

From: [Heather Westra](#)
To: [Williams, Kevin](#)
Cc: [Doyle, Dan](#)
Subject: [External_Sender] Letter regarding decommissioning rule
Date: Wednesday, September 07, 2022 6:51:20 PM
Attachments: [PIICDecommRuleComments.pdf](#)

?Attached is a letter from the Prairie Island Indian Community regarding the NRC's proposed rule on decommissioning.

It was great to talk to you about this matter on August 24. If you have any additional questions, please feel free to contact me.

Best regards,

Heather Westra

Johnny Johnson
President



Shelley Buck
Vice President

Valentina Mgeni
Secretary

Michael Childs Jr.
Treasurer

Cody Whitebear
Assistant Secretary/Treasurer

September 7, 2022

Secretary, U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Re: Docket ID NRC-2015-0070- Comments on the Regulatory Improvements for Production and Utilization Facilities Transitioning to Decommissioning

ATTN: Rulemakings and Adjudications Staff

Dear Secretary,

The Prairie Island Indian Community ("PIIC" or the "Tribe"), a federally-recognized Indian tribe, offers the following comments regarding the Nuclear Regulatory Commission's (NRC) proposed decommissioning rule, as noticed in the Federal Register on March 3, 2022 (87 FRN 12254). The proposed rule amends regulations relating to the decommissioning of production and utilization facilities. The NRC's goals in amending these regulations are to maintain a safe, effective, and efficient decommissioning process; reduce the need for license amendment requests and exemptions from existing regulations; address other decommissioning issues deemed relevant by the NRC. The Tribe's comments relate to federal trust responsibility, consultation, and potential archaeological and cultural impacts during decommissioning.

The Prairie Island Indian Community is a federally recognized Indian tribe organized under the Indian Reorganization Act of 1934. The Prairie Island Indian Community's tribal members are Mdewakanton Dakota. The Tribe's homeland is located at the confluence of the Vermillion and Mississippi Rivers in southeastern Minnesota, approximately 35 miles southeast of the Twin Cities. The Mdewakanton, or "those who were born of the waters," have lived on Prairie Island for countless generations. *See Figure 1.*

Immediately adjacent to our homeland is the Prairie Island Nuclear Generating Plant (PINGP) and independent spent fuel storage installation (ISFSI), which are separately licensed and regulated by the NRC. The PINGP has been on-line since the mid-1970's and will currently

operate until 2034. If the PINGP is decommissioned in 2034, there will be 98 casks of spent fuel stored on-site, less than 700 yards from tribal member homes. Quite possibly, the PINGP will be relicensed for a subsequent term (i.e., until 2054). There is no other community as close to a nuclear power plant or storage facility as the Prairie Island Indian Community *See Figure 2.*

