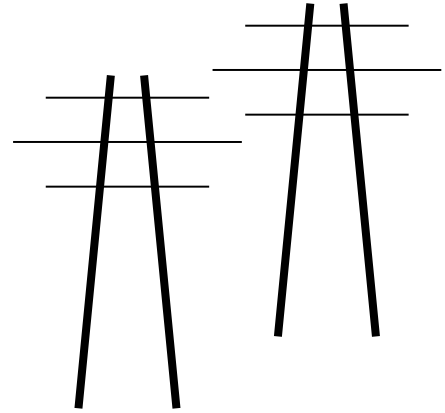


# Legalelectric, Inc.

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Will Seuffert, Executive Secretary  
Public Utilities Commission  
121 – 7<sup>th</sup> Place East, Suite 350  
St. Paul, MN 55101

Ray Kirsch, Environmental Review Mgr.  
Dept. of Commerce -- EERA  
85 – 7<sup>th</sup> Place East, Suite 500  
St. Paul, MN 55101

RE: Comments of Overland – Legalelectric re: Draft Scoping Decision  
E002/CN-08-510 Supplemental EIS

Dear Mr. Seuffert and Mr. Kirsch:

Thank you for the opportunity to submit comments on the DRAFT Scoping Decision. I've cut and pasted the DRAFT and incorporated my comment/additions into the DRAFT.

**The most important matter to be addressed is the identification of the specific cask that Xcel requests be designated for storage and transport, and assurance that the statutory requirements that the designated cask “replace” those currently used for storage, and those purported to be used for storage and transport that would not be accepted by a licensed CIS storage facility. See Minn. Stat. §116C.775, §116C.776, §116C.777.**

Issues of the jurisdictional boundaries of federal and state environmental review, the jurisdiction of our state over costs, and the relevant state environmental law pertaining to use of dry casks for storage and designation of a dry cask are important to consider, as environmental issues are present.

Environmental review must also address whether it is indeed possible to unload the TN-40 and TN-40HT casks in place and transfer that nuclear waste to the new casks. After reviewing Xcel's filings on this matter, it seems that Xcel is dodging its statutory responsibility to “replace” the current TN-40s with the proposed but not yet identified storage and transport casks. It is also apparent that Xcel is trying to get this "request" approved without identifying the specific cask to be used, and the procedure for federal approval of use of a cask other than the TN-40 with its Part 72 license. The state should take note of these issues and address them in the EIS in the "Purpose" section and description, and in "Regulatory Framework." It's the Commission's job to assure that these statutory requirements are met, and to monitor the federal process in coordination with the NRC.

Using the “Table of Contents” format found in the Draft Scoping Decision:

## **MATTERS TO BE ADDRESSED**

The issues outlined below will be analyzed in the SEIS for Xcel Energy’s proposed change in spent fuel storage technology at the Prairie Island ISFSI. The analysis will be limited to impacts and mitigation measures related to Xcel Energy’s proposed change that were not addressed in the Prairie Island 2009 EIS. Logically any cask designation change as requested was not a part of the Prairie Island uprate EIS.

### **I. GENERAL DESCRIPTION OF THE PROJECT**

#### **A. Project Description**

- i. Must identify specific cask to be used
- ii. Project description must include operation and maintenance, including cask replacement and decommission required for statutory compliance.

#### **B. Project Purpose and Need**

- i. Cask replacement as required by Minn. Stat. §116C.775, §116C.776.
- ii. TN-40 & TN-40HT decommissioning required by Minn. Stat. §116C.775.
- iii. Certificate of Need – change in cask size and type requires recertification

#### **C. Project Costs –**

- i. Minnesota has jurisdiction over economic issues – cite and explain
- ii. Costs in comparison to cost of continuing to use TN-40
- iii. Costs calculation must include cost of “replacement” including transfer of TN-40 & TN-40HT waste to specific casks for transport to specific NRC LICENSED storage facility that will accept that specific cask and cost of decommissioning of all TN-40s.

