



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

May 9, 2024

Kelly Applegate
Commissioner of Natural Resources
Mille Lacs Band of Ojibwe
43408 Oodena Drive
Onamia, MN 56359

SUBJECT: SECTION 106 CONSULTATION REGARDING THE MONTICELLO NUCLEAR
GENERATING PLANT, UNIT 1 SUBSEQUENT LICENSE RENEWAL
APPLICATION (DOCKET NUMBER: 50-263)

Dear Commissioner Kelly Applegate:

On March 13, 2023, the U.S. Nuclear Regulatory Commission (NRC) staff initiated consultation under Section 106 of the National Historic Preservation Act of 1966, as amended (NHPA) with the Mille Lacs Band of Ojibwe regarding the Monticello Nuclear Generating Plant, Unit 1 (Monticello) subsequent license renewal application (Agencywide Documents Access and Management System (ADAMS) ML23069A280). In accordance with Title 36 of the *Code of Federal Regulations* Section 800.8(c), the NRC staff has elected to use the National Environmental Policy Act of 1969, as amended (NEPA), process to comply with its obligations under Section 106 of the NHPA. On April 24, 2024 (ML24106A110), the NRC staff notified your Tribe of the availability of the draft environmental impact statement (DEIS), NUREG-1437, Supplement 26, Second Renewal, "Site-Specific Environmental Impact Statement for License Renewal of Nuclear Plants: Regarding Subsequent License Renewal for Monticello Nuclear Generating Plant, Unit 1, Draft Report for Comment." In that notification, the NRC staff requested your comments on the DEIS and its preliminary conclusions by June 10, 2024.

Over the course of the Section 106 consultation to date, our offices have exchanged additional correspondence and held meetings to discuss this undertaking. Specifically, on April 12, 2023 (ML23117A313), your office provided scoping comments in correspondence to the NRC. Additionally, on July 25, 2023 (ML23222A126), August 10, 2023 (ML23237A264), November 17, 2023 (ML23345A012), and January 11, 2024 (ML24023A090), the NRC staff held consultation meetings with your office. The NRC staff would like to take this opportunity to address the scoping comments provided in correspondence to the NRC dated April 12, 2023, and concerns raised during the consultation teleconference meetings on August 10, 2023, and January 11, 2024. The NRC staff notes that the scoping comments provided in your April 12, 2023, letter addressed the applicant's (Xcel Energy) subsequent license renewal application, specifically the Environmental Report (ER). The NRC considered these comments in the development of the DEIS.

Section 404 of the Clean Water Act (CWA)

In your letter to the NRC dated April 12, 2023, your Tribe identified that the State of Minnesota is exploring the potential to assume the permitting and administration responsibilities for the Clean Water Act Section 404 permit program, for discharges of dredged and fill material, from the U.S. Army Corps of Engineers (USACE). In the event that the State assumes this authority, you urge that the NRC be permitted by the USACE, for the section of the Mississippi River that is within the Monticello's operation boundaries, to ensure that the Federal government maintains its trust responsibilities to Tribes.

As the nation's regulator of nuclear power plants, the NRC is not authorized or positioned to seek a permit from the USACE to oversee licensee compliance with the CWA; rather, NRC licensees are responsible to comply with the permits issued by other cognizant regulatory authorities. For Monticello, Xcel Energy periodically conducts mechanical or hydraulic maintenance dredging in the area in front of the plant's concrete intake apron and the Mississippi River. Monticello holds both a USACE regional general permit (RGP-003-MN) and a Minnesota Department of Natural Resources State dredge permit (1967-0743). As discussed in Appendix B of the DEIS, there are several Federal laws and regulations that affect environmental protection, health, safety, compliance, and consultation at NRC licensed nuclear power plant sites. The applicant (Xcel Energy), not the NRC, is responsible for obtaining all necessary Federal permits, licenses, approvals and other entitlements in connection with the operation of a nuclear power plant. The NRC does not apply for or hold dredging permits from either the USACE or States that have assumed permitting responsibilities under Section 404 of the CWA. Furthermore, the NRC does not have authority over Section 404 CWA permitting and cannot be delegated such authority by the USACE.