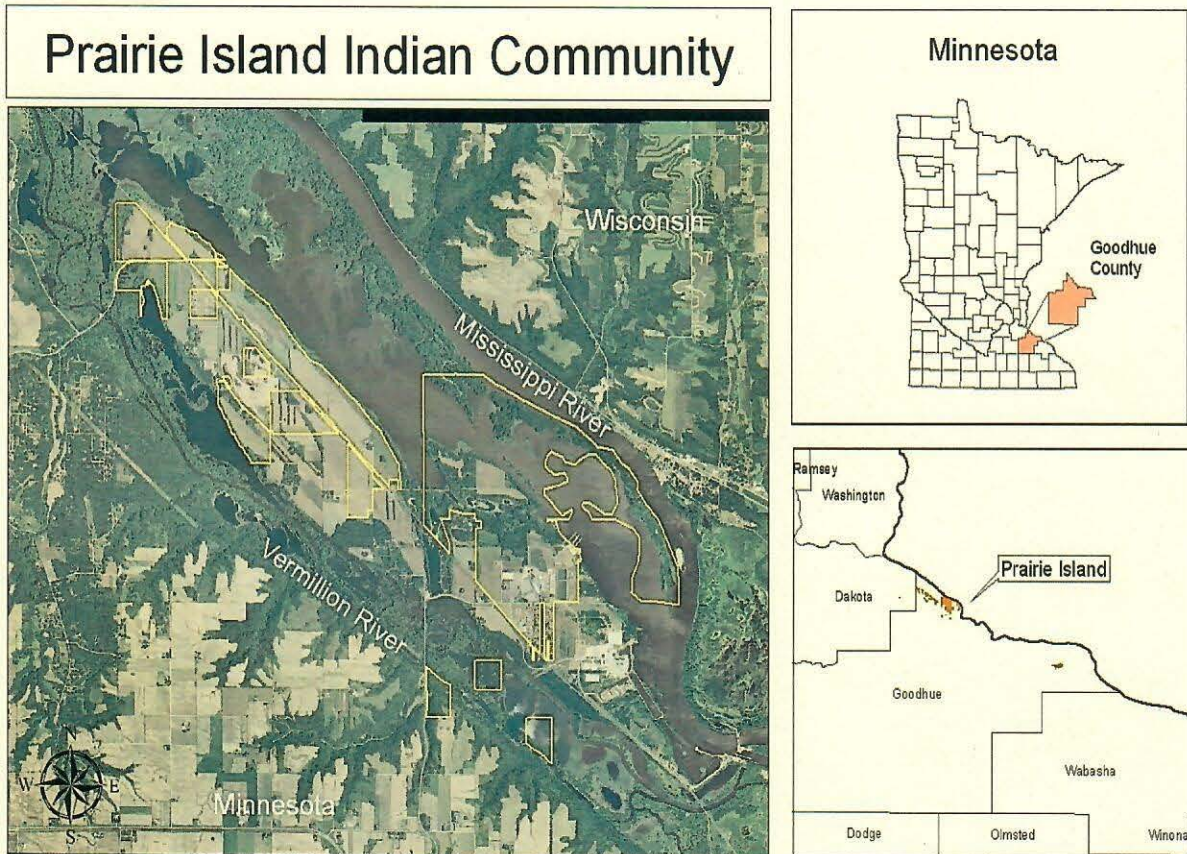


Figure 1. The lands of the Prairie Island Indian Community

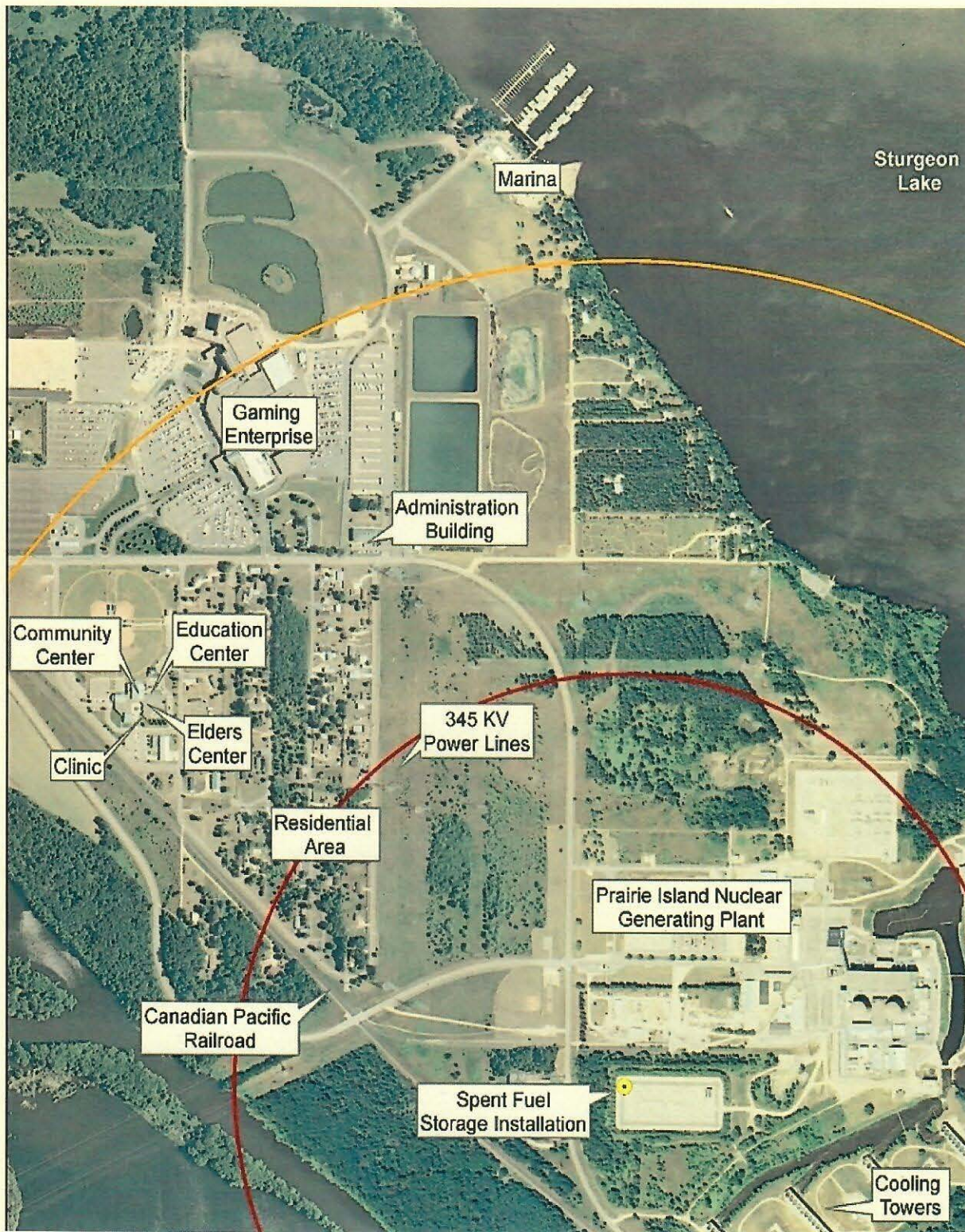


Figure 2.

The PIIC has a long history of working with the NRC, at both the regional and headquarters levels. The Tribe has been a Cooperating Agency for the purposes of developing an Environmental Impact Statement for the PINGP license renewal and an Environmental Assessment for the ISFSI license renewal. We believe that our strong working relationship with the NRC, both at the regional and headquarters levels, is based on mutual respect and a shared goal of protecting people and the environment. We helped with the development of the NRC's Tribal Policy Statement and Tribal Protocol Manual. The NRC has also attended many tribal meetings over the last decade. It is therefore astonishing that there is no mention of "tribes," "tribal governments" or even the word "tribe" in the proposed rule-making.

Both the NRC's Tribal Policy and Tribal Protocol Manual, in place for several years, serve to guide the agency in its interactions with tribes. Although the proposed decommissioning rule asks what "the appropriate role of State and local governments and nongovernmental stakeholders in the decommissioning process" might be, there seems to be no role for tribal governments, contrary to agency goals for working with tribes. If asked, most tribes impacted by nuclear power plants, will want to be involved in the decommissioning process. This oversight must be corrected.

Tribal Sovereignty and Federal Trust Responsibility

