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MINNESOTA SENATE

SPECIAL COMMITTEE ON ETHICAL CONDUCT

COMPLAINT OF KRISTINA K. PRANKE

against the

SENATE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

REPORT ON INVESTIGATION

by

**Peter S. Watson
Senate Counsel**

June 28, 1994

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1. Introduction

Kristina K. Franke of St. Paul has filed a complaint that members of the Senate Committee on Environment and Natural Resources held a closed meeting with James Howard, Chief Executive Officer of Northern States Power Company (NSP), in violation of the open meeting law, Minnesota Statutes, section 3.055. She also complained that key parties, namely representatives from the Mdwakanton Dakota tribe, were not invited to the meeting. Her complaint did not identify the members involved nor the time or place of the meeting. The Special Committee on Ethical Conduct assigned Senate Counsel Peter S. Wattson to investigate and report to them what had happened and what laws or Senate rules may have been violated.

2. Procedural History

By a letter dated March 28, 1994, Kristina K. Franke requested Senator Ellen Anderson to call for an ethics probe into the way the previous week's meeting with Northern States Power Company's Chief Executive Officer, James Howard, was handled. First, she complained it was a closed meeting in violation of Minnesota Statutes, section 3.055. Second, she complained that key parties were not invited to the meeting, namely representatives from the Mdwakanton Dakota tribe. She sent copies of her letter to Senators Roger Moe, Carol Flynn, Janet Johnson, and John Marty. (See Exhibit 1.)

Senator Marty's staff contacted Senate Counsel Peter Wattson, who told her that the story floating around the Capitol was that a quorum had not been present and that the Senators had not transacted any business. Senator Marty wrote Ms. Franke that "according to Senate Counsel" the meeting did not violate the open meeting law because there was not a quorum and no official action was taken. (See Exhibit 2.)

On May 4, 1994, Ms. Franke wrote to Senator Carol Flynn asking that she send the complaint to the Committee on Rules and Administration and have Senator Roger Moe step down as chair of the committee. (See Exhibit 3.)

On May 6, 1994, Senator Moe wrote to Senator Flynn notifying her that Senators Kiscaden and Stumpf had been appointed to temporarily replace Senators Frederickson and Novak as members of the Special Subcommittee on Ethical Conduct. (See Exhibit 4.)

That same day Senators Flynn, Kiscaden, and Stumpf met with Senate Counsel Peter Wattson and directed him to conduct an investigation of the complaint and report back to them on what had happened and what state laws or Senate rules may have been violated.

On May 10, 1994, John E. Grzybek, Ms. Franke's attorney, wrote to Senator Flynn asking that Mr. Wattson be removed as investigative counsel and that an independent and impartial counsel be immediately appointed to conduct the investigation. Mr. Grzybek also requested that

any report generated by an investigation be made public immediately or at the very least be made available to him well before any hearing before the committee. (See Exhibit 5.)

Between May 18 and June 2, 1994, Mr. Wattson interviewed all the Senate members and staff alleged to have been present at the meeting with Mr. Howard. (See Exhibits 6 to 18.)

3. Facts Found by Senate Counsel

a. Discussion of the Need to Meet

S.F. No. 1706, authored by Senator Steven Novak, was defeated in the Senate Committee on Environment and Natural Resources on a vote of eight to ten on Tuesday, March 15, 1994. The committee has a total of 18 members. The ten who voted no were Senators Ellen R. Anderson, Kevin M. Chandler, Harold R. "Skip" Finn, Dennis R. Frederickson, Janet B. Johnson, Gene Merriam, Ted A. Mondale, Steven Morse, Leonard R. Price, and Phil J. Riveness.

Within days after the bill was defeated, Senator Janet Johnson began hearing rumors about procedural maneuvers that might be used to revive the bill. She heard that this might involve a motion on the floor to withdraw the bill from the Environment and Natural Resources Committee and place it on General Orders or a motion in the rules committee to do the same. She was concerned about this and wanted to talk to other more experienced members about the procedures that were available in a situation like this and what was normally done. She wanted to compare notes with others on the various rumors that were floating around and determine what moves they needed to be prepared to counteract. The discussion began with two or three members toward the end of that week. They agreed that the ten who had voted to kill the bill should gather to discuss these procedural questions. Senator Johnson agreed to call them, since the others didn't have time.

Over the weekend, Senator Johnson called all the others but Senator Mondale. She invited them to attend a meeting Monday morning, March 21, 7:00 a.m. in Room 23K of the Capitol.

b. Monday, March 21

All eight of the members Senator Janet Johnson had called were present for the meeting Monday morning. Senator Merriam arrived late, about 7:30 a.m., and may have been the last to arrive. The nine who were present discussed Rule 40 and how it could be used to withdraw a bill from a committee either by a motion in the rules committee or by a motion on the floor. Senator Merriam told the group there was no reason for them to meet if the bill were dead, but if the Senate were determined to pass the bill, the group might want to work on a counter proposal. The meeting ended about 8:30 a.m., and the members agreed to meet again later that day.

Sometime on Monday or Tuesday, March 21 or 22, Senator Novak approached Senator Moe to tell him that he intended to use Rule 40 to withdraw the Prairie Island bill from the Committee on Environment and Natural Resources so that it might be considered on the floor of the Senate. He said he was confident that even though the bill had been defeated in the

environment committee he had the necessary votes on the floor to pull it out and pass it. Senator Moe thought Senator Novak was correct in saying that a vote of the whole Senate would come out differently than a vote in the environment committee. He was not so sure that Senator Novak would have the votes to use Rule 40 to get the bill out of committee. Senator Moe urged Senator Novak not to make his Rule 40 motion on the floor because it would set a bad precedent. Senator Moe viewed the committee system as vital to the orderly functioning of the Senate and thought that it was important to defend each committee's jurisdiction less chaos break out on the Senate floor, with one member after another moving to withdraw a bill from committee. Senator Moe was also concerned that the Senate would look bad if, on such a major issue as this, it was necessary to use the unusual procedure of a Rule 40 motion to withdraw the bill from the environment committee. Senator Moe asked Senator Novak, if he felt he had no other option than a Rule 40 motion, to make the motion in the Committee on Rules and Administration, rather than on the floor. That still would require a vote of the entire Senate to make the withdrawal effective, but would allow for a more orderly procedure for discussing the merits of whether the bill should be withdrawn from the environment committee. Senator Novak said he would consider that, but that he faced a deadline of Friday, March 25, for making his Rule 40 motion because after that date the majority needed to withdraw the bill from committee increased from 50 percent to 60 percent.

When the group began meeting, not at the very first meeting but sometime on Monday or Tuesday, Senator Merriam called their attention to the fact that the ten who had voted "no" comprised a quorum of the environment committee and that because of the open meeting law, they needed to not make any decisions as a group.

There was no discussion of a possible compromise until it was clear that the bill was leaving the environment committee and going to the floor. Senators Merriam and Riveness had been meeting with Senator Novak and reporting back to the group on what Senator Novak was doing to move the bill along. The group of ten knew that all it would take was two votes changing from "no" to "yes" to move the bill out of committee and that Senators Merriam and Riveness, who were the last two undecided votes before the bill was defeated, were the ones most likely to change.

The turning point, in Senator Chandler's view, came when Senator Merriam announced to the group that Senator Novak now had the votes on the floor to use Rule 40 to withdraw the bill from the environment committee. Further, he also had the votes in the rules committee to do the same. Senator Merriam explained that Senator Novak faced a deadline of Friday, March 25, since after that date the majority he would need on the floor to pull the bill out of committee would rise from 50 percent to 60 percent. So a vote to withdraw the bill from committee would occur on the floor no later than Friday, March 25, and it would pass. Senator Merriam told the group, "I am going to tell you the facts of life," that they could write in their diaries that they went down in a blaze of glory as the bill was withdrawn from committee over their objection and they had no influence on its content, or they could work to develop a counter proposal. He said that once the bill left the environment committee, especially if it left against their will, they risked losing any influence they otherwise might have had over its content.

The fundamental problem facing the group was whether there was anything that they could put together as a proposal that would be acceptable to Senator Novak and to NSP. The

sense of the group was that they should identify a person from NSP with whom they could talk. Laura McCartan had been NSP's spokesperson on the Prairie Island issue, but Senator Finn, for one, thought the group needed to talk to someone higher up in the company, someone who could make decisions on the company's behalf. They wanted to push NSP toward an increase in its use of renewable resources for energy and for a firm date when the Prairie Island nuclear plant would be closed, but they did not have a good feeling for what alternate sites might be possible and what NSP's attitude was toward the Mdewakanton Sioux Tribe who lived near the plant.

On Monday or Tuesday, some members of the group were informed that James Howard, NSP's Chief Executive Officer, would be available in Senator Moe's office if members wanted to ask him questions. Some members took advantage of this opportunity.

c. Tuesday, March 22

On Tuesday, March 22, at their third meeting in Room 23K, the group agreed to hold a press conference the next day to announce their proposal.

d. Wednesday, March 23

1) Morning, Room 23K

The group met for the fourth time in Room 23K on Wednesday morning, March 23, at 9:30 a.m.. They worked on their counter proposal in preparation for the press conference.

That same morning, Senator Novak notified Senator Moe of his intention to make a Rule 40 motion in the rules committee meeting scheduled for that afternoon and that he had the votes lined up to pass the motion. Senator Moe told him that the motion would pass "over my dead body." He said to tell NSP that he would do everything in his power to defeat the motion. He said it was important to allow the committee process a chance to work.

Senator Moe contacted Merle Anderson, NSP's lobbyist, and told him of his opposition to the Rule 40 motion. Mr. Anderson said he would try to talk Senator Novak out of making the motion that afternoon.

2) Press Conference, Room 123

The press conference was held in Room 123 of the Capitol starting around 12:30 p.m. on Wednesday, March 23. Senator Riveness served as spokesperson for the group to announce the proposal. Its main features were requirements that the Prairie Island nuclear generating plant close by 2002 and that NSP be required to undertake an alternate citing process that would provide for no storage of spent fuel on Prairie Island. The proposal also included prohibiting reracking the storage pool at Prairie Island to increase its storage capacity. Various members of the group had kept in contact with environmental groups and Indian representatives and knew they supported this proposal.

