SCHEDULING NOTE

Title:	**BRIEFING ON NRC TRIBAL POLICY STATEMENT (Public Meeting)**
Purpose:	To provide the Commission an opportunity to hear the diverse views of stakeholders and the staff's assessment of those views that contributed to the development of the draft final Tribal Policy Statement.
Scheduled:	**September 19, 2016** **Time 9:00 am – 12:00pm**
Duration:	Approx. 3 hours
Location:	Commissioners' Conference Room, 1st FL OWFN

Participants:	**Presentation**
External Panel	**50 mins.***
Federal Representative	
Reid Nelson, Director, Office of Federal Agency Programs, Advisory Council on Historic Preservation	10 mins.*
Tribal, Industry and Other Interested Parties	
Heather Westra, Consultant, Prairie Island Indian Community	10 mins.*
Richard Arnold, Chair, National Transportation Stakeholders Forum, Tribal Caucus	10 mins.*
Scott Hansen, Executive Committee, National Tribal Air Association, Catawba Indian Nation	10 mins.*
R. Budd Haemer, Senior Nuclear Counsel, Indiana Michigan Power	10 mins.*

Topics:

- Comments on Proposed Final Tribal Policy Statement

Commission Q & A	**30 mins.**

Break **5 mins.**

<u>NRC Staff Panel</u> **35 mins.***

Glenn Tracy, Deputy Executive Director for Materials, Waste, Research, State, Tribal, Compliance, Administration, and Human Capital Programs

Marc Dapas, Director, Office of Nuclear Material Safety and Safeguards (NMSS)

Dan Collins, Director, Division of Material Safety, State, Tribal, and Rulemaking Programs, NMSS

Paul Michalak, Chief, Agreement State Program Branch, Division of Material, Safety, State, Tribal, and Rulemaking Programs, NMSS

Diana Diaz-Toro, Project Manager, Environmental Review Branch, Division of Fuel Cycle Safety, Safeguards, and Environmental Review, NMSS

<u>Topics:</u>

- Commission Direction
- Comments on Proposed Final Tribal Policy Statement
- Draft Final Tribal Policy Statement
- Tribal Policy Statement Implementation
- NRC Tribal Consultations under Section 106 of the National Historic Preservation Act

Commission Q & A **30 mins.**

Discussion – Wrap-Up **5 mins.**

*For presentation only and does not include time for Commission Q & A's

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ADVISORY COUNCIL ON HISTORIC PRESERVATION

Briefing on the U.S. Nuclear Regulatory Commission Tribal Policy Statement

Advisory Council on Historic Preservation Comments

Reid Nelson

NATIONAL HISTORIC PRESERVATION ACT

- Establishes federal agency preservation responsibilities (Section 110)
- Administers historic preservation review process (Section 106)
- Coordinates federal, state, local, and tribal involvement in undertakings (Section 106)

THE SECTION 106 PROCESS

36 CFR § 800.3-7

CONSULTATION

1. INITIATE the process

- Determine undertaking
- Notify SHPO/THPO
- Identify Tribes and Other Consulting Parties
- Plan to involve the public

No undertaking/ potential to cause effects?

2. IDENTIFY historic properties

- Determine APE
- Identify historic properties
- Consult with SHPO/THPO, Tribes, and Other Consulting Parties
- Involve the public

No historic properties present/affected?

3. ASSESS adverse effects

- Apply criteria of adverse effect
- Consult with SHPO/THPO, Tribes, and Other Consulting Parties
- Involve the public

No historic properties adversely affected?

4. RESOLVE adverse effects

- Avoid, minimize, or mitigate adverse effects
- Notify ACHP
- Consult with SHPO/THPO, Tribes, and Other Consulting Parties
- Involve the public

Agreement (MOA/PA) or Council Comment

Advisory Council on Historic Preservation

PARTICIPANTS IN SECTION 106

- Federal agencies
- State Historic Preservation Officer(s)
- Tribal Historic Preservation Officer(s)
- Indian Tribe(s)
- Native Hawaiian Organization(s)
- Applicant
- Other Interested Parties

TRIBAL PARTICIPATION IN SECTION 106

- 1992 Amendments to the National Historic Preservation Act
- 2000 Executive Order 13175 - Consultation and Coordination with Indian Tribal Governments
- 2004 Revised Section 106 regulations

SECTION 106 AND TRIBAL CONSULTATION

- Tribal sovereignty and government-to-government relationship between the federal government and federally recognized Indian tribes
- Properties of religious and cultural significance to Indian tribes
- Tribal special expertise in assessing the eligibility of historic properties

ACHP'S COMMENTS ON NRC TRIBAL POLICY STATEMENT

- Commends the NRC in issuing its first Tribal Policy Statement and clarifying its policies and procedures
- Articulates the NRC's commitment to promote a government-to-government relationship between itself and federally recognized Indian tribes
- Ensures compliance with tribal consultation requirements of Section 106

ACHP RECOMMENDATION TO INCLUDE NATIVE HAWAIIAN ORGANIZATIONS IN NRC TRIBAL POLICY STATEMENT

- Include Native Hawaiian Organizations in the Tribal Policy Statement
  - The National Historic Preservation Act and the Section 106 regulations require federal agencies to consult with Native Hawaiian Organizations
  - The NRC is responsible for licensing materials in Hawaii

GENERAL RECOMMENDATIONS

- Engage in tribal consultation early in the planning process with projects
  - Ensure full participation of Indian tribes in the Section 106 review process
  - Allow Indian tribes address concerns with historic properties and the Section 106 review process
- Acknowledge tribal expertise in assessing the eligibility of historic properties
  - The NRC will need to consult with that specific tribe to carry out such a determination

GENERAL RECOMMENDATIONS

- Make a reasonable and good faith effort to identify Indian tribes and Native Hawaiian organizations
  - May have an interest in an undertaking
  - Able to identify historic properties that may possess religious and cultural significance to the tribe
- Build relationships with Indian tribes, Native Alaskans, and Native Hawaiian Organizations
  - Allows for effective consultation