Region and 50-mile Radius from the Site

In your letter to the NRC dated April 12, 2023, your Tribe requested that the reference point for the 50-mile radius be set at the site boundary so that it would result in the Mille Lacs Reservation being 49.83 miles from the site boundary. The definition of vicinity (6-mile radius) and region (50-mile radius) is generally left to the discretion of the applicant. Historically, the reference point for the 50-mile radius in license renewal applications, for one-unit plants, is the reactor center point. The applicant set the reactor center point as the reference point in its ER. In the applicant's ER, using this reference point, the Mille Lacs Reservation falls outside of the 50-mile radius. In the DEIS the NRC staff also used the reactor center point as the reference point for the 6-mile and 50-mile radius consistent with the applicant's ER and established practice for one-unit plants.

Historic and Cultural Resources

In your letter to the NRC dated April 12, 2023, your Tribe commented that the ER's cultural history discussion was Euro-American focused and the Tribe disagreed with the ER's assessment of onsite cultural resources as the assessment was based on the Minnesota State Historic Preservation Office (MN SHPO) databases. The NRC staff addressed these comments in the DEIS. In Section 3.9.1.4, Contact Period/Mille Lacs Band of Ojibwe History, of the DEIS the NRC staff included a discussion of treaties, a brief history excerpt from your Tribe's perspective that was provided in your April 12, 2023, letter, and a comprehensive land use history beyond Euro-American context. Additionally, Section 3.9.2, Historic and Cultural Resources at Monticello, includes a discussion of resources beyond what is identified in the MN SHPO databases, including red cedar (*Juniperus virginiana*) and wild rice (*Zizania* spp.). A

discussion of red cedar and wild rice is also provided in Section 3.6.3.7, Culturally Important Species, of the DEIS.

During the August 10, 2023, teleconference, your Tribe requested that an inventory of culturally important plant species be conducted to determine/identify if red cedar and wild rice are present on the Monticello site. Additionally, during this teleconference your Tribe requested to participate in surveys conducted on the Monticello site. As discussed in Section 3.9.2, Historic and Cultural Resources at Monticello, of the DEIS, Xcel Energy contracted Westwood Professional Services, Inc. (Westwood) to conduct a Phase IA cultural resources literature search and a survey of culturally important plant species within the Monticello site. In support of the literature search, a field visit was conducted in late October 2023 and a representative of the Mille Lacs Band of Ojibwe's Tribal Historic Preservation Office was in attendance. On December 6, 2023, a representative of the Mille Lacs Band of Ojibwe's Tribal Historic Preservation Office was also in attendance when the culturally important plant species survey was conducted. Because the peak growth period for wild rice is between July and early October, Westwood was not able to complete a survey for wild rice during their field visit. Westwood plans to complete the survey in early summer of 2024. In a response to NRC's request for additional information, Xcel Energy stated that it will invite the Mille Lacs Band of Ojibwe to participate in the wild rice survey. On December 21, 2023, Xcel Energy informed NRC staff that a draft copy of the Phase IA cultural resources literature search and a survey of culturally important plant species was provided to your Tribe for review and comment. During the January 11, 2024, teleconference, the NRC staff discussed comments from the Mille Lacs Band of Ojibwe regarding the Monticello site cultural resource literature search and red cedar survey commissioned by Xcel Energy. During the January 11, 2024, teleconference, your Tribe requested that should ground disturbance occur outside the Monticello Nuclear Generating Plant facility complex, a Tribal monitor should be present. As discussed in Section 3.9.3, *Procedures*, of the DEIS, Xcel Energy is updating its site procedures to incorporate a direction to notify and invite the Mille Lacs Band of Ojibwe to monitor ground disturbing activities should ground disturbance occur in areas outside the Monticello Nuclear Generating Plant facility complex and that are under the control of Northern States Power – Minnesota, doing business as Xcel Energy. Once the procedure updates are finalized, the NRC staff will verify that they have been updated to stipulate that Xcel Energy will invite the Mille Lacs Band of Ojibwe to monitor ground disturbing activities.