After the press conference, the proposal was immediately rejected by Senator Novak, who said he would use the occasion of a rules committee meeting scheduled for that afternoon at 4 o'clock to move to withdraw the bill from the environment committee and refer it to the floor.

Meanwhile, Senator Moe had summoned Mr. Howard to his office, along with Merle Anderson. Mr. Howard said that NSP could live with a maximum of 17 casks and would be willing to show some flexibility on the use of renewable sources for energy.

Before the rules committee meeting that afternoon, Senator Moe let Senator Novak know that, if Senator Novak did not attempt a Rule 40 motion in the rules committee on Wednesday and the environment committee did not pass the bill, he would call a rules committee meeting on Friday. He also approached Senator Riveness and voiced his concern that a motion to withdraw the bill from the environment committee was the wrong way to go. He urged Senator Riveness to work out some kind of compromise that the environment committee could consider.

The rules committee meeting occurred without Senator Novak moving to withdraw the bill from the environment committee.

3) Late Afternoon, Room 23K

The group had agreed to meet again late that afternoon to discuss their strategy while they waited for a response from NSP. They first scheduled a meeting for Room 23K at 5:00. Later, Senator Mondale's office called around to tell them the meeting had been moved to Room 237.

4) Late Afternoon, Room 237

As they were leaving the rules committee meeting about 5:00 p.m., Senator Moe invited Senator Merriam to his office to meet with Mr. Howard. Senator Merriam went to Senator Moe's office and was there when Mr. Howard arrived five or ten minutes later. Vic Moore and Tim Seck of Senator Moe's staff were also present, along with Merle Anderson, NSP's lobbyist. Senator Moe asked Senator Merriam how the group of ten would react to Mr. Howard's new proposal. Senator Merriam said that the group of ten was then meeting in Room 237 and suggested that Mr. Howard go to talk with the group. Senator Moe asked, "Are you sure?" Would the members be offended by this approach? At around 5:30 p.m. Senator Merriam went over to Room 237 and asked the group if they wanted to hear from Mr. Howard. Some members hesitated at first, but after a couple of minutes of discussion, they agreed. Senator Merriam reported back to Senator Moe that the group of ten were frustrated that they had been unable to get answers to their questions from the spokespeople NSP had sent to the capital so far.

Senator Moe then sent Mr. Moore over to smooth the way for Mr. Howard's arrival. He followed with Mr. Howard and Merle Anderson. Before Mr. Howard entered, Senator Moe told the group that they could ask Mr. Howard questions, but should be respectful and treat him like a guest.

When Mr. Howard arrived in Room 237, Senator Anderson was not present. Mr. Moore went to get Senator Anderson. When he returned with her, the ten members of the Environment and Natural Resource Committee present were Senators Ellen R. Anderson, Kevin M. Chandler,

Harold R. "Skip" Finn, Dennis R. Frederickson, Janet B. Johnson, Gene Merriam, Ted A. Mondale, Steven Morse, Leonard R. Price, and Phil J. Riveness. Also in the room were Senator Moe, Vic Moore, Tim Seck, and Merle Anderson.

Mr. Howard did a lot of the talking. He told the group why he thought it was important to grant NSP's request. He said that the 17 casks that were authorized by S.F. No. 1706 were necessary and that NSP could not take less than that. Those 17 casks would be enough to permit NSP to keep the Prairie Island plant operating until the year 2002. Mr. Howard said he was betting that by 2002 there would be another place to send the spent nuclear fuel, but that it was a gamble. He said that if NSP were not permitted to use any of the casks for storage, the plant would have to shut down. Mr. Howard said that NSP was willing to accept a limit of 17 casks at both Prairie Island and Monticello together, and that they would agree to put this limit into the form of a contract that was not subject to repeal by the Legislature. He expressed the company's willingness to entertain other proposals from the group.

Senator Finn asked if NSP would consider siting waste storage at its Monticello nuclear generating plant. Merle Anderson said that NSP had considered and rejected that option because Monticello is upstream from the Twin Cities and siting it there would be politically impossible.

When Senator Johnson began to inquire about NSP's commitment to nuclear power in the future, Senator Finn discouraged her because that appeared to him to be an effort to negotiate and he thought this was not a time for negotiations. Senator Johnson had no intention of negotiating and thought it was important to find out NSP's position on this issue, but she desisted.

Senator Chandler asked about the feasibility of reracking the storage pool at Prairie Island. Someone asked why the company preferred the use of dry casks rather than reracking.

Senator Morse asked Mr. Howard to explain his vision of how NSP would be producing power in the future. From his answer, Senator Morse and Senator Anderson were convinced that NSP was committed to continuing to operate nuclear plants in Minnesota and had no intention of phasing them out. Senator Morse was convinced that NSP had no serious commitment to the use of renewable energy resources.

Someone asked what would happen if the Prairie Island plant closed down. Someone asked what authority Mr. Howard had to speak for NSP stockholders.

Members also asked about the status of federal regulations on spent nuclear fuel and the proposal by the Apache tribe in New Mexico to provide a long-term depository for spent nuclear fuel. When the members had finished asking Mr. Howard questions, he departed. The meeting with Mr. Howard had lasted for about half an hour.

The committee members remained in Room 237 for just a few minutes after Mr. Howard left before breaking up.

After Mr. Howard left, the committee members met privately for a few minutes. The members who had voted to kill the bill the previous week had been slowly changing their minds all that week, even before the press conference at which they announced their counter proposal. The meeting with Mr. Howard may have eased some members' concerns, but made other members even more upset with NSP because it was clear that NSP did not have a commitment to the use of renewable resources for energy. Senators Janet Johnson, Finn, and Chandler were clearly not pleased with what Mr. Howard had told them, but as Senator Johnson said, "A few people were spinning fast and taking others with them."

e. Thursday, March 24

1) Morning, Room 23K

The next morning, Thursday, March 24, some members of the group met again in Room 23K. They agreed it was time to decide whether to go forward with a proposal or not. They agreed on a few important points and delegated Senator Riveness to talk to Senator Novak and NSP. Senator Merriam went with Senator Riveness to Senator Moe's office. There they met with Senator Moe, Mr. Howard, and Merle Anderson. Vic Moore and Tim Seck of Senator Moe's staff were also present. The proposal was that NSP accept a limit of 17 casks total at both Prairie Island and Monticello, that NSP not rerack the storage pool at Prairie Island to increase its storage capacity, and that NSP agree to an increase in its use of renewables. The group also proposed that NSP be required to undertake and accelerate its siting process to locate an alternative site for nuclear waste disposal.

After they received the proposal, Mr. Howard and Mr. Anderson took about ten minutes to think it over. They then accepted the first three points but rejected the fourth.

2) Afternoon, Room 23K

Senators Riveness and Merriam reconvened the group in Room 23K around 5:30 p.m. to discuss NSP's reaction to their proposal

Senator Janet Johnson felt sad that the group of ten had not called in any representatives of environmental groups to testify, so she suggested that Mel Duncan, of the Minnesota Alliance for Progressive Action, and Craig Johnson, of Clean Water Action, be invited to talk to them about the process for selecting an alternative site, how long it would take, and how the siting process works. Not all the members of the group stayed to give the environmentalists equal time. Some filed out of the room immediately when the environmentalists came in; some stayed a few minutes. Senator Johnson was disappointed they were not given the same courtesy and time Mr. Howard was. The group asked them questions for about ten minutes before they were excused.

Earlier in the week, when negotiations on Prairie Island were in progress, several people had grumbled that the Mdewakanton Sioux Tribe was not having any input. Senator Finn had asked the Tribe's lobbyist, Tom Anzelc, to bring the tribal representatives over to the Capitol. The

tribal representatives had said that there was nothing more to talk about. On Thursday afternoon, two representatives of the Tribe had again visited Senator Finn and told him that there was still nothing to talk about regarding Prairie Island and a possible compromise with NSP. They were not invited to repeat their message to the group.

The group discussed the possibility that one amendment, to be offered by Senator Merriam, would include the items that NSP had indicated would be acceptable and that a second amendment, to be offered by Senator Riveness, would mandate the alternative siting process that NSP had rejected. The group understood that while they had the votes to add this requirement to the bill in the environment committee, NSP might be successful in removing it on the floor.

Senator Riveness presented this counter proposal to Senator Novak and NSP, and they agreed not to oppose either amendment in the environment committee, but reserved the right to oppose the alternative siting process on the floor.

3) Evening, Room 21

Drafting the amendments took place in Room 21 between about 6:00 and 8:30 p.m.. Senators Riveness and Finn were the first to arrive, followed by Senator Anderson, Senator Janet Johnson, Senator Novak, and Senator Morse. Senators Frederickson and Moe came in later.

Senate Counsel John Fuller drafted both amendments, then continued working on the Merriam amendment while Senate Counsel Hans Bjornson worked on the Riveness amendment. Senator Finn discussed with Senator Riveness and Mr. Bjornson a proposal to provide land to the Mdwakanton Sioux to which they might relocate if the casks were to remain stored at Prairie Island. Senator Riveness gave his approval., but Senator Moe disagreed, saying that was not something anyone had previously discussed with him. The meeting of the Environment and Natural Resources Committee had been scheduled to start at 7:00 p.m. but was being delayed while the amendments were being drafted. Senator Moe objected to the procedure whereby several senators were trying to give two different counsel conflicting instructions on what should be included in the two amendments. After further discussion on the merits of the proposal, he agreed to its inclusion in the Riveness amendment.

4) Environment and Natural Resources Committee, Room 15, 8:55 p.m.

The environment committee finally convened at 8:55 p.m.. Judging by the comments that members had made when he explained the amendments to them in Room 23K that afternoon, Senator Merriam had concluded that Senator Janet Johnson and Senator Anderson were still opposed, but he had no idea who would vote for it. He assumed that he and Senator Riveness and the eight who had voted "yes" the week before would vote for it, and hoped that others in the group of ten would join him, but had no commitments from any of them.