GENERAL RECOMMENDATIONS

- Train staff in Section 106
- Inform project applicants about Section 106 and required tribal consultation
  - Acknowledge the role of applicants in planning projects and funding cultural surveys
  - Involve applicants in negotiations to conduct surveys and to augment previous archeological reports

CONCLUSION

- For further information, please contact:
  - Valerie Hauser
    Director Office of Native American Affairs
    Vhauser@achp.gov
  - Sarah Stokely
    ACHP NRC Liaison
    Sstokely@achp.gov
- www.achp.gov

Advisory Council on Historic Preservation
Links to Documents and Guidance on the National Historic Preservation Act and Section 106 for the Nuclear Regulatory Commission

Fact Sheet on the Advisory Council on Historic Preservation
http://www.achp.gov/AboutTheACHPFactSheet2011.pdf

Fact Sheet on the Section 106 Process
http://www.achp.gov/OFAPFactSheet2011.pdf

The National Historic Preservation Act
http://www.achp.gov/docs/nhpa%202008-final.pdf

The Section 106 Regulations, 36 CFR Part 800, "Protection of Historic Properties"
http://www.achp.gov/regs-rev04.pdf

ADDITIONAL RESOURCES

Section 106 Application Toolkit
http://www.achp.gov/apptoolkit.html

Consultation with Indian Tribes in the Section 106 Review Process: A Handbook
http://www.achp.gov/regs-tribes2008.pdf

Section 106 Consultation between Federal Agencies and Indian Tribes Regarding Federal Permits, Licenses, and Assistance Questions and Answers
http://www.achp.gov/docs/Assistance%20Agency%20Tribal%20Consultation%20Q&A.pdf

Reasonable and Good Faith Identification Standard Guidance
http://www.achp.gov/docs/reasonable_good_faith_identification.pdf

