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John Wachtler
Project Manager
Environmental Quality Board
300 Centennial Bldg.
658 Cedar St.
St. Paul, MN 55155

Via email: john.wachtler@state.mn.us

RE: COMMENTS ON SCOPE OF EIS

Application to the Minnesota Public Utilities Commission for a Certificate of Need – Monticello Spent Nuclear Fuel Storage
EQB Docket No. 04-87-CON-Monticello
PUC Docket No. E002/CN-05-123

Dear Mr. Wachtler:

I'm sending this letter Comment regarding the Scope of the EIS as a part of the EQB's review of Xcel's Certificate of Need application. My concerns are based on my experienced on my work representing Florence Township on nuclear waste issues and other projects that grew out of that intervention.

Given what I know of Comments of others, I am limiting my Comment to narrow topics. Two aspects concern me regarding the scope – the intersection of federal and state jurisdiction, and the purpose of the EIS.

Federal/State Jurisdiction

The “need” for dry cask storage is predicated on two things. First, the CoN is the foundation of the state's jurisdiction, as it is the economic regulation allowed – economics are all that the state may regulate in things nuclear. CoN approval for dry cask storage depends on demonstration for need for the power produced by the generating facility producing the nuclear waste (as we say in transmission, “It's all connected.”), and an examination of relicensing is inherent in the examination. Second, it requires that on site dry cask storage be the best alternative both for the immediate “need” for continued Monticello generation, and that it be the reasonable solution if the “need” is demonstrated for Monticello when that is factored into the generation

alternatives mix. This is a complicated question at best, and as proposed, the EIS will address these issues.

Under the scope as proposed, the EIS will also address more directly “environmental” issues, with the caveat that state jurisdiction is limited. That does not mean, however, that the state should not raise issues beyond its jurisdiction, just that we must be understand the limits of the state’s power and the state must raise take responsibility to raise these issues in the federal forum.

Short version:

- State jurisdiction is limited
- EIS scope should not be limited to that which state has jurisdiction over
 - Inform record about pertinent environmental issues
 - Build record for presentation of Minnesota’s interest in federal venue

Federal Intervention - Purpose of EIS

Environmental issues are within the federal jurisdiction. Therefore, the EIS is most effective as a tool for guidance in federal intervention by the state to represent Minnesota’s interest.

The state has little jurisdiction over environmental issues due to federal preemption over health and safety issues, so in one sense, there’s little point to an EIS. On the other hand, these environmental issues must be fully developed at the federal level. The EQB should use this EIS opportunity to build the record to support the state’s environmental intervention. How? If this record is as complete as possible on all issues, it will be the groundwork for the issues important to Minnesotan’s, representative of the public interest that the state has the obligation and mandate to represent in the federal proceeding. This is the best way to assure that all issues are covered to the extent possible, and that there are no surprises going forward. Toward this end, I urge the EQB to take a broad a view of scope as is possible and take in information for guidance in state intervention.

State intervention was an issue during the Florence Township proceeding. The state did not have the will to effectively represent the issues of the state. An example of how this can and should occur is the way that the Environmental Quality Board intervenes in Public Utility Commission proceedings. The state intervenes not to support or oppose the application, but to inform the record and assure that Minnesota’s environmental interests are represented, that is, after all, the mandate of the EQB. The state’s EIS can develop the issues to present at the federal level, and provide sufficient background to put forth an effective intervention, using the input of concerned citizens who comment to bring a broader and deeper view than staff could accomplish independently.

This multipurpose EIS would also provide the opportunity for the state to assess the utility for the development of this record such that the state could retain experts and conduct reasonable factfinding.

Short version:

- Environmental review limited at state, but open at federal level
- Use EIS to develop environmental issues in depth, regardless of jurisdiction
- Use EIS to inform and provide base for EQB intervention at federal level
- Asses utility for costs of broad EIS

I cannot stress strongly enough the need for effective state intervention at the federal level, both in the NRC proceeding generally and specifically regarding environmental issues under the mandate of the EQB.

Very truly yours,

Carol A. Overland
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