When Senator Mondale arrived for the meeting, Senator Chandler told him that Senator Riveness had an amendment that "we're going to vote for," without saying who he meant by "we."

Senators Mondale and Morse, at least, did not decide how to vote on the bill until during the committee meeting that night.

Senators Merriam and Riveness explained their amendments to the committee, but did not explain the process whereby they had been developed.

Senator Novak spoke in favor of the Merriam amendment and expressed his opposition to the Riveness amendment. Both amendments were adopted without a roll call vote. The bill as amended was recommended to pass on a vote of 16 to 2, with Senators Anderson and Janet Johnson opposed. The meeting adjourned at 9:45 p.m.

4. Open Meeting Requirements

a. Constitutional Provisions

The Minnesota Constitution, article IV, section 14, provides that "Each house shall be open to the public during its sessions, except in cases which in its opinion require secrecy." Article IV, section 7, provides that "Each house may determine the rules of its proceedings, sit upon its own adjournment, punish its members for disorderly behavior, and with a concurrence of two-thirds, expel a member; but no member shall be expelled a second time for the same offense." Article IV, section 10, provides, in part, that "For any speech or debate in either house they shall not be questioned in any other place." The Constitution thus assigns to each house the responsibility for determining when its sessions shall be open to the public and for punishing its members for any violations of the rules of the body.

b. Minnesota Statutes, Section 3.055.

The Legislature in 1990 enacted Minnesota Statutes, section 3.055, an open meeting law for the Legislature. As amended in 1993, it now reads:

3.055 Open Meetings.

Subdivision 1. Meetings to be open. Meetings of the legislature shall be open to the public, including sessions of the senate, sessions of the house of representatives, joint sessions of the senate and the house of representatives, and meetings of a standing committee, committee division, subcommittee, conference committee, or legislative commission, but not including a caucus of the members of any of those bodies from the same house and political party nor a delegation of legislators representing a geographic area or political subdivision. For purposes of this section, a meeting occurs when a quorum is present and action is taken regarding a matter within the jurisdiction of the body.¹ Each house shall provide by rule for posting notices of meetings, recording proceedings, and making the recordings and votes available to the public.

¹ The open meeting law for bodies other than the Legislature, Minn. Stat. sec. 471.705, does not include a definition of "meeting." The Minnesota Supreme Court has defined a "meeting" for purposes of section 471.705, to include

Subd. 2. **Enforcement.** The house of representatives and the senate shall adopt rules to implement this section. Remedies provided by rules of the house and senate are exclusive. No court or administrative agency has jurisdiction to enforce, enjoin, penalize, award damages, or otherwise act upon a violation or alleged violation of this section, to invalidate any provision of law because of a violation of this section, or to otherwise interpret this section.

c. Senate Rules

1) Rule 58 - Committee Meetings

Since 1973, the rules of the Senate have required that all meetings of the Senate, its committees, and subcommittees, be open to the public. In 1991, following enactment of section 3.055, Senate Rule 58 was amended to conform to the new statute. Among other things it added a definition that said "For purposes of this rule, a meeting occurs when a quorum is present and action is taken regarding a matter within the jurisdiction of the body."

2) Rule 59 - Quorum in Committee

Rule 59 provides that "A majority of its members constitutes a quorum of a committee."

3) Rule 75 - Ethical Conduct

The 1991 amendments also amended Senate Rule 75, which creates the Special Committee on Ethical Conduct. The amendments established a new procedure for considering complaints of violations of the open meeting law. The new language reads:

Any person may submit to the Chair of the Committee on Rules and Administration a complaint that members have violated the open meeting requirements of Minnesota Statutes, section 3.055. A member of the Senate may submit the complaint either orally or in writing; others must submit the complaint in writing. Whether the complaint was written or oral, the Chair of the Committee on Rules and Administration shall immediately forward it in writing to the Special Committee on Ethical Conduct without disclosing the identity of the complainant. The complaint must not be further disclosed, except to the members against whom the complaint was made, unless the complaint was made by a member of the Senate in writing under oath, in which case the investigatory procedures of this rule apply.

"those gatherings of a quorum or more members of the governing body, or a quorum of a committee, subcommittee, board, department, or commission thereof, at which members discuss, decide, or receive information as a group on issues relating to the official business of that governing body." *Moberg v. Independent Sch. Dist. No. 281*, 336 N.W.2d 510, 518 (1983). Unlike section 3.055, there is no requirement that the body take action for the open meeting requirements of section 471.705 to apply. *See St. Cloud Newspapers v. Dist. 742 Com. Schools*, 332 N.W.2d 1, 6 (Minn. 1983).

This new complaint procedure was different from the existing procedure for filing complaints with the committee because it authorized complaints to be filed by persons who were not members of the Senate. Further, it did not require that the complaint be submitted in writing, if made by a member of the Senate, or be under oath. It also differed from the past procedure by requiring that the identity of the complainant not be disclosed and that the complaint itself not be disclosed except to the members against whom the complaint was made, unless the complaint was made by a member of the Senate in writing under oath.

5. Questions to be Decided

a. May this Complaint be Disclosed?

When the new complaint procedure was written, it included new confidentiality provisions. First, in order to encourage members and private citizens to bring complaints without fear of reprisal, the identity of the complainant was not to be disclosed to the members of the Special Committee on Ethical Conduct. Second, in order to protect members against frivolous complaints, the complaint itself was not to be disclosed unless made by a member of the Senate in writing under oath.

In this case, Ms. Pranke has sought to give her complaint wide publicity by sending copies of it to four members of the Senate, in addition to the chair of the Committee on Rules and Administration. Further, her attorney has held a press conference to publicize her complaint and has asked that any report generated by an investigation into her allegations be made public immediately. I conclude that Ms. Pranke has waived her right to confidentiality.

Given the wide publicity her complaint has now received, the members complained against may also wish to waive their right of confidentiality and authorize further proceedings on the complaint to be held in public.

b. Was a Quorum Present?

The Senate Committee on Environment and Natural Resources has 18 members, so a quorum is ten members. Ten members of the Environment and Natural Resources Committee were present at the meeting with Mr. Howard on March 23, 1994, so a quorum of the environment committee was present.

c. Was Action Taken?

Legislative committees do a lot of listening and a lot of talking, but when the time comes to act, they take a vote. The vote is significant because it binds all members of the committee. It binds both the majority who prevailed and the minority who lost, as well as those who did not vote at all. When the voting is done, the committee has taken action. The questions and answers,

discussion and debate that occur before voting may be interesting and relevant, but they are not action.

The ten members of the Senate Committee on Environment and Natural Resources who met with James Howard on March 23, 1994, asked him questions and listened to his answers, but they took no votes and made no decisions. No member claimed that the group of ten did anything to bind either themselves or the other members of the environment committee. The group of ten took no action within the meaning of Senate Rule 58 or Minnesota Statutes, section 3.055.

6. Conclusion

Since the ten members of the Environment and Natural Resources Committee who met with James Howard on March 23, 1994, did not take any action regarding a matter within the jurisdiction of the committee, the group did not violate the open meeting law.

MINNESOTA SENATE
SPECIAL COMMITTEE ON ETHICAL CONDUCT

COMPLAINT OF KRISTINA K. PRANKE
against the
SENATE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

EXHIBITS
TO
REPORT ON INVESTIGATION

by
Peter S. Wattson
Senate Counsel

June 28, 1994

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March 28, 1994

Senator Ellen Anderson
G-27 State Capitol
St. Paul, Minnesota 55155

Dear Senator Anderson:

I've been unable to contact you by phone, so I'm writing this letter as a formal request asking you to call for an ethics probe over the way last week's meeting with Northern States Power CEO Jim Howard was handled.

First of all, it was a closed meeting, in violation of Minnesota's open meeting laws (citation: 3.055.), and so there was no public accountability. Secondly, key parties were not invited to the meeting--namely, representatives from the Mdewakanton Dakota tribe, which I consider a travesty.

This issue is too important to let the aforementioned meeting slide by without an thorough accounting of it, and so as one of your constituents, I request that you follow the proper channels to have this matter addressed expeditiously. I have been informed that the way to bring this matter up is through the Senate Majority Leader (who had a part in the NSP meeting happening, I'm told), so I'm also giving his office a copy of this letter, as well as several other of your colleagues.

I respect your representation, Ellen. We need to do the right thing on this too. Please inform me of what takes place. Thank you.

Sincerely,



Kristina K. Pranke
1206 Edmund Avenue
St. Paul, Minnesota 55104
(612) 659-0590

cc: Senators Roger Moe, Carol Flynn, Janet Johnson, John Marty

Senator
John Marty

Senate
State of Minnesota

April 6, 1994

Kristina K. Pranke
1206 Edmund Ave.
St. Paul, MN 55104

Dear Ms. Pranke,

Thank you for sending me the copy of your letter to Sen. Ellen Anderson regarding your concerns about the meeting between NSP CEO Jim Howard and several senators.

According to Senate Counsel this meeting did not violate the open meeting laws for two reasons. The first reason is that there was not a quorum, the required number of senators to transact business. Secondly, no official action was taken at this meeting.

It was not fair to exclude the other interested parties from this meeting. I was very disappointed in the way this issue was handled and I hope that this will not happen again in the future.

Thank you again for contacting me on this important issue.

Sincerely,


John Marty

JM:et

P.S. Ellen Anderson has provided strong leadership on this issue & I know she was equally upset in the way the matter was handled.



Kristina Kramer Pranke
1206 Edmund Avenue
St. Paul, Minnesota 55104
(612) 659-0590

May 4, 1994

Senator Carol Flynn
G-29 State Capitol
Minnesota Senate
St. Paul, MN 55155

Dear Senator Flynn:

This letter comes as a follow-up to our conversation of this morning and of my letter of March 28, 1994 (of which you received a copy) regarding my formal request calling for an ethics investigation into the NSP CEO Jim Howard meeting with members of the Senate Environment and Natural Resources committee. Several sources have indicated that the meeting was arranged and called by Senator Roger Moe's office, and so, as I mentioned in my March 28 letter to Senator Ellen Anderson's office, any investigation into the facts of what actually happened would necessarily include Senator Moe as well.