NRC Tribal Policy Statement Commission Briefing

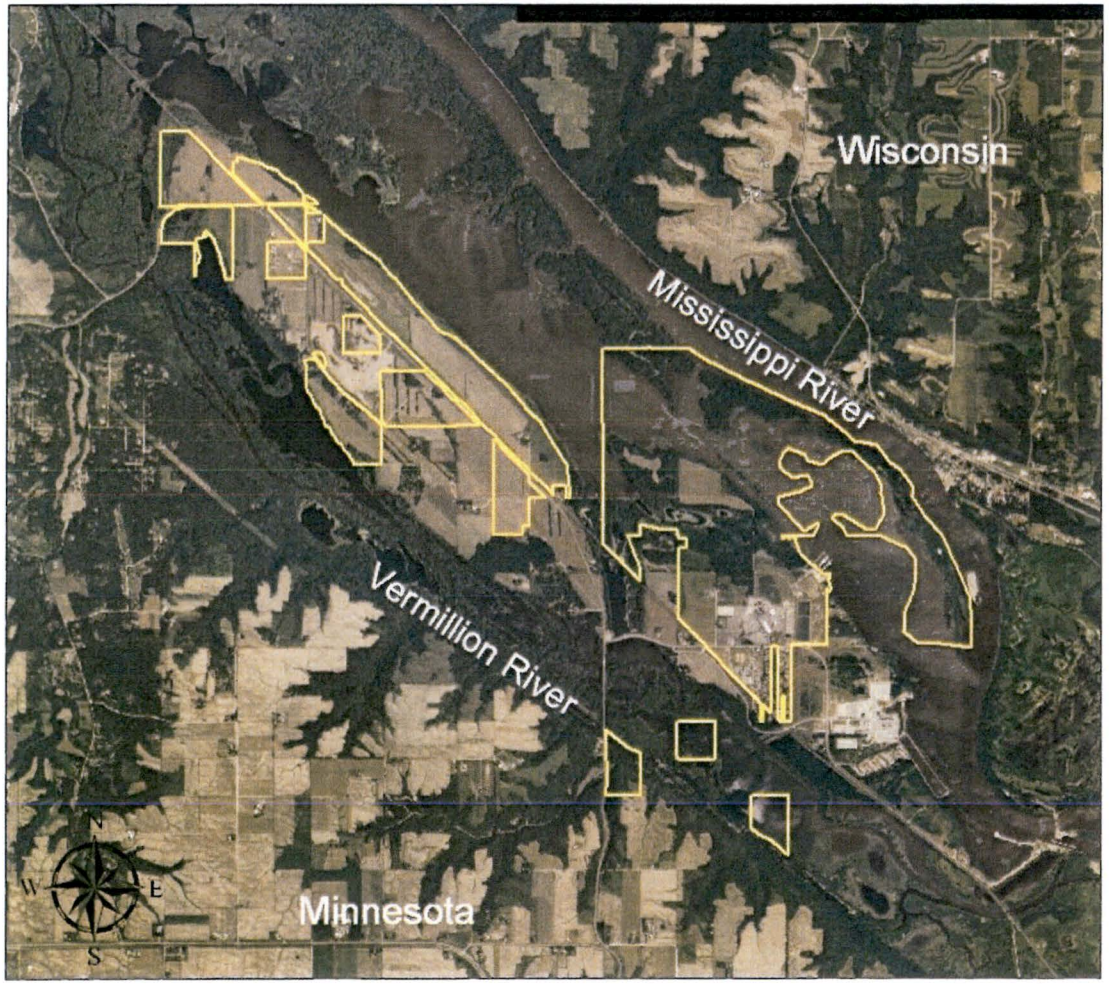
Heather Westra

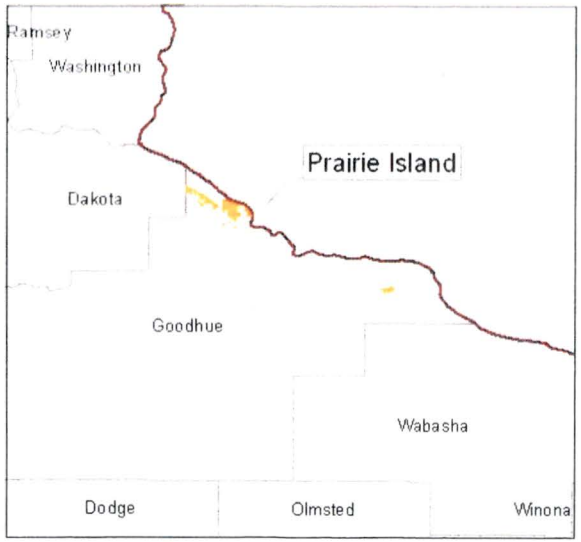
Prairie Island Indian Community

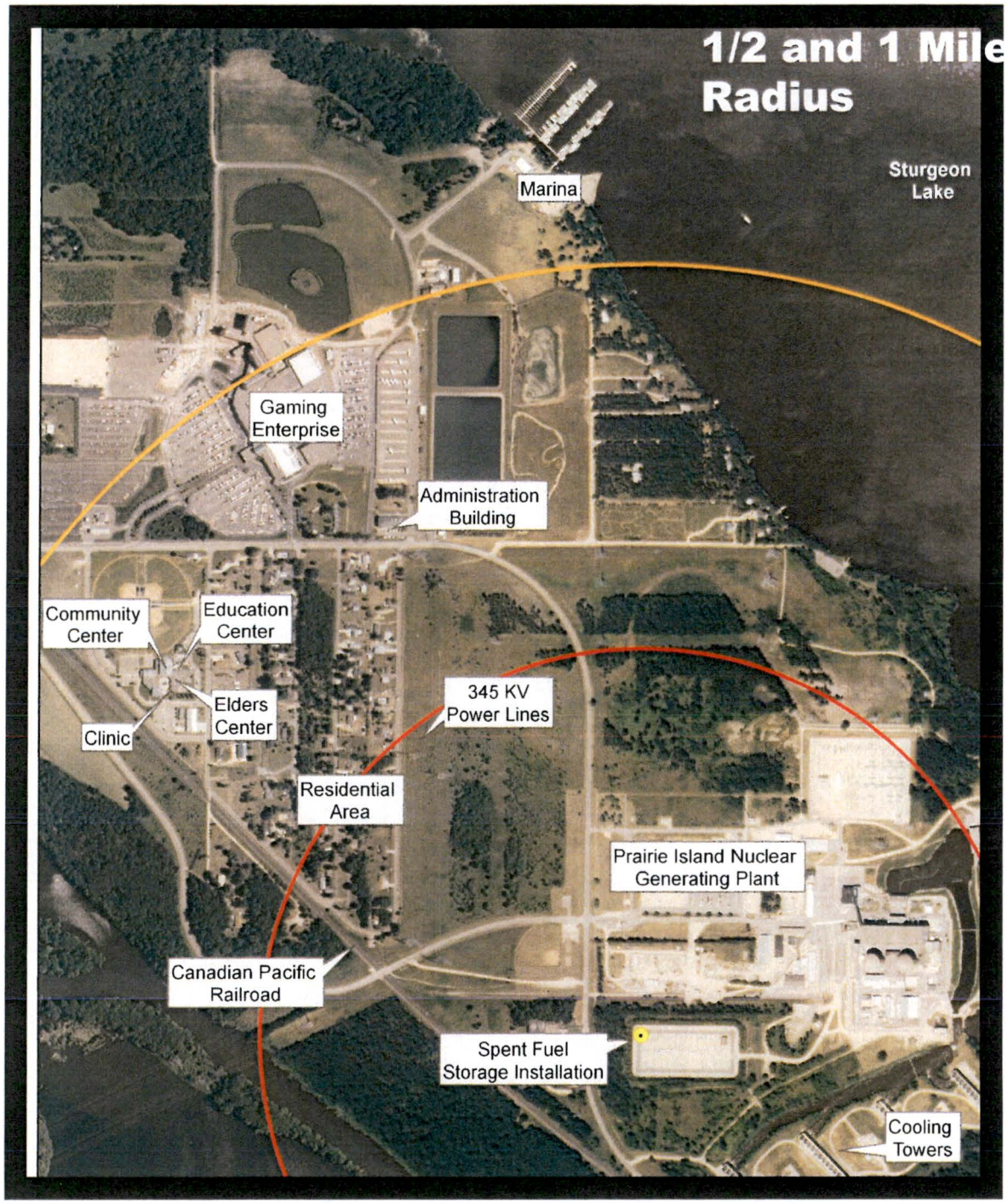
Welch, Minnesota

Location

Prairie Island Indian Community






1/2 and 1 Mile Radius
Sturgeon Lake
Marina
Gaming Enterprise
Administration Building
Community Center
Education Center
Elders Center
Clinic
345 KV Power Lines
Residential Area
Prairie Island Nuclear Generating Plant
Canadian Pacific Railroad
Spent Fuel Storage Installation
Cooling Towers

-Tribal Caucus-
National Transportation Stakeholders Forum

Richard Arnold, Co-Chairman

NTSF

- Department of Energy as a mechanism for sharing information nationally about shipments of radioactive waste and materials
- Collaborative Process between NTSF, Tribes, Federal Agencies, States, Local Governments and Industry representatives
- NTSF, DOE, NRC among others provide updates on evaluating the national impact on safety and security important to both Tribes and other stakeholders

Tribal Caucus

- 15 Tribes and Consolidated Group of Tribes and Organizations (CGTO) consisting of 16 Tribes
- Focus: Public Health and Safety, Packaging, Transportation, Emergency Management, Security, Inspection Enforcement, Impacts to Tribal lands and Effects upon Cultural Resources
- NRC participation in NTSF is essential and cost-effective in light of limited budgets and resources
- Tribal Caucus welcomes, need, expects and relies upon NRC involvement

Tribal Protocol Manual

- NRC Introduced to Tribal Caucus in 2012 and finalized in 2014
- Operational Framework for NRC and Tribes
- Tribal Caucus is pleased NRC is committed to institutionalizing a process for formally engaging Tribal governments.
- TPM now serves as a guide to facilitate tribal interactions, and a unique model for addressing those activities under NRC authority.

