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January 2, 2013

Cindy Bladey  
Chief, Rules, Announcements, and Directives Branch  
Office of Administration  
Mail Stop: TWB-05-B01M  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Re: Docket ID NRC-2012-0246  
Comments on the Notice of Intent to Prepare Environmental Impact Statement

Dear Ms. Bladey:

In its October 25, 2012 Federal Register notice, 77 Fed. Reg. 65137, the Nuclear Regulatory Commission ("NRC") announced its intent to prepare an environmental impact statement ("EIS") with regard to the Waste Confidence decision and rule. Northern States Power Company, a Minnesota Corporation d/b/a/ Xcel Energy ("NSPM"), and the Prairie Island Indian Community ("PIIC") submit the following joint comments in response to the NRC's invitation.

NSPM is the owner and operator of the Monticello Nuclear Generating Plant, the Monticello Independent Spent Fuel Storage Installation, the Prairie Island Nuclear Generating Plant ("PINGP"), and the Prairie Island Independent Spent Fuel Storage Installation ("ISFSI"). The PIIC is a federally recognized Indian tribe. The Tribe's Reservation is located on the ancestral homeland of the Mdewakanton Dakota on Prairie Island, which is formed at the confluence of the Vermillion and Mississippi Rivers in southeastern Minnesota (approximately 35 miles southeast of the Twin Cities of Minneapolis and St. Paul, Minnesota). The Mdewakanton, "those who were born of the waters," have lived on Prairie Island for countless generations.

The PINGP and ISFSI are also located on Mdewakanton Dakota ancestral lands and immediately adjacent to the Prairie Island Indian Community Reservation. The PINGP's ISFSI is approximately 600 yards from the nearest Community residences, and is located on the west bank of the Mississippi River in an area that is quite popular for recreational boating and heavily used by barges. With the signing of the Nuclear Waste Policy Act ("NWPA") in 1983, the Federal Government resolved to dispose of spent nuclear fuel generated by this country's nuclear power plants. Even in 1983, the NWPA recognized that "a national problem" had been created by the accumulation of spent nuclear fuel, that previous Federal efforts for its disposal had been inadequate, and that it was the Federal Government's responsibility to provide for its permanent

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disposal. At the same time, the NWPA recognized that it was the responsibility of the utilities generating the spent fuel to pay for its disposal, via a one mil per kilowatt-hour of nuclear energy generated fee assessed to nuclear utility customers (i.e., ratepayers).

Since 1983, only the ratepayers' responsibility to pay has been met. American ratepayers have paid in over \$30 Billion (including interest) to the Nuclear Waste Fund with nothing to show for it. The Federal Government, with a statutory and contractual obligation to begin disposing of utilities' spent fuel by 1998, at first acknowledged this responsibility, then later said it would meet the obligation by 2003, then 2010, then 2017, and then finally stopped projecting any dates whatsoever. In 2010, the Federal Government unilaterally cancelled the entire waste program (except for the collection of the Nuclear Waste Fees from the utilities and ultimately their customers).

Since the early days of the Federal Government's nuclear waste program, NSPM and the PIIC have worked cooperatively in attempting to encourage and enforce the Federal Government's obligation. While NSPM and the PIIC have separate and sometimes diverging interests, they both have a common interest in seeing that the Federal Government carries out its responsibility to dispose of the spent fuel from Prairie Island and this nation's other commercial nuclear plants.

With respect to the scoping process for the Waste Confidence EIS, NSPM and the PIIC urge the NRC to recognize that the underlying need for the Waste Confidence decision and rule arises because of the Federal Government's failure to meet its legal responsibilities. Had the Department of Energy ("DOE") performed as required, long-term on-site storage of spent fuel would not have been necessary. Few, if any, commercial nuclear power plants would have had to construct and operate independent spent fuel storage installations ("ISFSI's"). The Prairie Island ISFSI would not have been necessary, let alone its anticipated 40-year license renewal.

One of the key issues for the scoping process identified in the October 25, 2012 Federal Register notice, is determining the potential spent fuel storage scenarios for the NRC to evaluate in the EIS. The notice identifies three possible scenarios – (1) temporary spent fuel storage after reactor operation ceases "until a repository is made available . . . in the middle of the century"; (2) temporary spent fuel storage after reactor operation ceases "until a repository is made available . . . at the end of the century"; and (3) spent fuel storage "if no repository is available by the end of the century." 77 Fed. Reg. at 65138. NSPM and the PIIC do not disagree with the NRC's use of scenarios (1) and (3). The first scenario, assuming that a repository is available in the middle of this century, is a conservative estimate as to when a repository should be available. After all, the 37 years for a repository to become available by the middle of this century is more than twice the time that Congress allowed for an operational repository when it enacted the Nuclear Waste Policy Act in 1982. The third scenario, assuming that no repository will be available, is clearly the most conservative possible scenario, assuming that a repository will not be available.

Joint Comments of Northern States Power Company d/b/a Xcel Energy Inc. and the Prairie  
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It is the second possible scenario identified in the Federal Register notice that NSPM and the PIIC find objectionable and request that it not be used in the EIS analysis. A repository that is not available until the end of this century is a repository that takes the Federal Government more than 85 years to implement. If there is going to be a repository, there is no reason why it should take that long. Including such a scenario in the EIS may encourage the view that it is acceptable for the Federal Government to wait that long to put a repository in place. There is no excuse for such an extended schedule when everyone, regardless of their views on nuclear energy, agrees that permanent disposal of spent fuel and high-level radioactive waste should be developed and implemented with all reasonable speed. Especially where the EIS will analyze the third scenario, i.e., the possibility that there will be "no repository," a scenario that assumes an 85-year schedule for a repository is unnecessary and unreasonable, and potentially counterproductive.

Finally, NSPM and the PIIC urge that the NRC, in scoping the Waste Confidence EIS, acknowledge that the uncertainty as to when the Federal Government will meet its obligation to dispose of the utilities' spent nuclear fuel is the underlying cause of the remand by the U.S. Court of Appeals for the DC Circuit in *New York v. NRC*. The NRC should similarly acknowledge that this uncertainty is due to the Administration's unilateral decision to terminate the Yucca Mountain program and to the failure of the Congress to provide adequate funding for the Yucca Mountain program. The NRC should acknowledge that the DOE and the Administration, having ended the current nuclear waste program, have failed in their obligation to put in place a new program. It has been almost a year since the Blue Ribbon Commission, created to recommend the path forward for handling nuclear waste, published its final report. The DOE was expected to release an implementation plan detailing how it would address the Commission's recommendations by July 2012; as of this date no such plan has been released.

While the EIS is intended to assess the environmental impacts of spent fuel stored at commercial nuclear power plants after cessation of operations, NSPM and the PIIC submit that the EIS must also evaluate the underlying causes of the need to store spent fuel at reactor sites long after reactor operations have ceased. This would provide an explanation and context for why the EIS is needed. It also performs the equally important function of educating the public as to the reasons for the current nuclear waste dilemma.



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