#### **D. Sources of information and links to same, i.e. 1991 & 2009 state EIS; NRC Eas.**

#### **E. History of casks at Prairie Island (links to supporting documentation)**

- i. TN-40
- ii. TN-40HT
- iii. TN transport overpack

#### **F. Planning for NRC’s 20, 100, and permanent/indefinite scenarios.**

### **II. REGULATORY FRAMEWORK & JURISDICTIONAL REVIEW**

#### **A. Federal Approvals – Part 72 ISFSI**

- i. ISFSI relicensing Environmental Assessment (issued July 2015)  
<https://www.nrc.gov/docs/ML1509/ML15098A026.pdf>
- j. License Amendment Environmental Report Supplement (issued July 2019)
- k. <https://www.nrc.gov/docs/ML1921/ML19217A313.pdf>
- l. ISFSI Amendment Environmental Assessment (issued October 2020)  
<https://www.nrc.gov/docs/ML2027/ML20275A342.pdf>
- m. Identification of needed federal approvals and links to specific regs and contact info for person(s) in charge of NRC and environmental approvals. Include specific requirements for Part 72 change in cask used.
- ii. Federal environmental review documents/links for proposed casks.
- iii. Federal environmental review documents/links for TN-40 and TN-40HT
- iv. PINGP and ISFSI Emergency Plan – most recent revision  
<https://www.nrc.gov/docs/ML2113/ML21139A311.pdf>

- v. Public participation requirement at federal level, including contact info for those in charge of public participation component
- B. State Approvals – CN, Uprate CN, and 1991 and 2009 EIS (links to supporting documentation)
  - i. Acknowledgement of nuclear and Prairie Island cask specific legislation and requirements:
    - Minn. Stat. §116C.721
    - Minn. Stat. §116C.775
    - Minn. Stat. §116C.776
    - Minn. Stat. §116C.777
    - Minn. Stat. §116C.83, Subd. 4
  - ii. Identification of needed state approvals and links to specific regs and contact info for person in charge of the state agencies that need to approve change. Include basis for and range of state jurisdiction over cost and environmental matters.
  - iii. Local approvals/actions, i.e., emergency response preparation, including contact info for person in charge of actions.
  - iv. Public participation requirements at state level, including comment periods, hearings, and contact info for those in charge of public participation component.
  - v. Cost comparison of storage and transport cycle, including cost of transferring fuel from TN-40/TN-40HT to the new casks
- C. Other Permits
- D. ISFSI emergency organization and response plan and cost, and update if needed
- E. Agency roles and coordination between state and federal
- F. PIIC consultation by state and federal agencies, October 2012 Memorandum of Understanding re: relicensing of ISFSI
- G. Forwarding public concerns to Department of Energy Minn. Stat. §116C.721.

### **III. ENGINEERING, DESIGN, AND CONSTRUCTION**

- A. Cask and Canister Systems for Spent Fuel Storage
  - i. Identify cask with date of certification/recertification, Safety Analysis Reports (SAR), environmental, incident and event and unusual event reports, etc. (links to supporting documentation)
  - ii. Casks considered but rejected, and rationale.
  - iii. Alternatives to specific dry cask and “no action” alternative
- B. Cask Handling
  - i. Documentation of federal testing and safety – link to Safety Analysis Reports (SAR), Safety Evaluation Reports (SER), incident, event, and unusual event reports, etc., as above
  - ii. Documentation of training for cask handling.
  - iii. Documentation of loaded casks, including loading date, refueling cycle, burn-up rate, and length of time between cask loading and date put in pool.
  - iv. Documentation of procedure and successful unloading and/or transfer of spent fuel from storage cask to new cask. If no fuel has been unloaded or transferred, so state.
  - v. Documentation of Part 72 license amendment/certification process for use at PINGP (links to supporting documentation).
  - vi. List of other Part 72 licensees who have secured amendment/authorization of use of