Tribal Policy Statement

- TPS was presented to Tribal Caucus with outreach to Tribes and Organizations in 2014
- Tribal Policy Statement serves as a framework for Strengthening Ties and Involvement with Tribes
- On June 15th the Tribal Caucus submitted comments for a 7th Principle however the recommendation was partially accepted.
- Tribal Participation in Working Groups impacting Tribes – *was a key element Response 5.3. "The NRC agreed with this comment and will consider inviting Tribes to participate on working groups related to regulatory actions that have substantial direct effects on one or more Indian Tribes, as appropriate."*

Conclusion

- NRC must continue its involvement in NTSF and ongoing outreach to tribal communities
- 180 days comment period and outreach activities
- Like all policies nothing is perfect
- Commission must boldly approve the Proposed Final Tribal Policy Statement and uphold its trust responsibility expressed as the rationale for the need to develop the policy statement!

Air Quality Work in Indian Country

Briefing on NRC's Tribal Policy Statement,
September 19, 2016

National Tribal Air Association

Presented by Scott Hansen
Region 4 Representative
Catawba Indian Nation

NTAA

NTAA's Mission

'To advance air quality management, policies and programs, consistent with the needs, interests and unique legal status of American Indian Tribes and Alaskan Natives'

www.ntaatribalair.org

NTAA

NTAA Principles

- Sovereignty/ Self-Determination of Tribes
- Tribes have the right to know and protect the quality of their air
- Tribes are leaders, strong partners, and co-regulators

NTAA

NTAA Principles

- Tribes have the legal authority to regulate under the Tribal Authority Rule (TAR)

- As sovereign nations, Tribes should be consulted on how best to address their community's exposure to air pollution from off-reservation sources, and actively engaged in the process of eliminating harmful off-Reservation pollution.

NTAA

NTAA Administration

- Founded in 2002
- 112 Member Tribes
- Executive Committee
  - Reps from each of 10 EPA regions and Alaska
  - By-laws approved by member Tribes
- NTAA administered by ITEP via cooperative EPA grant

NTAA

NTAA Executive Committee Outside the West Wing of the White House, August 2016

NTAA

NTAA's Recent Policy Work

- U.S. DOJ's Volkswagen 2.0 Emissions Settlement
- U.S. EPA's Clean Power Plan
- U.S. EPA's Minor New Source Review General Permits for Indian Country: 2nd Bundle
- U.S. EPA's Radon Emissions from Uranium Mills
- U.S. EPA's National Program Manager's Guidance
- U.S. EPA's Ground-Level Ozone
- U.S. Nuclear Regulatory Commission's Tribal Policy

NTAA

NTAA Comments – U.S. NRC Tribal Policy Statement

- Proposed minor changes to Principles 1, 2, & 4.
- Expressed support for Principle 3, but found little to no NRC outreach to Tribes and urged NRC to increase these outreach efforts.

NTAA

NTAA Comments – U.S. NRC Tribal Policy Statement

- Expressed concern for the lack of implementation of Principle 4, and recommended development of a Tribal consultation plan.
- Expressed support for Principle 5, but requests that it also require NRC to coordinate consultation efforts with other states.

NTAA

NTAA Comments – U.S. NRC Linear No-Threshold Model

- Recommended the LNT model continue to serve as the NRC's standard until it is definitively shown to be an ineffective model.

- Highlighted the need for additional information that shows the Hormesis model to be superior to the LNT and other models before considering replacement of the LNT model.

NTAA

For More Information
Visit NTAA's website

www.ntaatribalair.org

Or contact NTAA Project Director
Andy Bessler at
andy.bessler@nau.edu
or call 928-523-0526

NTAA

Thank you for your attention!

Scott Hansen

Environmental Specialist
Catawba Indian Nation
(803) 366-4792
scott.hansen@catawbaindian.net