I feel very uncomfortable relying on information from Senate sources regarding this matter, as I, as a private citizen, have run into roadblocks and misinformation about my rights in any complaint process within the Senate. I wrote my original letter of complaint over a month ago, and was informed by your office and Senate Counsel that a Senate member had to be the one to call for ethics investigation regarding this matter, and other members of the Senate, too, were under the impression that this was the process.

Only yesterday, May 3, did I discover, almost accidentally, that Rule 75 states that "any person", not only a member of the Senate, may call for an investigation, in they do so in writing. I did that. And I've heard that other citizens, too, have written letters of complaint calling for an ethics probe over the closed-door meeting. We have been misguided or ignored in this process.

Let me end by stating that I would like an immediate call by your office (as Senate Counsel Peter Wattson has informed me is the correct process since Roger Moe is also a party involved in the complaint) in your role on the Ethics Committee to send this complaint to Rules and Administration, have Roger Moe step down as chair of this committee, as well as any members who both serve on the Environment and Natural Resources committee and Rules and Administration, as they may have been involved in arranging this meeting as well. I would like to be informed as soon as possible as to when this Rules/Administration meeting takes place, so that I may attend, and I would like access to tapes/transcripts of this meeting.

The public has a right to know much more about the details of this meeting, right now, since the Senate has had my letter of complaint for over a month and knowingly or unknowingly, withheld information of my rights; the Prairie Island debate is being

debated now, and any decision regarding it will affect our future, and so this complaint demands immediate attention.

Thank you.

Sincerely,

A handwritten signature in black ink that reads "Kris Pranke". The signature is written in a cursive style with a large, stylized initial "K".

Kris Pranke

ROGER D. MOE
MAJORITY LEADER
Senator 2nd District
Route 3, Box 86A
Erskine, Minnesota 56535
Phone: 218/574-2216

Room 208, State Capitol
St. Paul, Minnesota 55155
Phone: 612, 296-2577
Fax: 612/297-5479

Senate

State of Minnesota

May 6, 1994

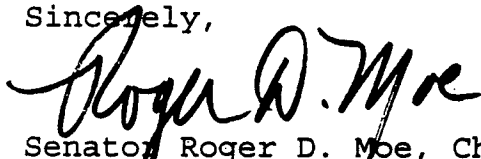
Senator Carol Flynn, Chair
Special Subcommittee on Ethical Conduct
Room G-29, State Capitol
St. Paul, MN 55155

Dear Senator Flynn:

This is to notify you of my appointment of temporary members to your subcommittee of the Senate Committee on Rules and Administration.

In the single matter of the complaint regarding the open meeting laws, I am appointing Senator Kiscaden and Senator Stumpf to temporarily replace Senators Frederickson and Senator Novak, respectively.

Sincerely,



Senator Roger D. Moe, Chair
Committee on Rules & Administration

RDM:ps

CC: Senator Terwilliger
Senator Frederickson
Senator Novak
Senator Kiscaden
Senator Stumpf



John E. Grzybek, Esq.
Attorney at Law

1324 Hartford Avenue
St. Paul, Minnesota 55116-1623
(612) 698-7446

MAY 11 1994

May 10, 1994

HAND DELIVERED

Senator Carol Flynn
Chairwoman, Senate Ethics and
Campaign Reform Committee
G-29 State Capitol Building
Saint Paul, Minnesota 55155

RE: Complaint of Kris Pranke
Senate Committee Violation of Open Meeting Law

Dear Senator Flynn:

I represent Kris Pranke who filed a formal complaint alleging that members of the Senate Environment and Natural Resources Committee violated the Senate's Open Meeting Law.

It is my understanding that your Committee has instructed Peter Watson, Senate Counsel, to investigate and report to the Committee regarding the allegations of my client. Mr. Watson has also informed me that the investigation and any Committee review of this matter will take place in about two weeks. While I understand that an investigation of a Senate standing committee is unprecedented under the Senate's Opening Meeting Law, and the Legislature has concluded an exhaustive session, I am discouraged that no stated and firm dates for completion of the investigation has been set, or a firm date for a public hearing on this matter. The ambiguity of deadlines is discouraging to my client and the public who are closely observing the conduct of the Senate.

Furthermore, I ask that Mr. Watson be removed as investigative counsel and an independent and impartial counsel be immediately appointed to conduct this investigation. My client has informed me that Mr. Watson had previously stonewalled her in her early efforts to commence an investigation on the ethical conduct of suspected members of the Senate responsible for the March 23, 1994, Environment and Natural Resources Committee meeting. In addition, correspondence from Senator John Marty's office to Ms. Pranke, indicates that Senate Counsel advised Senator Marty's office, without collaboration, that Ms. Pranke's allegations were, in short, unfounded. Senate Counsel indicated that the alleged meeting of Senators from the Senate Environment and Natural Resources Committee had no quorum and took no action, hence, did not violate the Senate's Opening Meeting Law.

Based on the letter received from Senator Marty's office, it

May 10, 1994

Page 2

would appear that the Senate Counsel's Office is predisposed in its decision on this matter. The allegations of Ms. Pranke are of such magnitude that an impartial investigation is imperative. The Senate Counsel's Office cannot, it would appear, provide the impartiality required.

I am concerned about the appearance of impropriety when the Senate's own counsel is asked to investigate allegations of Senate wrongdoing. I believe that it would be in the best interests of the Senate to avoid such an appearance.

Finally, I request that any report generated by an investigation into the allegations of Ms. Pranke be made public immediately, or at the very least made available to me as Ms. Pranke's counsel well before any hearing before your Committee.

I would appreciate an immediate response to the issues and requests made in this letter. Thank you.

Very truly yours,


John E. Grzybek

SENATOR ELLEN R. ANDERSON

Prairie Island Interview Summary

Date of Interview: May 19, 1994

Place of Interview: G-27 Capitol

Interviewer: Peter S. Wattson

I told Senator Anderson that I knew that she was one of a group of ten members of the Environment and Natural Resources Committee who had met with James Howard, the Chief Executive Officer of NSP, in Room 237 of the Capitol on the evening of Wednesday, March 23, 1994. I told her that I also knew that this meeting with Mr. Howard was one of a series of meetings that the ten had been having that week to discuss a possible compromise proposal on the bill to permit NSP to store nuclear waste in dry casks at Prairie Island. I asked her to tell me who had organized the meetings and why.

She said that Senator Janet Johnson had decided to organize a meeting of those who had voted against the proposal at an earlier meeting of the Environment and Natural Resources Committee where the bill had been defeated on a vote of 8 to 10. Senator Johnson called some of the members, who then spread the word to the rest.

Senator Anderson said that since the bill was defeated in committee, Senator Moe had been pressuring the members who had voted "no" to come up with a compromise. He visited each of the ten, one at a time, and told them he thought it was important for the Senate to pass a bill on Prairie Island and not have the bill die in committee. Although the ten had come up with a compromise, announced at a press conference, it was rejected by NSP and by Senator Novak. For that reason, Senator Moe told the members he visited that they should find a compromise acceptable to Senator Novak. He expressed his concern that otherwise Senator Novak, the author of the bill, would try to use Rule 40 to pull the bill out of the Environment and Natural Resources Committee and refer it to the floor. He said that Senator Novak was preparing to make a motion in the rules committee to do this and that it appeared Senator Novak would have the votes both in the rules committee and on the floor to withdraw the bill from the environment committee. Senator Moe seemed to be concerned that the Senate would look bad if, on such a major issue as this, it was necessary to use the unusual procedure of a Rule 40 motion to withdraw the bill from the environment committee.

Senator Anderson said that Senator Merriam was likewise concerned that Senator Novak would make a Rule 40 motion in the rules committee and that it would succeed. As long as the bill was going to be leaving the environment committee anyway, he thought it was important for

some committee members who opposed dry cask storage to write a compromise bill. He feared that once the bill left the environment committee, especially if it left against their will, they risked losing any influence they might otherwise have had over its content.

I told her that I knew the group had begun meeting on Monday morning, March 21, in Room 23K of the Capitol and asked her if she remembered when and where the various meetings had occurred and who was present at each. She said that all ten participated in the meetings at varying times with people coming and going. They tried to have all ten present, but that was not always possible. She said she did not recall on which particular occasion all ten members were present but was sure that there were times when they all were. She said that all of the meetings occurred in Room 23K, except the one with Mr. Howard, which was in Room 237. At one of their first meetings in Room 23K, Senator Merriam pulled out a copy of Minnesota Statutes and read to them section 3.055, the open meeting law that applies to the Legislature. It said that a meeting occurs when a quorum is present and action is taken. He pointed out that a quorum was present and that in order to comply with the law, they had to be sure not to take any action.

Senator Anderson said that she was in her office around 5 p.m. on Wednesday, March 23, when Vic Moore stopped in her office to tell her there was a meeting of the ten going on in Room 237 that she should attend. When she arrived, Mr. Howard was already there with his back to the door. She was not certain if all ten of the group were present, but she thinks they were. In addition to the ten, Senator Moe was present along with Vic Moore, Tim Seck, and a couple of other staff members. Senator Anderson believed at the time that the meeting had been called by Senator Moe, since Vic Moore had summoned her to it. However, Senator Moe later told her that Senator Merriam had organized it.

Mr. Howard did a lot of the talking. He told the group why he thought it was important to grant NSP's request. He described the siting process and how NSP had considered and rejected the possibility of storing casks at places other than at Prairie Island such as, for example, at Monticello. He said NSP had rejected Monticello as a site for storage because the Twin Cities were downstream and that would create too much of a political problem for NSP. He discussed whether reracking was feasible and his vision of how NSP would be producing power in the future. He was clearly wedded to continuing to operate nuclear power plants in Minnesota and had no intention of phasing them out.

