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Burl Haar, Executive Secretary
Chair Boyd, and Commissioners O'Brien, Pugh, Reha, and Wergin
Public Utilities Commission
121 – 7th Pl. E.
St. Paul, MN 55101

Via eDockets & email

RE: Request for Citizen Advisory Task Force – Minn. Stat. §216E.08
Prairie Island uprate and drycask docket, 08-509; 08-690 et seq.

The commission shall adopt broad spectrum citizen participation as a principal of operation.

Minn. Stat. §216E.08, Subd. 2

Dear Dr. Haar, Chair Boyd, and Commissioners O'Brien, Pugh, Reha, and Wergin :

To be clear --I am making this statement as an individual who is an attorney who has represented many Intervenor, parties and interests in proceedings before the Public Utilities Commission. I am not making this statement on behalf of any client or in the course of representation of any party – I'm not representing any party in this matter and have not intervened personally.

My interest in the Prairie Island nuclear dockets stems from prior representations, including Florence Township when then NSP had applied to site nuclear waste in the Township, interest in the Monticello docket, and interest in all things nuclear. I have also petitioned for a Task Force in the past, specifically for the Mesaba Project, on behalf of my client mncoalgasplant.com, and in the Chisago Project for my then client Concerned River Valley Citizens, and perhaps on behalf of Florence Township (my memory is failing me on that one).

A Task Force should be appointed

Two weeks ago, I was at the CapX 2020 hearing in the small hearing room and was notified of and then attended the Prairie Island Prehearing/Scheduling Conference. Despite a well-attended Scoping Public Meeting the evening before in Red Wing, I was the only member of the public at the table. It was disturbing that there was no one else there addressing public interest issues. Anyway, at that time, I raised the importance of a Task Force, because that was nowhere mentioned on the proposed schedule. I also raised my concerns about how Task Forces have functioned and not functioned over time. Because consideration of appointment of a Task Force is before you today, and because once again MOES staff is opposing establishment of a Citizen Task Force, I raise these issues here for your consideration.

*Subdivision 1. **Advisory task force.** The commission may appoint one or more advisory task forces to assist it in carrying out its duties. Task forces appointed to evaluate sites or routes considered for designation shall be comprised of as many persons as may be designated by the commission, but at least one representative from each of the following: Regional development commissions, counties and municipal corporations and one town board member from each county in which a site or route is proposed to be located. No officer, agent, or employee of a utility shall serve on an advisory task force. Reimbursement for expenses incurred shall be made pursuant to the rules governing state employees. The task forces expire as provided in section 15.059, subdivision 6 . At the time the task force is appointed, the commission shall specify the charge to the task force. The task force shall expire upon completion of its charge, upon designation by the commission of alternative sites or routes to be included in the environmental impact statement, or upon the specific date identified by the commission in the charge, whichever occurs first.*

Public participation is a priority of the Power Plant Siting Act:

Subd. 2. **Other public participation.** The commission shall adopt broad spectrum citizen participation as a principal of operation. The form of public participation shall not be limited to public hearings and advisory task forces and shall be consistent with the commission's rules and guidelines as provided for in section [216E.16](#).

The rules do not require a Task Force, but the Commission should -- particularly for a project stemming from as contentious an issue as the Prairie Island bills of 1994 and 2003, as thorough and exhaustive/exhausting a process as we went through in the Goodhue County "Nuclear Waste Daze," and particularly where the impacts of your decisions in this matter will be present for the entirety of the thousands of years of the nuclear cycle. People care enough about this issue to show up at a hearing, to petition for a Task Force, and it is the Commission's obligation to safeguard and assure public participation. The work of the Goodhue County Task Force and the first Chisago Task Force showed the depth of the role that a task force can play in informing the record. Appointment of a Task Force is appropriate in this case.

A Task Force can assure that alternatives are adequately considered

A Task Force can assure that alternatives are adequately considered by the very nature of its deliberations and the knowledge that members bring to the process. The most important work of the task force is to thoroughly vet the application and investigate and propose alternatives, system alternatives and siting alternatives, to the applicant's proposal. Alternative review is crucial for adequacy of environmental review under NEPA and MEPA. In the past, and present, alternative review has been lacking, specifically in Chisago II and currently in the Mesaba Project.

In Chisago II, the task force was appointed, but was given only 3 meetings over 8 days, EIGHT DAYS, to complete its work. This was inadequate, and my client, the City of Lindstrom petitioned for an extension of time, which was not granted. See Attached Exhibit A, Petition for Extension of Task Force. Further, the supporting documentation to be included with the Task Force Report was NOT included with the report when it was filed with the Commission – MOES staff left that information out. This was discovered during the hearing, and Bill Neuman, Task Force member, attempted to correct the error at the time. In addition, the scope of environmental review was too narrowly constrained, and the distinction between system and routing alternatives not clearly defined, such that not all approved alternatives were reviewed. Reasonable alternatives were presented late in the process and the Task Force had not time to review these options nor were they included in an addendum/supplement to the Environmental Report. The Task Force was lead by MOES staff, instead of being lead by a member.

The alternatives review for Mesaba fared even worse. The Task Force met four times over four or five weeks and had in all about five or six weeks to review a very technical application and grasp the issues of coal gasification, and make recommendations of alternatives. This group was also led by MOES staff, not a Task Force member. Supporting documentation intended by the Task Force to be included in its report was not included, again. But in the Mesaba docket, the flawed alternatives review is the most serious problem, recognized by the in EPA and US Army Corps of Engineer in their comments. The EPA Comment included this objection to the alternatives analysis, raising wetlands concerns and concerns about the limited alternatives reviewed, issues that had been raised by Task Force members:

Based on the information provided in the DEIS, EPA has assigned a rating of "EO-2." The "EO" indicates that we have environmental objections to the proposed project. The "2" indicates that additional information needs to be provided to support the impact analysis documented in the DEIS. This rating will be published in the Federal Register. Our objections are based on the alternatives analysis and direct impacts to wetlands, and we question whether the project will meet Clean Water Act Section 404 requirements for selecting the least environmentally damaging preferred alternative (LEDPA). Discussion of this issue and comments on other topic are enclosed.

The EPA Comment is attached as Exhibit B.

The US Army Corps of Engineers had similar concerns, concerns that had also been raised by Task Force members:

The Corps also believes that there continue to be several NEPA deficiencies in the DEIS. These are 1) not addressing the alternative of a stand alone Phase I project; 2) not all direct actions are disclosed (e.g., not all wetland impacts appear to be disclosed in the impact tables); 3) not all impacts of connected actions are disclosed (e.g. need for additional high voltage transmission lines beyond the nearest substation); 4) not all impacts due to plant operations are disclosed (e.g., no evaluation of train and truck emissions over the 20 year life of the plant); and 5) an unresolved issue regarding the DOE's ability to evaluate alternatives to the applicant's proposed project.

The draft Scoping Document for this docket shows how narrow the alternatives are that staff proposed be reviewed. It looks like narrow review of review is again proposed, and staff is urging that the PUC deny the Petitions for a Task force. Without Task Force participation, without informing the record through discussion of alternatives, the review will be inadequate.

It is my hope that the PUC would do all it can to assure that this inadequate level of environmental review does not continue, and the best way to assure that is to appoint a Task Force, to allow it reasonable time to do its work, to include the full work product of the Task Force in the record, and to assure development of the record regarding the full range of reasonable alternatives to the project.

Please let me know if you have any questions or require anything further.

Very truly yours,



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