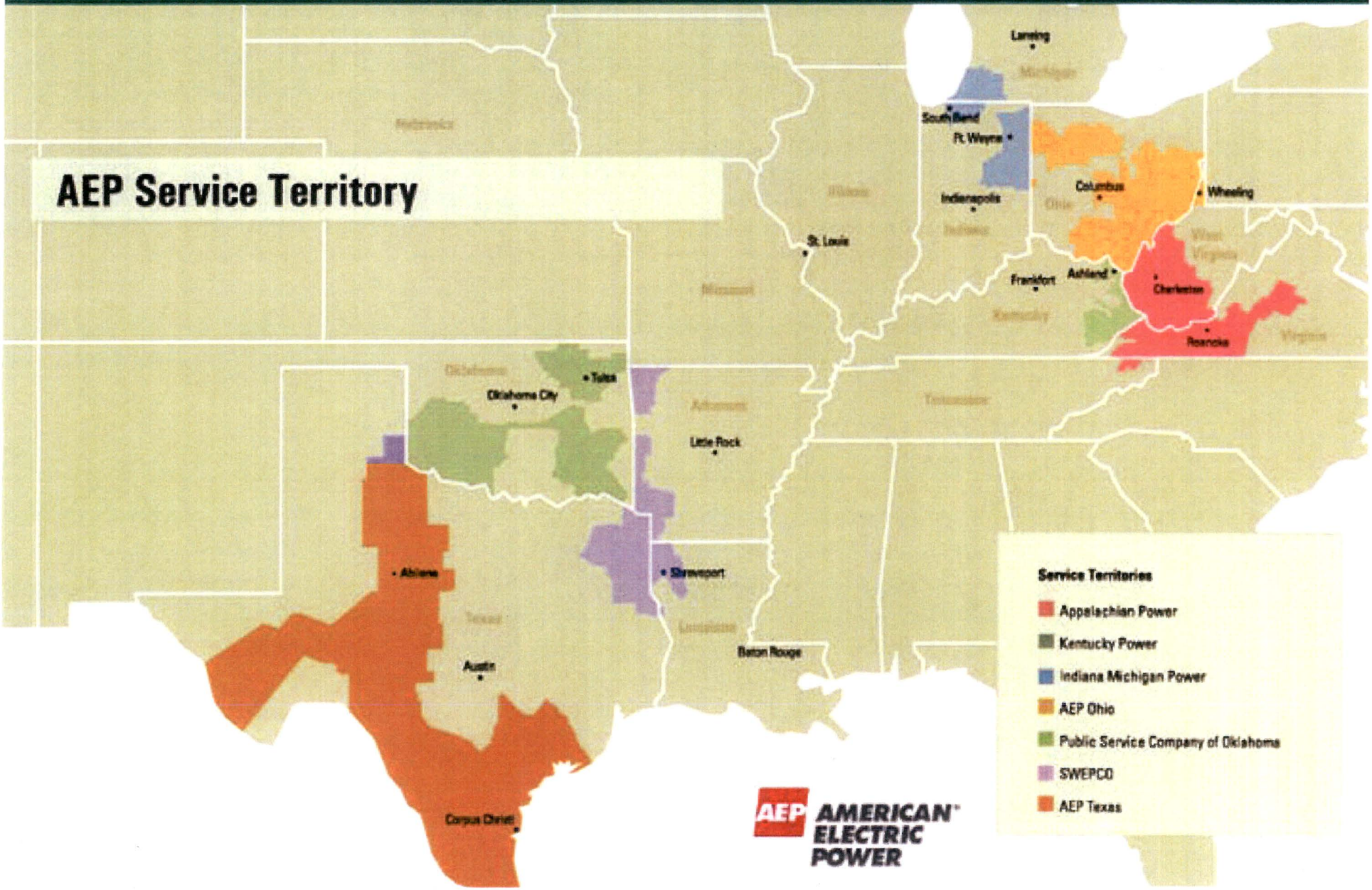
NTAA

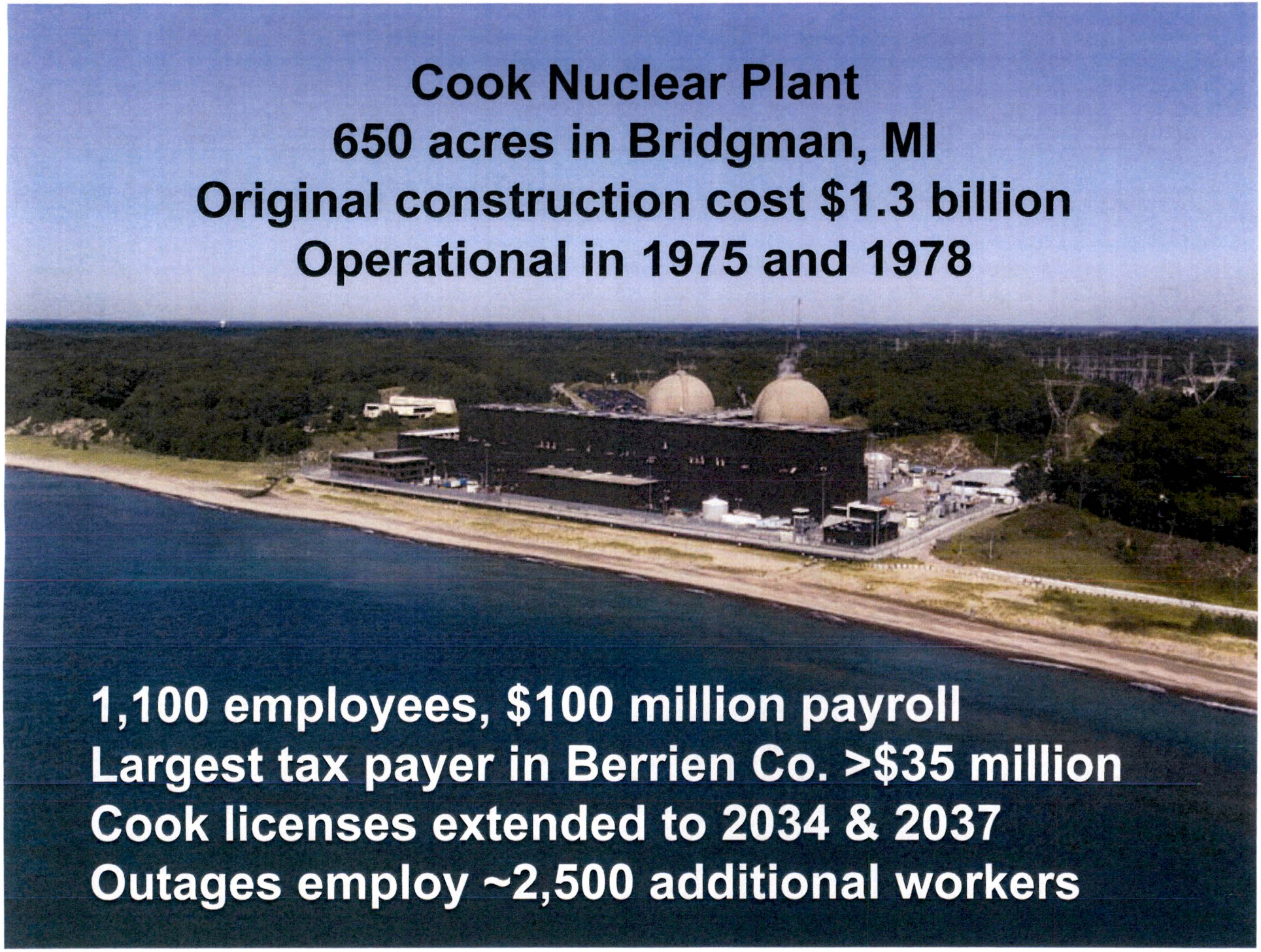
Cook Nuclear Plant

Overview

- Introduction
- Cook Overview
- NRC Draft Tribal Policy

Indiana Michigan Power is part of AEP– one of the largest US utilities




Cook Nuclear Plant
650 acres in Bridgman, MI
Original construction cost $1.3 billion
Operational in 1975 and 1978
1,100 employees, $100 million payroll
Largest tax payer in Berrien Co. >$35 million
Cook licenses extended to 2034 & 2037
Outages employ ~2,500 additional workers