Senator Anderson said that members of the group asked Mr. Howard questions, but she does not recall asking any herself.

I asked her how long the meeting with Mr. Howard had lasted. She said she thought it was less than an hour. She had arrived after the meeting began but had the impression it had not been going on long before she arrived.

She said that after Mr. Howard left, the committee members met privately for a few minutes. It was clear to her that, by the end of the meeting, several of the members had changed their minds. The change had been gradual, but the meeting was the culmination of the process.

She was now convinced that the votes would be there to vote the bill out of committee. Senator Merriam and Senator Riveness had been the last two undecided votes on the committee. They had voted "no" when the bill was defeated, but it was clear to Senator Anderson that they had decided to compromise with Senator Novak and NSP.

Senator Anderson told those who inquired about what had happened at the meeting that "people had caved in" and that it looked as though the bill would be amended and reported out of the environment committee.

After the meeting Senators Merriam and Riveness served as emissaries from the group to meet with Senator Novak and Senator Moe to work out a compromise. These discussions occurred during the evening of March 23 and all the next day in preparation for a meeting of the Environment and Natural Resources Committee, which had been scheduled for 7 p.m.. Senators Merriam and Riveness shuttled back and forth between various interested members trying to work out language.

I informed Senator Anderson that it was Mr. Grzybek's position that taking testimony from a person such as Mr. Howard constituted action by the committee within the meaning of the open meeting law. Senator Anderson pointed out that the rule in the Senate is that you do not need a quorum to take testimony, that a quorum is necessary only when the committee begins to vote, so taking testimony may not be an action of the committee.

On the afternoon of March 24, Senator Anderson went to look for Senate counsel and found them in Room 21 drafting the amendment. Senate Counsel Hans Bjornson and John Fuller were drafting in accordance with instructions given to them by Vic Moore, and Senator Moe was overseeing the process.

I told Senator Anderson that I knew the full committee meeting had been scheduled for 7 p.m. but its start was delayed while the drafting was completed. Senator Anderson said that when she arrived in Room 15 the room was packed with people, with members and others engaged in animated conversations all over the room. When the meeting was convened and the amendment was presented, someone (she thinks it may have been Senator Morse) asked the chair if there would be public testimony permitted on the amendment. The chair, Senator Lessard, said "No." After a few brief statements from committee members, the vote was taken. The amendment was adopted and the bill, as amended, was recommended to pass. Senator Anderson voted no on the amendment and no on the bill at that meeting.

SENATOR KEVIN M. CHANDLER

Prairie Island Interview Summary

Date of Interview: May 18 and 24, 1994

Place of Interview: Telephone

Interviewer: Peter S. Wattson

Senator Chandler said that several days after the vote in the Environment and Natural Resources Committee where the Prairie Island bill had been defeated on a vote of 8 to 10, Senator Johnson suggested that the ten who voted "no" should meet in order to ensure that their opposition remained solid. He said the first meeting was in Room 23K, but he did not recall exactly when. I told him that Senator Merriam's records showed a meeting in 23K at 7:00 a.m. on Monday, March 21, and asked how that squared with his recollection. He said he recalled it was an early morning meeting because that was the time when the most members could get together and that Senator Merriam had arrived late. He said that at some point during the meetings in Room 23K Senator Merriam brought out a copy of Minnesota Statutes and read to the group section 3.055, the open meeting law for the Legislature.

Senator Chandler said that there was no discussion of possible compromise concepts until it was clear that the bill was leaving the committee and going to the floor. Senators Merriam and Riveness had been meeting with Senator Novak and reporting back to the group on what Senator Novak was doing to move the bill along. The group of ten knew that all it would take is two votes changing from "no" to "yes" to move the bill out of committee and that Merriam and Riveness, who were the last two undecided votes before the bill was defeated, were the ones most likely to change.

The turning point, in Senator Chandler's view, came when Senator Merriam announced to the group that Senator Novak now had the votes on the floor to use Rule 40 to withdraw the bill from the environment committee. Further, he also had the votes in the rules committee to do the same. Senator Novak faced a deadline of Friday, March 25, which was the first committee deadline, since after that date the majority he would need on the floor to pull the bill out of committee would rise from 50 percent to 60 percent. So a vote to withdraw the bill from committee would occur on the floor no later than Friday, March 25, and it would pass.

Senator Merriam told the group "I am going to tell you the facts of life," that they could write in their diaries that they went down in flames as the bill was withdrawn from committee over their objection and they had no influence on its content, or they could work with Senator Novak to include additional restrictions and safeguards. The group agreed to work on additional restrictions on NSP to include in the bill.

I told Senator Chandler that Senator Merriam's notes showed that a rules committee meeting had been scheduled for Wednesday afternoon, March 23, to hear Senator Novak's Rule 40 motion and that the group's press conference had occurred at 12:15 p.m. that day. Senator Chandler said that was consistent with his recollection. At the press conference the group announced its proposal to close the plant by a date certain and to require a siting process that would allow no storage of spent fuel on Prairie Island. He thought the proposal also included reracking at Prairie Island. He said that environmental groups and the Indians he spoke with supported this proposal.

As a result of their decision to attempt to strengthen the bill, the rules committee meeting occurred without Senator Novak moving to withdraw the bill from the environment committee.

Late that afternoon or evening, the group met in Room 237 for further discussions on their proposals. Senator Anderson was not present at the beginning but came in later. Unbeknownst to the group, Senator Merriam was over talking with Senator Moe and with Jim Howard, Chief Executive Officer of NSP, in Senator Moe's office.

Vic Moore came into Room 237 and said that Mr. Howard was in the Capitol and would answer their questions if they had any and asked that they not merely use this as an opportunity to "beat him up." Moments later Senator Moe appeared and asked if the group wanted Mr. Howard to come in. The group said it was OK and Mr. Howard walked in.

The group took turns asking Mr. Howard questions about the technical feasibility of various options, including reracking and alternative sites for waste storage. There were no questions on the bill itself. The questioning lasted for about half an hour and the meeting broke up right after Mr. Howard left.

In the course of the next day, Senators Merriam and Riveness continued to meet with Senator Novak to work out an amendment. Senator Novak was willing to make changes in the bill requested by a member if the member then would agree to vote for the bill. Senator Chandler said that because it was a certainty that the bill was going to the floor, he agreed to vote to pass the bill out of committee in exchange for language relating to a third-party contract, siting process, and additional renewables, but would work against the bill on the floor.

SENATOR HAROLD R. "SKIP" FINN

Prairie Island Interview Summary

Date of Interview: May 23, 1994

Place of Interview: 306 Capitol

Interviewer: Peter S. Wattson

I explained to Senator Finn the complaint that had been filed and the procedure that the Subcommittee on Ethical Conduct had decided to follow. I told him that I had already interviewed six of the ten members and had a general idea of what had happened. I asked him to explain what he knew about how the meetings had gotten started.

Senator Finn explained that he had approached Senator Murphy about getting additional information about the NSP proposal. As a result, Laura McCartan, who was NSP's spokesperson on the Prairie Island issue, came over to the Capitol and discussed the proposal with Senator Finn. Senator Finn later told Senator Moe's office that there was a basis for compromise but that the members needed to talk to someone higher up in NSP than Laura McCartan, someone who had authority to make decisions on behalf of the company.

During the week when negotiations on Prairie Island were in progress, Senator Finn said several people grumbled that the Mdewakanton Sioux Tribe was not having any input. Senator Finn asked the Tribe's lobbyist, Tom Anzels to bring the tribal representatives over to the Capitol. The tribal representatives said that there was nothing more to talk about.

Senator Finn said that it was Senator Janet Johnson who suggested getting together. She was afraid that Senator Novak would use Rule 40 to pull the bill out of the environment committee. Senator Janet Johnson and Senator Anderson wanted all ten members who had voted against the bill to get together.

Senator Finn said that he recalled one or two meetings in Room 224 before the group began meeting in Room 23K.

At one of the early meetings, Senator Merriam cautioned the group to be careful not to violate the open meeting law. Senator Finn said the group tried not to have a quorum present but that there may have been meetings where all ten were present.

Senator Finn said that in the day or two before the group met in Room 237, members were informed that Mr. Howard would be available in Senator Moe's office if members wanted to ask him questions. Senator Finn took advantage of this opportunity to meet separately with

Mr. Howard and he thinks Senators Merriam, Riveness, and Chandler did likewise.

On Wednesday, March 23, the group was meeting in Room 237 waiting for Senator Merriam to return from meeting with Senator Moe when Senator Merriam came in and said that Mr. Howard was available to come and meet with them. The group discussed whether they should listen to Mr. Howard. Some initially were opposed.

Senator Moe soon arrived and brought Mr. Howard with him, along with Merle Anderson, NSP's lobbyist. Mr. Howard said a few words and then answered questions from the group.

Senator Finn asked if NSP would consider siting waste storage at its Monticello nuclear plant. Merle Anderson said that NSP had considered and rejected that option because Monticello is upstream of the Twin Cities and siting it there would be politically impossible.

Each member asked a different line of questions. When Senator Johnson began to inquire about what NSP might find acceptable, Senator Finn discouraged her because that appeared to him to be an effort to negotiate and he thought this was not a time for negotiations. Senator Chandler asked about reracking.

The meeting with Mr. Howard lasted between 20 minutes and half an hour. Senator Finn believes that there was never a time when all ten members were present with Mr. Howard. He believes that there were at least one or two members out of the room at different times while Mr. Howard was there. The group remained in the room only briefly after Mr. Howard left.

After the meeting, Senators Merriam and Riveness served as emissaries from the group to Senator Novak.

On Thursday afternoon two representatives of the Tribe visited Senator Finn and told him, once again, that there was nothing to talk about regarding Prairie Island and a possible compromise with NSP.

