LBP-12-24, 76 N.R.C. 503, 507-08 (Dec. 20, 2012).

The ASLB properly acknowledged the Petitioner's right to seek protection of its health and safety and environmental interests under the AEA and NEPA in the relicensing proceedings. Likewise, the Petitioner has standing to challenge the NRC's generic determinations regarding the health and safety and environmental risks of spent fuel storage and disposal in this appeal. The interests raised in the ASLB relicensing proceedings are identical here, where Petitioner seeks to ensure that the NRC's generic determinations regarding the health and environmental risks of spent fuel storage and disposal - on which the NRC relies in its individual licensing proceedings - fully comply with the requirements of the AEA and NEPA. Therefore, the ASLB's standing decision in the PINGP and ISFSI licensing proceedings adequately demonstrates the Petitioner's standing to bring this Petition.

2. Response to item 6(f): "Are any other cases involving the same underlying agency order pending in this Court or any other?

The following related cases (now consolidated with this one) are pending in the U.S. Court of Appeals for the District of Columbia Circuit:

Case 14-1210	*State of New York et al., v. United States Nuclear Regulatory Commission, et al.*
Case 14-1216	*Beyond Nuclear, Inc., et al., v. United States Nuclear Regulatory Commission, et al.*
Case 14-1217	*Natural Resources Defense Council v. United States Nuclear Regulatory Commission, et al.*

3. Response to item 6(g): "Are any other cases, to counsel's knowledge, pending before the agency, this Court, another Circuit Court, or the Supreme Court, which involve substantially the same issues as the instant case presents?"

In the Matter of Northern States Power Company (Prairie Island Nuclear Generating Plant, Independent Spent Fuel Storage), Docket No. 72-10-ISFSI-2, ASLBP NO. 12-922-ISFSI-MLR-BD01.

This proceeding before the NRC's Atomic Safety and Licensing Board (the ASLB Proceeding) involves an application for a 40-year renewal of the license for the independent spent fuel storage installation ("ISFSI") at the Prairie Island Nuclear Generating Plant ("PINGP"). While Petitioner believes that its challenge of the Continued Storage Rule and GEIS in the instant case (seeking the *vacatur* of the Continued Storage Rule and GEIS as was ordered in *New York v. NRC*, 681 F.3d 471 (D.C. Cir. 2012)) does not involve "substantially the same issues" presented in the ASLB Proceeding (seeking leave to file a contention challenging the application of the Continued Storage Rule and GEIS in a particular license renewal proceeding and requesting a waiver of the Continued Storage Rule in a particular license renewal proceeding), Petitioner nevertheless identifies the ASLB Proceeding to apprise the Court and parties.