Cook Nuclear Plant

AEP Focuses on Serving All of its Customers

- **From AEP's 1934 Creed**

  "We aim to give one kind of service to everyone... the best that's possible. That means supplying our customers with what they want when they want it."

- **The Pokagon Band of the Potawatomi Tribe is served by Indiana Michigan Power Company**

AEP

Cook Nuclear Plant

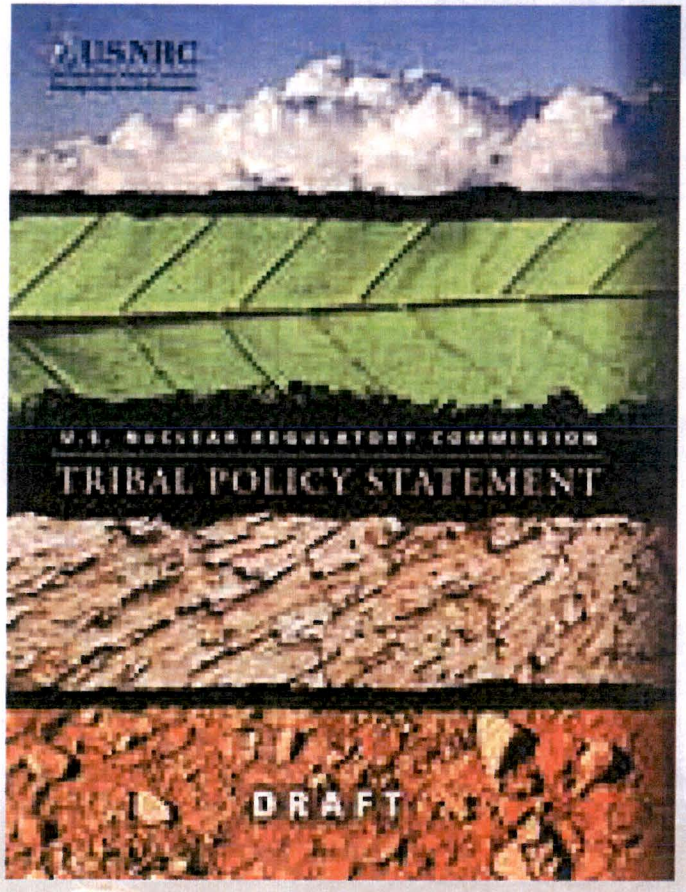
Typical Areas of High Interest

- Government Regulation
- Emergency Planning and Response
- Environmental Monitoring
- Security
- Local Investment

AEP

Cook Nuclear Plant

Cook Comments on NRC Policy and Protocol Manual



- The Manual should include the Pokagon Band as having Trust Lands within a 50-mile radius of a nuclear power plant.
- The Policy should foster outreach to all Tribal communities (recognized or not) on all issues of interest, with formal consultation of recognized Tribes focused on those with significant impacts.

AEP

Cook Nuclear Plant

Licensing Actions Are Not Suitable for Tribal Consult

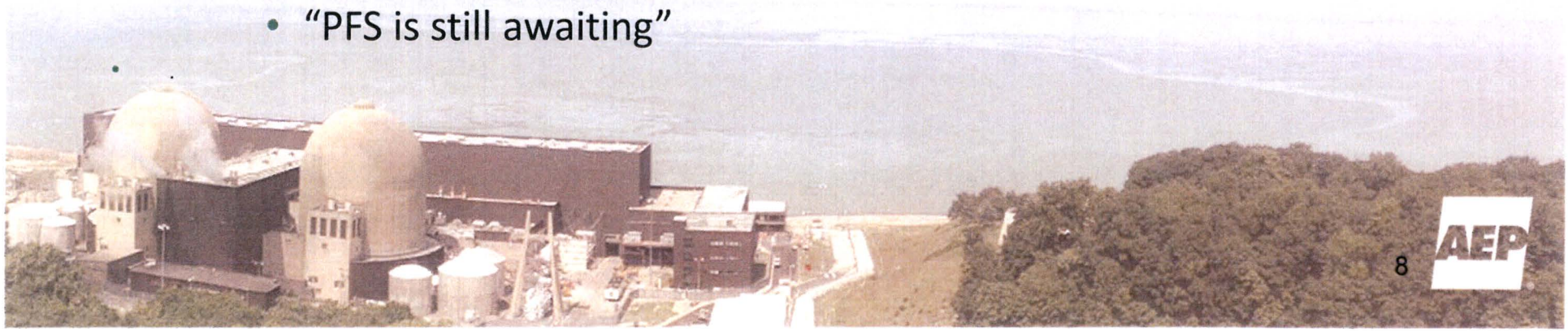
- Licensing Actions addressed in 10 CFR Part 2
  - Those regulations provide for public participation, including by Tribal Governments
  - Scope of Tribal consult should be only on associated activities like environmental or historic site reviews
- Commission role for those Tribal consultations not called for by a statute.