The most basic principle of Indian law is the principle of "sovereignty." That is, an Indian tribe possesses all the powers of any sovereign state. Tribal governments are not subject to state or local jurisdiction but are universally subject to federal jurisdiction. The tribes enjoy a government-to-government relationship (and expectation) with the federal government through its agencies, like the NRC, as affirmed by the agency's Tribal Policy and Tribal Protocol Manual.

Both the Tribal Protocol Manual and the NRC Tribal Policy provide important historical information, such as various treaties, Congressional Acts affecting Indian tribes and rights, and a discussion of the Federal Trust Responsibility. This information provides the proper historical context critical to understanding the unique relationship federally recognized Indian tribes have with the Federal Government. This point is underscored in the Tribal Protocol Manual, which notes that Indian tribes are not the public or special interest groups, but are, in fact, governments. This point is important in understanding why tribes desire to have a government-to-government relationship and be included and recognized in NRC proceedings.

The final rule must be revised to recognize that tribes have an interest and potential role in the decommissioning of nuclear power plants. Moreover, the NRC should ensure that impacted tribes are part of any Community Advisory Boards or Community Advisory Panels that are established by the licensee as part of the decommissioning process.

Consultation

As expressed in Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, "Consultation. (a) Each agency shall have an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." [2] The purpose of consultation is to ensure that Indian Tribes are consulted before government officials make decisions that may have an impact on their lives and territories; this includes agency legislative proposals.