Late Thursday afternoon someone sent a copy of a draft amendment to Senator Finn's office for review. He saw it was wrong and went down to Senator Merriam's office to discuss with him the need for a change. On the way, he ran into someone who assured him that the changes were already being made, but Senator Finn proceeded to Room 21 where various members were working with the drafters on the amendments. Senator Finn discussed with Senator Riveness and Senate Counsel, Hans Bjornson, a proposal to provide land to the Mdewakanton Sioux to which they might relocate if the casks were to remain stored at Prairie Island. Senator Riveness said that was OK, but Senator Moe "blew a gasket" when he found out about it saying that was not something anyone had previously discussed with him. After further discussion, he agreed to its inclusion in the Riveness amendment.

At the committee meeting when the amendments were offered, Senator Finn doesn't recall any public testimony.

SENATOR DENNIS R. FREDERICKSON

**Prairie Island
Interview Summary**

Date of Interview: May 23, 1994

Place of Interview: Room 139, State Office Building

Interviewer: Peter S. Wattson

I explained to Senator Frederickson the complaint that had been filed and the procedure the Subcommittee on Ethical Conduct had agreed to follow. I told him that I was aware a series of meetings had occurred and asked how he had become involved.

Senator Frederickson said that after the Prairie Island bill had been defeated in committee, Senator Janet Johnson and others had been talking in the retiring room and on the floor about what they should do next, especially the possibility that the bill might be withdrawn from committee under Rule 40.

Senator Frederickson recalled that there had been two or three meetings in Room 23K, perhaps four. He does not recall who notified him of the meetings; notice was spread by word of mouth.

Senator Frederickson said that people were coming and going from Room 23K all the while the group was meeting. He suspects that there were occasions when all ten were present but is sure that no votes were taken. He does not recall any discussion of the open meeting law. The main discussion was the possibility of a Rule 40 motion to withdraw the bill from the environment committee, that the motion would probably be successful, and that the group would then lose its opportunity to mandate the use of renewable energy resources. The group would also lose its opportunity to limit the number of casks that were stored on Prairie Island and lose its opportunity to require that the casks be moved off the island.

On Wednesday, March 23, someone suggested to him that the group gather in Room 23K around 5:00 p.m.. Senator Frederickson went to Room 23K shortly after 5:00 p.m.. No one from the group was there, but someone in the area told him that someone had called to say that the meeting had been moved to Room 237.

When Senator Frederickson arrived in Room 237, which would have been around 5:15, all nine other members of the group were there. They discussed where they were with possible amendments to the bill. During their discussion Vic Moore came in and asked if James Howard, CEO of NSP, could come in and talk with them for a few minutes. Shortly

after that, Senator Moe appeared along with Mr. Howard and Merle Anderson, NSP's lobbyist.

Mr. Howard talked about the importance of the plant at Prairie Island and why they needed dry cask storage. Someone asked why NSP could not store the casks at Monticello. Mr. Howard replied that Monticello was upstream from the Twin Cities and that the Mississippi River was a source of drinking water for Minneapolis. This made storage at Monticello politically unfeasible.

Senator Frederickson recalls asking questions but does not recall what they were. He characterized the meeting as an exchange of information from Mr. Howard to the members. He said there were no negotiations and no deals made. The discussion with Mr. Howard lasted about half an hour. It was completed by 6:00 or shortly thereafter.

After Mr. Howard left, the members remained in Room 237 for a short time.

After the meeting, Senator Riveness pursued his plan to find an alternate storage site while authorizing immediate use of four casks on Prairie Island.

On Thursday, March 24, Senator Frederickson and others gathered in Room 23K to discuss the amendments that were in progress. Senator Riveness or someone had met with Senator Novak to discuss what he would accept. The plan was to draft two amendments, one that Senator Novak would support and a second that Senator Novak would oppose.

The environment committee meeting Thursday night was scheduled to start about 7 p.m.. Around 6:00 or 6:30, Senator Frederickson went to Room 21. There he found Senate Counsel John Fuller and Hans Bjornson working on the amendments, along with Senate Researcher Bill Riemerman. Senator Janet Johnson was there. Senator Moe and Vic Moore were there at one point. Senator Morse also dropped in. Senator Frederickson reviewed the amendments and provided his comments on them to Mr. Bjornson and Mr. Fuller.

Senator Frederickson recalls that the meeting was delayed for an hour or so while the amendments were being drafted. When the amendments were offered, there was no public testimony and Senator Frederickson does not recall how much of an explanation was made of the content of each amendment.

SENATOR JANET B. JOHNSON

Prairie Island Interview Summary

Date of Interview: May 26, 1994

Place of Interview: Telephone Call

Interviewer: Peter S. Wattson

I reviewed with Senator Johnson the status of the complaint and told her that I had already interviewed eight of the members who had met with Mr. Howard. She asked me to refresh her recollection on when these events had occurred. I told her that the minutes of the Committee on Environment and Natural Resources showed that the bill had been defeated on Tuesday, March 15, and that Senator Merriam had told me she called him on Sunday, March 20, to attend a meeting Monday morning, March 21. I asked her to begin with the first thing that happened after the bill was defeated in committee.

Senator Johnson said that, within days after the bill was defeated, she began hearing rumors about procedural maneuvers that might be used to revive the bill, that this might involve going through the rules committee or a motion on the floor. She was concerned about this and wanted to talk to other more experienced members about the procedures that were available in a situation like this and what was normally done. She wanted to compare notes with others on the various rumors that were floating around and determine what moves they needed to be prepared to counteract. The discussions began with two or three members toward the end of that week. They agreed that the ten who had voted to kill the bill should gather to discuss these procedural questions. Senator Johnson agreed to call them, since the others didn't have time to do so.

Over the weekend, Senator Johnson called all the others but Senator Mondale.

All eight of the members she had called were present for the meeting Monday morning, March 21, which lasted roughly from 7:00 a.m. to 9:00 a.m.. Senator Merriam arrived late and Senator Johnson is not sure that he was the last to arrive. They discussed Rule 40 and how it could be used to withdraw a bill from a committee either by a motion in the rules committee or by a motion on the floor and agreed to meet again later that day.

At the group's third meeting, sometime on Tuesday, they discussed the criticism they were receiving for having voted against the bill without proposing any alternative. She asked me when their press conference had occurred. I told her that Senator Merriam's records showed it had taken place at 12:15 p.m. on Wednesday, March 23, in Room 123. She then said that it was at their Tuesday meeting when they decided to have a press conference to announce their counter

proposal.

On Wednesday afternoon following the press conference, they waited for a response from NSP. Senator Johnson received a call from Senator Mondale's office that she should go to a meeting on Prairie Island in Room 237.

While they were meeting in Room 237, Vic Moore came in and said that Mr. Howard was in Senator Moe's office and asked whether the group would like to talk to him. Senator Johnson believes that Mr. Howard had been to the Capitol before and had met with a number of senators before coming to speak to the group of ten. When he arrived in Room 237, the members asked him various questions about NSP's proposal. They did not make any offers to him or attempt to negotiate with him and they made no decisions.

Senator Johnson said that the members who had voted to kill the bill the previous week had been slowly changing their minds all that week, even before the press conference at which they announced their counter proposal. The meeting with Mr. Howard may have eased some members' concerns but made other members even more upset with NSP because it was clear that NSP did not have a commitment to the use of renewable resources for energy. She and Senators Finn and Chandler were clearly not pleased with what Mr. Howard had told them but as she said "a few people were spinning fast and taking others with them." Senators Merriam, Riveness, Finn, and Mondale were working to forge a compromise.

Senator Johnson felt sad that the group of ten had not called in any representatives of environmental groups to testify, so at a meeting in Room 23K later on Wednesday eve, she suggested that Mel Duncan and Craig Johnson be invited to talk to them about the process for selecting an alternative site, how long would it take, and how the siting process works. The group asked them questions for about ten minutes but again made no decisions. Not all the members of the group stayed to give the environmentalists equal time, some filed out of the room immediately when the environmentalists came in room, some stayed a few minutes. She was disappointed the environmentalists were not given the courtesy and time Jim Howard was.

Negotiations on the compromise proposal and drafting the Merriam and Riveness amendments occurred throughout the day on Thursday, continuing until the start of the meeting that night.

SENATOR GENE MERRIAM

Prairie Island Interview Summary

Date of Interview: May 18 and 26, 1994

Place of Interview: Room 122 Capitol

Interviewer: Peter S. Wattson

Senator Merriam said that after the Prairie Island bill was defeated in the environment committee on Tuesday, March 15, members who had voted no expected that something would happen to revive it. They thought it was important for those who voted "no" to discuss what to do to stop it or minimize the chances of its passage.

Senator Johnson called him on Sunday, March 20, to see if he was available to meet Monday morning at 7 a.m. in Room 23K.

Senator Merriam arrived late to the meeting, about 7:30 a.m. When he arrived everyone was there except Senator Mondale. The meeting ended about 8:30 a.m. Senator Merriam told the group that there was no reason for the group to meet if the bill were dead, but if the Senate were determined to pass the bill, the group might want to work on a counter proposal.

Between Monday, March 21, and Thursday, March 24, the group met in Room 23K a number of times, perhaps half a dozen.

When the group of ten began meeting, not at the very first meeting but sometime on Monday or Tuesday, Senator Merriam called their attention to the fact that the ten of them comprised a quorum of the environment committee and that because of the open meeting law they needed to not make any decisions. He said the group complied with that requirement.

One of the meetings in Room 23K was scheduled for 9:30 a.m. on Wednesday, March 23. The group knew that a rules committee meeting had been scheduled for 4:00 that afternoon and that Senator Novak might use that opportunity to make a Rule 40 motion to withdraw the bill from the environment committee. They knew that Senator Novak faced a deadline of Friday, March 25, for making his Rule 40 motion, since after that date the majority he needed on the floor to withdraw the bill increased from 50 percent to 60 percent. They discussed a counter proposal and prepared for a press conference to be held later that day.

About 12:30 p.m. Wednesday, March 23, the group held a press conference in Room 123 at which they announced a counter proposal. Sometime that afternoon, Senator Merriam received a call from Senator Mondale's office notifying him that the group would be meeting in Room 237 at 5:00 p.m..