- A. Environmental Setting – considerations of expanded cask pad, different casks and operational considerations and risks of unloading, loading, decommissioning, and generally re:
  - i. Topography
  - ii. geology
  - iii. surface and groundwater hydrology
  - iv. flood plain
  - v. meteorological – particularly extreme cold
  - vi. flora and fauna, including threatened, endangered, and special status species
- B. Human Environment – considerations of expanded cask pad, different casks and operational considerations and risks of unloading, loading, decommissioning, and generally re:
  - i. Environmental justice – PIIC, PoC, and low income
  - ii. rare and unique natural resources
  - iii. culture, archeological and historic resources
  - iv. resource use – subsistence consumption of fish and wildlife
  - v. emergency response plan – accidents and planning
  - vi. public health and safety – non-radiological (links to NRC documents)
  - vii. land use
  - viii. security in environment of increased terroristic acts and threats
  - ix. socioeconomics and demography
  - x. transportation
  - xi. visual impacts and aesthetics
  - xii. waste management and disposal.
- C. Natural Environment
  - i. air quality, climate
  - ii. biological resources
  - iii. geology and soils, including engineered ISFSI berm
  - iv. noise
  - v. water resources

## **V. POTENTIAL IMPACTS AND MITIGATION MEASURES – RADIOLOGICAL**

The SEIS will discuss potential radiological impacts related to the proposed change in spent fuel storage technology, and replacement including unloading, loading, and decommissioning.

- A. Natural Background Radiation, existing exposures from high radon levels in area
- B. Radiation Risks
  - i. Sources
  - ii. Dose to public
- C. Potential Impacts to the Public, including Prairie Island Indian Community and City of Red Wing
- C. Potential Impacts to Workers – Dose to workers
- D. Environmental Justice and verification of requisite consultation
- E. Links to Annual Radiological Environmental Monitoring Program Reports
- F. Emergency Plan <https://www.nrc.gov/docs/ML2113/ML21139A311.pdf> (May 2021)
- G. Management plan to facilitate immediate shipment of stored waste out of state and decommissioning. Minn. Stat. §116C.775-7; Minn. Stat. §116C.83, Subd. 4.

## **VI. DATA AND ANALYSIS**

Data and analysis in the SEIS will be commensurate with the importance of potential impacts and the relevance of the information to consideration of the need for mitigation measures. Minn. R. 4410.2300. EERA staff will consider the relationship between the cost of data and analyses and the relevance and importance of the information in determining the level of detail of information to be prepared for the SEIS. Economic considerations alone are not a defense to a MERA action. Minn. Stat. §116B.04(b).

EERA staff will include in the SEIS a statement specifying what information is incomplete or unavailable, efforts to obtain, and the relevance of the information in evaluating potential impacts. Minn. R. 4410.2500. If it is information necessary for thorough review and consideration, the EIS release shall be delayed until it is obtained.

## **VII. ALTERNATIVE SITES TO BE EVALUATED**

The SEIS will evaluate the storage of spent nuclear fuel at the PINGP ISFSI. No other sites will be evaluated in the SEIS.

## **VIII. STUDIES TO BE UNDERTAKEN**

No studies will be undertaken in preparation of the SEIS. The SEIS will cite and link to relevant and credible studies from sources such as the NRC, EPRI, etc.

## **ISSUES OUTSIDE THE SCOPE OF THE SEIS**

The SEIS will not address the following topics:

- A. Impacts and mitigation measures that are addressed in the Prairie Island 2009 EIS related to uprate.
- B. Operation of the PINGP.
- C. NRC regulation of casks for spent nuclear fuel and of ISFSI design and safety. Relevant information shall be linked in Supplemental EIS.
- D. The nuclear fuel cycle.
- E. Transportation of spent nuclear fuel from the PINGP ISFSI. Preparation and plan for transport shall be addressed in light of Minn. Stat. §116C.775-7, which requires cask replacement, transport, and decommissioning at first opportunity.
- F. NRC regulations and standards. The SEIS shall reference certain standards promulgated by the NRC; however, the supplement will not address the adequacy of these standards.

This is not all inclusive, and I'll be commenting on the Supplemental EIS when it becomes available. Thank you for the opportunity to comment on the DRAFT scope.

Very truly yours,



Carol A. Overland  
Attorney at Law