Air Quality Resources

In your letter to the NRC dated April 12, 2023, your Tribe noted the Mille Lacs Reservation has not been redesignated as a Class I Federal Area. As stated in the Section 3.3.2, Air Quality, of the DEIS, the NRC staff confirmed that there are no Class 1 Federal Areas within 100 miles of the Monticello site.

Seismic History

In your letter to the NRC dated April 12, 2023, your Tribe noted that the nearest fault identified in the applicant's ER is incorrect and requested a discussion that the Monticello site is located at the edge of the Midcontinental rift zone. The NRC staff addressed these comments in the DEIS. Section 3.4.4, Seismic Setting, of the DEIS discusses the seismic setting in the vicinity of Monticello and indicates that the mapped fault nearest to the Monticello site is approximately 2.9 miles northwest of the site, which comports with the nearest fault line you identified in your

scoping letter. Section 3.4.1, Physiography and Geology, of the DEIS discusses Precambrian rifting.

Terrestrial Ecology

In your letter to the NRC dated April 12, 2023, your Tribe requested that a discussion of terrestrial animal communities should consider two sites (Sherburne National Wildlife Refuge and State Uncas Dunes Scientific and Natural Area) that host migratory birds and trumpeter swan population within the Monticello site. The NRC staff addressed these comments in the DEIS. Section 3.6.3.6, Important Species and Habitats, of the DEIS discusses important habitats on and around the Monticello site and this discussion includes the Sherburne National Wildlife Refuge and Sand Dunes State Forest. Section 3.6.3.4, Species Protected under the Migratory Bird Treaty Act, of the DEIS provides a discussion of trumpeter swan population within the Monticello site.

Aquatic Ecology

In your letter to the NRC dated April 12, 2023, your Tribe requested consideration of the potential threat of bighead carp, also known as the “Asian carp” and a discussion that under the 1837 Treaty of St. Peters 11 Tribes exercise their right to hunt, fish, and gather within this territory. The NRC staff addressed these comments in the DEIS. Section 3.7.1.2, Important Species and Habitats of Mississippi River, of the DEIS includes a discussion of Asian carp and Tribal fishing rights. Additionally, Section 3.9.1.4, Contact Period/Mille Lacs Band of Ojibwe History, of the DEIS includes a discussion of the Treaty of 1837.

Environmental Justice

In your letter to the NRC dated April 12, 2023, your Tribe identified that the ER’s Environmental Justice (EJ) analysis did not consider Tribal usufructuary practices for subsistence hunting, fishing, and gathering or how NRC’s oversight of Monticello would serve to meet the Justice40 Initiative. The NRC staff addressed these subsistence practices in the DEIS. Section 3.12, EJ, of the DEIS includes a discussion of Tribal usufructuary practices for subsistence. With respect to the Justice40 Initiative, Section 402 of E.O. 14057, “Catalyzing Clean Energy Industries and Jobs Through Federal,” states that “agencies shall consider incorporating recommendations of the Justice40 Initiative,” required by section 223 of Executive Order 14008, “Tackling the Climate Crisis at Home and Abroad.” The Justice40 Initiative sets a goal for certain Federal investments for 40 percent of the overall benefits to flow to disadvantaged communities. SECY- 22-0025, “Systematic Review of How Agency Programs, Policies, And Activities Address Environmental Justice,” states that E.O. 14008 was evaluated by the NRC staff and the evaluation did not identify any agency programs to which the Justice40 initiative would apply. As such, the DEIS does not consider the Justice40 initiative.

If you have any questions concerning the NRC's environmental review or information provided in this letter, please contact Nancy Martinez, by phone at 630-829-9734 or via email at Nancy.Martinez@nrc.gov, or Jessica Umana, by phone at 301-415-5207 or via email at Jessica.Umana@nrc.gov by June 10, 2024.

Sincerely,



Signed by Moses, John
on 05/09/24

John M. Moses, Deputy Director
Division of Rulemaking, Environmental
and Financial Support
Office of Nuclear Material Safety
and Safeguards

Docket No. 50-263

cc:

Melanie Benjamin
Chief Executive/Chairwoman

Susan Klapel
Executive Director of Natural Resources

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