AEP

Cook Nuclear Plant

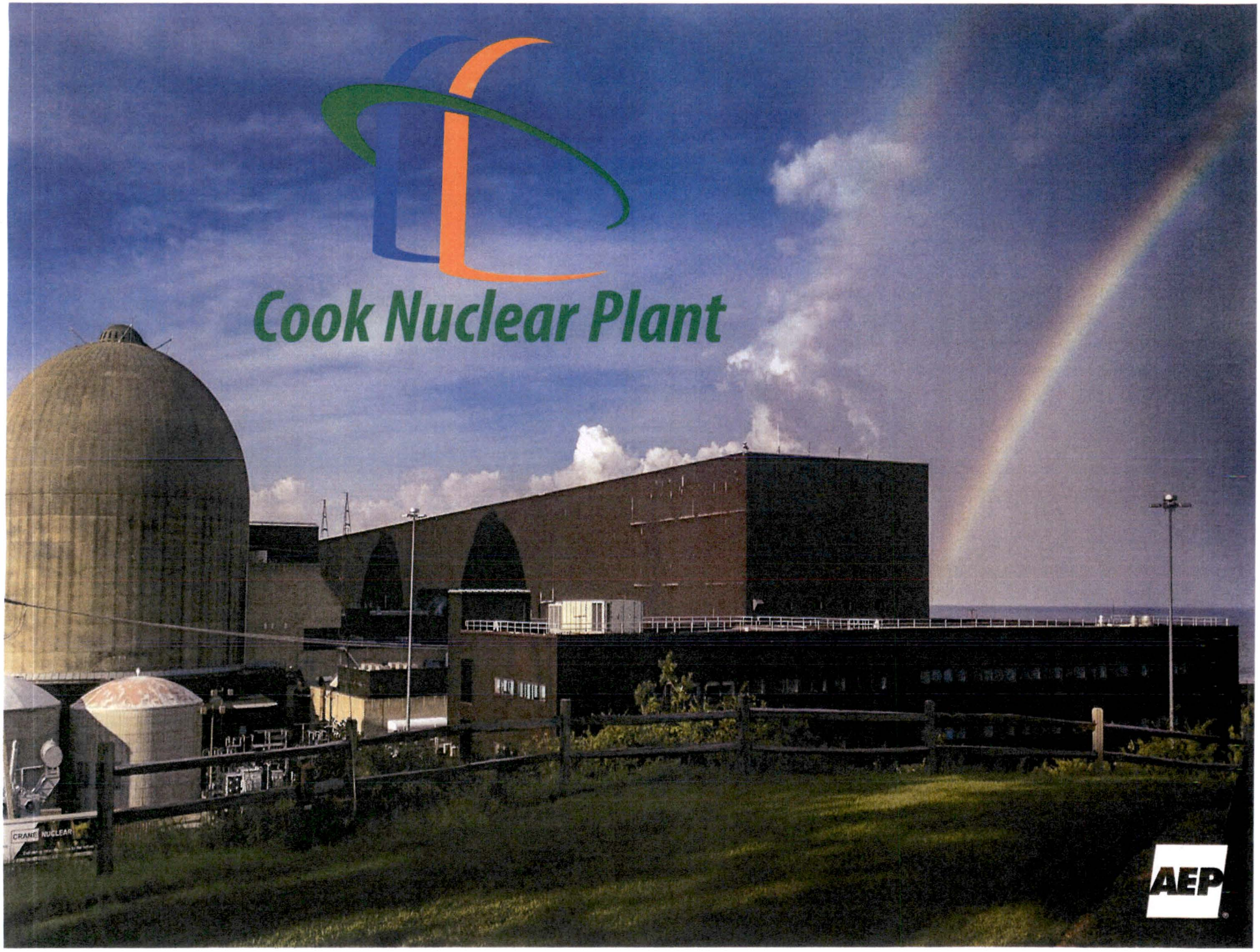
Respecting Tribal Sovereignty Is a Two-way Street

- **Tribal sovereignty deserves respect, whether the Tribe is supporting a nuclear project, opposing it, or has the matter under advisement.**
- ***Ohngo Gaudadeh Devia v. NRC***, Nos. 05-1419, 05-1420, 06-1087 (D.C. Cir.)
  - The language in the NRC annual summary of litigation could be more precise
    - "dissident Goshutes"
    - "PFS is still awaiting"



AEP

Cook Nuclear Plant



U.S.NRC

United States Nuclear Regulatory Commission

Protecting People and the Environment

U.S. Nuclear Regulatory Commission: Tribal Policy Statement Commission Briefing

NRC Panel

September 19, 2016

Opening Remarks

Glenn Tracy,
Deputy Executive Director for Operations for Materials, Waste, Research, State, Tribal, Compliance, Administration, and Human Capital Programs

Formal Statement recognizes the interest Tribes have in the licensing and regulation of radioactive materials

- Current NRC Tribal interactions are on a case-by-case basis.
- Statement establishes guidelines for staff and notifies the public of the NRC's policy principles.
- Identifies a designated official for Tribal consultations.

NRC Panel will address the following topics

- Commission Direction, NRC Priorities, and Budget Implications.
- Policy Statement Scope and Implementation.
- Policy Principles and Public Comments.

NRC Tribal Interactions

Marc Dapas, Director,
Office of Nuclear Material Safety and Safeguards (NMSS)

NRC recognizes its Federal Trust Relationship and Responsibility

- NMSS plays an integral role in outreach to Tribes.
- NRC has fewer Tribal interactions when compared to other Federal agencies.
- The NRC is committed to a government-to-government relationship with Tribes.
- Longstanding and unique relationship with the Prairie Island Indian Community.

NRC has maintained working relationships with Tribal governments and inter-Tribal organizations

- Consistent with spirit and intent of Executive Order 13175.
- Complies with statutory provisions, such as those in the National Historic Preservation Act.
- Encourages custom-tailored approaches to Tribal consultations.

Commission Direction, Priorities, and Budget Implications

Dan Collins, Director,
Division of Material Safety, State, Tribal and Rulemaking Programs, NMSS

Tribal interest in uranium recovery activities led to Commission direction to develop tools for effective Tribal interactions

- Develop and implement an internal protocol.
- NUREG-2173 - NRC Tribal Protocol Manual.