As they were leaving the Rules Committee meeting, about 5 p.m. on Wednesday, March 23, Senator Moe invited Senator Merriam to his office to meet with James Howard, the CEO of NSP. Senator Merriam went to Senator Moe's office and was there when Mr. Howard arrived five or ten minutes later. Senator Merriam told Senator Moe that the group of ten was then meeting in Room 237. Senator Moe asked if they wanted to meet with Mr. Howard. At around 5:30 p.m., Senator Merriam went over to Room 237 and asked the group if they wanted to hear from Mr. Howard. Some members hesitated at first, but after a couple of minutes of discussion, they agreed. Senator Moe told the group that they could ask Mr. Howard questions but should be respectful and treat him like a guest.

The discussion with Mr. Howard lasted for about half an hour as members asked him various questions about NSP's proposal.

On Thursday morning, March 24, Senators Merriam and Riveness went to Vic Moore's office to see whether there might be the basis for negotiating an agreement with Senator Novak, with Mr. Moore serving as a broker between the two sides. Mr. Howard was in the Capitol again and was brought into Mr. Moore's office to meet with Senators Merriam and Riveness.

On Thursday afternoon, March 24, after an agreement had been brokered between Senator Novak and Senators Merriam and Riveness, Senators Merriam and Riveness went to Room 23K to explain it to the group. Judging by their comments, Senator Merriam concluded that Senator Janet Johnson and Senator Anderson were still opposed, but he had no idea who would vote for it. He assumed that he and Senator Riveness and the eight who had voted "yes" the week before would vote for it, and hoped that others in the group of ten would join him, but had no commitments from any of them.

SENATOR ROGER D. MOE

Prairie Island Interview Summary

Date of Interview: May 25, 1994

Place of Interview: 208 Capitol

Interviewer: Peter S. Wattson

I explained to Senator Moe that after he forwarded Ms. Pranke's complaint to Senator Flynn, Senator Flynn had directed me to conduct an investigation and report back to the Committee on Ethical Conduct in preparation for a public hearing on the complaint. I told him that I had already interviewed eight of the ten senators concerned and asked him to explain how his involvement with them began.

Senator Moe said that Senator Novak had approached him on Monday or Tuesday, March 21 or 22, to tell Senator Moe that he intended to use Rule 40 to withdraw the Prairie Island bill from the Committee on Environment and Natural Resources, so that it might be considered on the floor of the Senate. He said he was confident that even though the bill had been defeated in the environment committee, he had the necessary votes on the floor to pull it out and pass it. Senator Moe thought Senator Novak was correct in saying that a vote of the whole Senate would come out differently than a vote in the environment committee. He was not so sure that Senator Novak would have the votes to use Rule 40 to get the bill out of committee. Senator Moe urged Senator Novak not to make his Rule 40 motion on the floor because it would set a bad precedent. Senator Moe viewed the committee system as vital to the orderly functioning of the Senate and thought that it was important to defend each committee's jurisdiction lest chaos break out on the Senate floor with one member after another moving to withdraw a bill from committee. Senator Moe asked Senator Novak, if he felt he had no other option than a Rule 40 motion, to make the motion in the Committee on Rules and Administration, rather than on the floor. That still would require a vote of the entire Senate to make the withdrawal effective but would allow for a more orderly procedure for discussing the merits of whether the bill should be withdrawn from the environment committee. Senator Novak said he would consider that but that he faced a deadline of Friday, March 25, for making his Rule 40 motion because after that date the majority needed to withdraw the bill from committee increased from 50 percent to 60 percent.

On Wednesday morning, March 23, Senator Novak notified Senator Moe of his intent to make a Rule 40 motion in the rules committee meeting scheduled for that afternoon and that he had the votes lined up to pass the motion. Senator Moe told him that the motion would pass "over my dead body." He said to tell NSP that Senator Moe would do everything in his power to defeat the motion. He said it was important to allow the committee process a chance to work. He pledged to call a rules committee meeting no later than Friday if the environment committee were unable to work out a compromise.

Senator Moe contacted Merle Anderson, NSP's lobbyist, and told him of Senator Moe's opposition to the Rule 40 motion. Mr. Anderson said he would try to talk Senator Novak out of making the motion that afternoon.

Senator Moe then met with Merle Anderson and James Howard, the Chief Executive Officer of NSP, in Senator Moe's office. Mr. Howard said that NSP could live with a maximum of 17 casks and would be willing to show some flexibility on the use of renewable sources for energy.

Senator Moe then contacted Senator Merriam and others to tell them of Mr. Howard's position. He asked them to get back to him with their reaction.

Senator Moe asked his staff to contact Mr. Howard and ask him to return to the Capitol. There, he and Merle Anderson met with Senator Moe and Senator Merriam along with Vic Moore and Tim Seck of Senator Moe's staff. Senator Moe asked Senator Merriam how the group of ten would react to Mr. Howard's new proposal. Senator Merriam suggested that Mr. Howard go to talk with the group, which was then meeting in Room 237. Senator Moe asked, "Are you sure?" Would the members be offended by this approach? Senator Merriam said no, that they were frustrated they had been unable to get answers to their questions from the spokespeople NSP had sent to the Capitol so far.

Senator Moe then sent Mr. Moore over to smooth the way for Mr. Howard's arrival. He followed with Mr. Howard and Merle Anderson.

After Mr. Howard made some brief opening comments, he took a number of questions, perhaps six to eight. Everyone who spoke was polite and Mr. Howard answered all their questions. The questions included why it wasn't feasible to store spent nuclear fuel at Monticello, the status of federal regulations, and the proposal by the Apache Tribe in New Mexico to provide a long-term depository. Mr. Howard gave the members the company position on all of these issues. No action was taken by the members at that meeting. The process took about half an hour. Senator Moe does not recall for sure whether all ten were present at that time.

The next day, Senators Merriam and Riveness came to see Senator Moe with a counter proposal. Senator Moe said that it looked like something that the environment committee might be willing to adopt. Merle Anderson was present and said that most of the proposal was acceptable and that it appeared that an agreement could be worked out.

Negotiations and drafting of the compromise proposal went on throughout the day on Thursday. At some point, Senator Lessard, the Chair of the Committee on Environment and Natural Resources, scheduled a meeting for that evening at which the proposal was considered and adopted.

SENATOR TED A. MONDALE

Prairie Island Interview Summary

Date of Interview: May 18, 1994; June 2, 1994

Place of Interview: Telephone calls

Interviewer: Peter S. Wattson

Senator Mondale said that the group of ten began meeting informally before the meeting with Mr. Howard but that all ten were rarely, if ever, present at the same time. For him, the meetings began with the press conference where the ten issued their compromise proposal. About an hour before the press conference, Senator Janet Johnson came to him, told him about the press conference, and said that they wanted all those who had voted "no" on the Prairie Island bill to be there. The easy thing to do, and the politically correct thing, would have been to continue to say "no," as Craig Johnson of Clean Water Action had urged them to do. But there were moves afoot to withdraw the bill from the environment committee and it was important for the group to show flexibility by putting forth a counter proposal that moved toward the use of alternative energy sources while phasing out nuclear power. The group also wanted to bind NSP and the Legislature with a contract that could not be repealed later.

Later that day, Wednesday, March 23, Vic Moore summoned Senator Mondale to a meeting in Room 237 with James Howard, the Chief Executive Officer of NSP. Senator Mondale's staff may have notified other members of the meeting, but it was not Senator Mondale himself who decided to move it from Room 23K to Room 237. He does not know who did. Senator Mondale is not sure whether all ten were present. He is sure Senator Frederickson was there but doesn't know about Senator Merriam.

Mr. Howard told the group that 17 casks were necessary, that NSP could not take less than that. The 17 casks would be enough to permit NSP to keep the Prairie Island plant operating until the year 2002. Mr. Howard said he was betting that by 2002 there would be another place to send the spent nuclear fuel, but that it was a gamble. He said that if NSP were not permitted the use of any casks for storage the plant would have to shut down.

Senator Mondale said that no action was taken at that meeting.

The group met in Room 23K of the Capitol, both morning and afternoon the day of the hearing in the environment committee (Thursday, March 24). At the afternoon meeting, Mel Duncan was brought in to tell the group what options were available for finding an alternative site for storage of spent nuclear fuel. Senator Mondale does not recall whether Craig Johnson appeared before the group.

The group continued discussions of possible amendments to the Novak bill right up until the beginning of the meeting on Thursday night, March 24. Senator Mondale said "I was not in any room where an agreement was made." He understood that Senators Merriam and Riveness had come to an agreement with Senators Moe and Novak prior to the environment committee hearing, but by 5:30 on the afternoon of Thursday, March 24, there was no agreement with the other members of the group.

Senator Mondale was not involved in drafting the language of the Riveness amendment. When he arrived for the meeting, Senator Chandler told him that Senator Riveness had an amendment that "we're going to vote for," without saying who he meant by "we." The first time that he saw there was concrete language was at the committee meeting where the amendment was moved and adopted. He decided to vote for it based on what he read at the meeting; he had not made a decision or made a commitment to anyone before he voted.

VIC MOORE
Executive Director to the Committee on Rules and Administration

Prairie Island
Interview Summary

Date of Interview: May 18, 1994

Place of Interview: 208 Capitol

Interviewer: Peter S. Wattson

Mr. Moore said that after the Prairie Island bill was defeated in the Senate committee on environment and natural resources, several members began talking about the possibility of pulling the bill out of committee using a Rule 40 motion or reconsidering the vote whereby the bill was defeated. Mr. Moore knew that the ten members who had voted against the bill in the environment committee were having meetings.

Senator Novak had told Senator Moe he had the votes to pull the bill out of the environment committee. Senator Moe told Senator Novak that he would try to defeat that motion and asked Senator Novak to delay making it. They were both aware of the Friday, March 25, deadline for getting bills out of committee and that after Friday the majority that Senator Novak would need to withdraw the bill from the environment committee would increase from 50 percent to 60 percent of the Senate.