Nowhere in the draft rule is there discussion of how potentially impacted tribes will be identified and consulted. The concept of government-to-government consultation between Indian tribes and the United States is long-standing and well recognized. As expressed in Executive Order 13175, Consultation and Coordination with Indian Tribal Governments": "Consultation - Each federal agency must have an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." The purpose of consultation is to ensure that Indian tribes are meaningfully involved before government officials make decisions that may have an adverse impact on their lives and territories.

Consultation should go well beyond simply communicating information to Tribal Governments via a letter or Federal Register Notice. It should be a two-way dialog, where the federal agency taking an action meets with Tribal leaders or appointed representatives to discuss the action, any possible impacts and identify possible solutions. Presenting the proposed decommissioning rule at a tribal meeting is outreach, not consultation.

In addition to the requirement for Federal agencies to consult with a Tribe over actions that may have an impact on that Tribe, there are several other good reasons for all government levels, as well as private businesses, to consult with Tribes. Consultation respects Tribal sovereignty and provides an opportunity to work together on mutual interests. Sharing information, and seeking guidance and advice, usually results in a better, more acceptable mutual solution, to a problem or issue.

The NRC must identify and consult with tribes potentially impacted by this rule (which we understand to be about 30 tribes). Because this is such a complicated rule-making, the NRC should convene a meeting with tribes likely to be impacted by this rule. We welcome such a meeting and look forward to participating.

Post-Shutdown Decommissioning Activities Report

The proposed rule asks whether it is advisable to require a licensee's post-shutdown decommissioning activities report (PSDAR) to be approved by the NRC. The purpose of the PSDAR is to "provide the NRC and the public with a general overview of the licensee's proposed

decommissioning activities” and is a way to inform the public of the proposed decommissioning activities before they commence.

The PSDAR also evaluates potential impacts to surface water, groundwater, threatened and endangered species, as well as archaeological and cultural resources. Without the requirement for the NRC to approve the PSDAR, there is no federal mechanism to ensure that tribes are involved in the process. Otherwise, it will be up to the licensee to involve the tribes.

This is especially critical with respect to environmental impacts. It is not clear whether new or updated information is included (or required to be included) in the PSDAR or whether original licensing documents are the basis for the report. This approach could result in the potential destruction of important cultural and archaeological resources.

As we mention above, we were a Cooperating Agency for the NRC’s EIS for the relicensing of the PINGP (NUREG-1437, Supplement 39) and the EA for the ISFSI renewal (Docket 72-0010), as well as Intervenors. The basis for the NRC’s EIS and EA was Xcel’s Environmental Reports (ER) submitted with each licensee application. In both dockets we raised a contention related to the adequacy of the ER to consider potential impacts to cultural and archaeological resources. In both cases, the Atomic Safety and Licensing Board Panel (ASLBP) found that we raised a genuine concern.

What we found is that, in both cases, the information provided in the ER, pertaining to archaeological resources was outdated and insufficient. Had we not intervened in the proceeding or been a Cooperating Agency, we never would have known that burial mounds on Xcel’s property were disturbed in the 1960’s, human remains and funerary objects were removed, excavation units left open, and that a cooling tower was constructed atop of a burial mound. To settle our contentions (both proceedings), Xcel agreed to conduct additional archaeological surveys and to develop a Cultural Resources Management Plan. The additional surveys identified several previously unrecorded archaeological sites that will now be protected during the decommissioning of the PINGP and ISFSI.

If the original licensing documents (ER, EA, Environmental Statement or EIS) form the basis of the PSDAR, and they are either not updated or are insufficient, there is great potential for adverse impacts. This is why it is critical that the NRC approve the PSDAR’s, which will trigger consultation with the tribes. This important step cannot be left up to the licensees. While some tribes may enjoy a good relationship with the licensee, others may not, and some licensees may not be aware of tribes potentially impacted by decommissioning.

We thank you for this opportunity to provide our comments. If you have any questions, please contact Heather Westra at (651) 329-5796.

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Respectfully submitted,



Johnny Johnson, President
Prairie Island Indian Community