Tribal interest in uranium recovery activities led to Commission direction to develop tools for effective Tribal interactions (cont)

- Develop policy statement as a high-level foundation for the protocol that echoes the language and spirit of relevant Presidential Executive Orders.

Commission direction in the development of the Statement

- Use the existing tools and practices as a starting point.
- Seek input from the Tribes and the public on Tribal Protocol Manual.
- Clearly articulate that the NRC's actions must be in accordance with governing statutes and regulations.

Commission direction in the development of the Statement (cont)

- Sensitivity to the distinction between Indian Tribes who are Federally recognized and those who are not.
- Indicate that the NRC will conduct outreach to, and identity opportunities for, State-recognized Tribes to participate in the NRC regulatory process.

Commission direction in the development of the Statement (cont)

- Make the Tribal Protocol Manual available on the NRC's public web site.

NRC staff will shift resources from developmental efforts to implementation efforts

- Limited resources needed to maintain completed developmental tasks.
- Current budget sufficient to cover anticipated Tribal outreach efforts.
- Statutory obligations to consult with Tribes are accounted for in budget formulation.

NRC staff will shift resources from developmental efforts to implementation efforts (cont)

- Resources for potential future consultations will be addressed through the add/shed process.

NRC staff will monitor its Tribal activities and resource expenditures to identify any trends

- Commission-approved Implementation Plan identifies commitments and actions in support of the Policy Principles.
- Budget needs will be addressed through future planning, budgeting, and performance management process.

NRC Tribal Policy Statement: Policy Development, Scope, Policy Principles and Comments

Paul Michalak, Chief,
Agreement State Program Branch,
Division of Material Safety, State, Tribal and Rulemaking Programs, NMSS

Tribal Policy Statement development included feedback from Tribes, NRC offices, and other Federal agencies

- ***Federal Register*** **Notice to solicit suggestions for developing the Policy Statement and comments on Protocol Manual (October 12, 2012).**
- **Reviewed Tribal policy statements of executive departments, their related agencies, and other independent agencies.**

Tribal Policy Statement development included feedback from Tribes, NRC offices, and other Federal agencies (cont)

- ***Federal Register*** **Notice to solicit public comment on the proposed NRC Tribal Policy Statement (December 1, 2014).**

NRC Tribal Policy Statement is a high level, broad reaching document that will be implemented agency-wide

- Consistent with related Executive Orders and Presidential Memoranda.
- Not limited to a specific statute.
- Applies to Federally recognized Tribes.

NRC Tribal Policy Statement is a high level, broad reaching document that will be implemented agency-wide (cont)

- Encourages participation of State-recognized tribes to engage in the regulatory process, as appropriate.
- Provides agency-wide principles to achieve consistency.
- Encourages custom-tailored approaches to consultation and coordination.

NRC Tribal Policy Principles

- **The NRC Recognizes the Federal Trust Relationship and Will Uphold its Trust Responsibility with Indian Tribes.**
- **The NRC Recognizes and Is Committed to a Government-to-Government Relationship with Indian Tribes.**
- **The NRC Will Conduct Outreach to Indian Tribes.**

NRC Tribal Policy Principles (cont)

- **The NRC Will Engage in Timely Consultation.**
- **The NRC Will Coordinate with Other Federal Agencies.**
- **The NRC Will Encourage Participation by State-Recognized Tribes.**

NRC staff received comments on the proposed Tribal Policy Statement

- NRC's Trust Responsibility as a Federal agency.
- Suggested changes to the language of the Policy Statement.
- NRC's Tribal outreach and consultation.
- NRC's Government-to-Government relationship with Tribes.

Consultation revised to provide clarification and distinction from other NRC interactions with Tribes

- Meaningful and timely discussions on the NRC's regulatory actions that have substantial direct effects on one or more Indian Tribes.
- Mutually-agreed protocols, timely communication, coordination, cooperation, and collaboration.

Consultation revised to provide clarification and distinction from other NRC interactions with Tribes (cont)

- **Opportunities for appropriate Tribal officials/representatives to meet with NRC staff to discuss respective interests and perspectives.**

Interaction is defined to provide clarification

- Reciprocal actions involving the NRC and Indian Tribes.
- May include outreach, consultation, coordination, training, and information exchanges with Indian Tribes.

Outreach is defined to provide clarification and distinction from Tribal consultation

- Efforts to inform Indian Tribes about the agency's actions and plans.
- Includes sharing information and encouraging Tribal governments to communicate their concerns and interests to NRC staff.

Trust Responsibility is revised to provide additional clarification on how the NRC meets its responsibility to Tribes

- NRC exercises its Trust Responsibly in the context of its authorizing statutes.
- NRC implements its Trust Responsibility by ensuring that Tribal members receive the same protections under its implementing regulations that are available to other persons.

NRC National Historic Preservation Act Section 106 Process - Tribal Consultations, Developments, and Enhancements

Diana Diaz-Toro, Project Manager, Environmental Review Branch, Division of Fuel Cycle Safety, Safeguards, and Environmental Reviews, NMSS

National Historic Preservation Act requires federal agencies consider the effects of their actions on historic properties

Results in consultations with:

- **State Historic and Tribal Historic Preservation Officers**
- **Other federal, state, and local government agencies**

National Historic Preservation Act requires federal agencies consider the effects of their actions on historic properties (cont)

- Tribal governments
- Applicant/Licensee
- Other interested parties and the public

Complexity of National Historic Preservation Act Section 106 consultations can vary

Factors include:

- **Number of consulting parties**
- **Scope of the licensing action**
- **Location of the proposed facility**

NRC is continuously improving its process to comply with Section 106 requirements

- Finalizing staff guidance on conducting the Section 106 process for uranium recovery facilities.
- Partnership with the Advisory Council on Historic Preservation.

Questions?