Senator Moe asked Mr. Howard, Chief Executive Officer of NSP, to come to the Capitol. He told him there was a meeting of the Rules Committee scheduled for Wednesday afternoon at which Senator Novak would move to withdraw the bill from the environment committee. He said he would work hard to defeat the motion.

Senator Novak agreed not to make his motion in the Rules Committee meeting that day and after the meeting Mr. Moore got Senators Merriam and Riveness together to talk. Senator Moe called Mr. Howard to return to the Capitol to talk with them. After Mr. Howard had talked with Senators Merriam and Riveness, Senator Merriam suggested that Mr. Howard go over to Room 237 where the other members of the group were meeting and tell them what he had just told Senators Merriam and Riveness.

When Mr. Howard arrived in Room 237, Senator Anderson was not present. Mr. Moore went to get Senator Anderson. When he returned with her, others present were Senators Frederickson, Mondale, Morse, Price, Riveness, Janet Johnson, Finn, and Chandler, along with Senator Merriam, Senator Moe, Mr. Howard, Merle Anderson, NSP's lobbyist, Mr. Moore, and Tim Seck, an employee in Senator Moe's office.

After the meeting with Mr. Howard, negotiations continued with Senators Merriam, Riveness, and Chandler, but the proposals that lead to the amendments that were offered did not come until the next day.

SENATOR STEVEN MORSE

Prairie Island Interview Summary

Date of Interview: May 19, 1994

Place of Interview: G-24 Capitol

Interviewer: Peter S. Wattson

Senator Morse said that after the Prairie Island bill was defeated in the environment committee, a meeting was organized for those who voted against it, possibly by Senator Janet Johnson and Senator Anderson, to get together in order to discuss issues and options if the bill were not reported out by the environment committee. Senator Morse remembers Senator Merriam pulling out a copy of Minnesota Statutes and reading to the group the open meeting law, which applies if a quorum is present and the group makes decisions on matters within their jurisdiction. He said that the members were aware that they were a quorum of the environment committee and were mindful of the need not to make any decisions.

The group was meeting in Room 237 discussing possible scenarios when Mr. Howard was brought in. Merle Anderson, NSP's lobbyist was also present. The members asked Mr. Howard questions and engaged in dialogue but did not engage in any negotiations with him.

Senator Morse became convinced that NSP was committed to nuclear power and had no serious commitment to the use of renewable energy sources. He pressed Mr. Howard on what type of power will be used in the future. Senator Morse took special note of the answer to the question of why NSP could not store dry casks at its Monticello nuclear plant. It was stated by the representatives of NSP that they couldn't do that because Monticello was upstream from the Twin Cities. Mr. Howard said that if NSP got 17 casks that is all they'd seek for all sites within the state.

On Thursday night, just before the scheduled meeting of the environment committee, Senator Morse went to Room 21 to work on the amendments. Various members drifted in and out of the room. He recalls Senators Moe, Finn, Anderson, and Janet Johnson being there at one time or another. Senate Counsel John Fuller and Hans Bjornson were the drafters. From the conversations, Senator Morse gathered that there was not yet a consensus on how to move forward and he himself did not make a final decision on how to vote on the bill until during the committee meeting that night.

SENATOR LEONARD R. PRICE

Prairie Island Interview Summary

Date of Interview: May 18, 1994

Place of Interview: Telephone Call

Interviewer: Peter S. Wattson

Senator Price said that the meeting with Mr. Howard of NSP was just one of a series of meetings that occurred between the defeat of the Prairie Island bill in the environment committee and its passage five to seven days later. Those who met were the ten members who had voted "no" on final passage at the first meeting. The group met in Room 23K "quite a few times" in addition to meeting in Room 21. They discussed what options lay before them but never discussed a proposed package or voted on it. Representatives of the group, Senators Riveness, Merriam, and Finn, discussed their ideas with Senator Moe.

Sometime before the meeting with Mr. Howard, at a meeting in Room 23K, Senator Merriam discussed with the group the requirements of the open meeting law. Senator Price says it is possible there were times when all ten were present, including at the meeting with Mr. Howard.

The meeting with Mr. Howard occurred on Wednesday, March 23, in Room 237. The group had been meeting for five to ten minutes before Mr. Howard came in. They asked him questions about NSP's positions and Mr. Howard provided answers. The questions focused on reracking at Prairie Island, possible storage of dry casks at Monticello, what would happen if the plant closed down, NSP's commitment to the use of biomass to generate electricity, and Mr. Howard's authority to speak for NSP's stockholders.

The meeting with Mr. Howard lasted 30 to 40 minutes and then the group disbanded.

SENATOR PHIL J. RIVENESS

Prairie Island Interview Summary

Date of Interview: May 26, 1994

Place of Interview: 910 East 26th Street
Minneapolis, MN

Interviewer: Peter S. Wattson

I reviewed with Senator Riveness the status of the complaint and told him that I had already interviewed nine of the members who had met with Mr. Howard.

I asked whether Senator Riveness had had any discussions with the other members before Senator Janet Johnson's phone call and the meeting on Monday morning, March 21. He said he thought he probably had, but was not sure. He also was not sure whether the first meeting that he attended was Monday morning.

Senator Riveness said that when the group began meeting it discussed what they had heard about Senator Novak's plans to use Rule 40 to pull the bill out of committee and what were his odds of being successful. They wondered whether they should just sit tight or should begin making a move toward compromise. They knew that Senator Novak had ideas for what should be done, but they didn't know exactly what his ideas were.

Senator Riveness offices near Senator Novak and so had the opportunity to talk to him briefly about it. It was clear from their first discussions on Monday or Tuesday that he disagreed with Senator Novak.

Senator Riveness did not recall when the various meetings occurred on Monday and Tuesday, but he did recall that the fundamental problem facing the group was whether there was anything that they could put together as a proposal that would be acceptable to Senator Novak and to NSP. The sense of the group was that they should identify a person from NSP with whom they could talk. They wanted to push NSP toward an increase in its use of renewable resources for energy and for a firm date when the Prairie Island nuclear plant would be closed, but they did not have a good feeling for what alternate sites might be possible and what NSP's attitude was toward the Mdewakanton Sioux Tribe who lived near the plant.

At their meetings on Tuesday and Wednesday, the group worked to develop a counter proposal to be presented at a press conference. Senator Riveness served as spokesperson for the group at the press conference.

After the press conference, their proposal was immediately rejected by Senator Novak who said that he would use the occasion of a rules committee meeting scheduled for that afternoon to move to withdraw the bill from the environment committee and refer it to the floor.

Before the rules committee meeting, Senator Moe approached Senator Riveness and voiced his concern that a motion to withdraw the bill from the environment committee was the wrong way to go. He urged Senator Riveness to work out some kind of compromise that the environment committee could consider.

That same afternoon, the group met in Room 23K to further discuss their strategy. Senator Merriam asked, "Why don't we talk to NSP?"

When the group moved to Room 237, Senator Moe introduced Mr. Howard to them. They asked Mr. Howard about NSP's commitment to the use of renewable resources for energy, the alternate sites that it had considered, its attitude toward the Mdewakanton Sioux Tribe, whether NSP would be willing to accept a finite limit on the number of casks stored at Prairie Island, and why the company preferred the use of dry casks rather than reracking. Mr. Howard said that NSP was willing to accept a limit of 17 casks at both Prairie Island and Monticello together, and that they would agree to put this limit into the form of a contract that was not subject to repeal by the Legislature. He expressed the company's willingness to entertain other proposals from the group.

The next day when the group met again, they agreed it was time to decide whether to go forward with a proposal or not. They agreed on a few important points and delegated Senator Riveness to talk to Senator Novak and NSP. Senator Merriam went with Senator Riveness to Senator Moe's office. There they met with Senator Moe, Mr. Howard, and Merle Anderson, NSP's lobbyist. Vic Moore of Senator Moe's staff was also there, and Tim Seck may have been present. After they presented their proposal, Mr. Howard and Mr. Anderson took about ten minutes to think it over and accepted most of it. The parts accepted were a commitment to increase NSP's use of renewables, a commitment not to rerack, and the limit to 17 casks. The group's proposal for an accelerated siting process to locate an alternative site was rejected.

Senators Riveness and Merriam then reconvened the group in Room 23K to discuss NSP's reaction to their proposal. The group invited Mel Duncan and Craig Johnson, two representatives of environmental groups, in to speak with them. The group agreed that one amendment to be offered by Senator Merriam would include the items that NSP had indicated would be acceptable: that the number of casks would be limited to a total of 17, and that it would not rerack the storage pool at Prairie Island to increase its storage capacity. The other amendment, to be offered by Senator Riveness, would include the requirement that NSP had rejected that it be compelled to look for an alternative site for storage of the dry casks. The group understood that while they had the votes to add this requirement to the bill in the environment committee, NSP might be successful in removing it on the floor.

Senator Riveness presented this counter proposal to Senator Novak and NSP and they agreed not to oppose either amendment in the environment committee, but reserved the right to oppose the alternate siting process on the floor.

Drafting the amendments took place in Room 21 between about 6:00 and 8:30 that evening. Senators Riveness and Finn were the first to arrive, followed by Senator Anderson, Senator Janet Johnson, Senator Novak, and Senator Morse.

When the amendments were drafted and the environment committee convened, Senator Riveness explained his amendment to the committee, but did not explain the process whereby it had been developed.

TIM SECK
Legislative Clerk, Rules and Administration Committee

Prairie Island
Interview Summary

Date of Interview: May 25, 1994

Place of Interview: G-17 Capitol

Interviewer: Peter S. Wattson

I explained to Mr. Seck the complaint that had been filed and the procedure that the Special Committee on Ethical Conduct had decided to follow. I asked him to explain what he knew about the meeting with Mr. Howard and the events surrounding it.

Mr. Seck said that his involvement began sometime Wednesday morning when Senator Moe met with Senator Novak and Merle Anderson of NSP (either separately or together, he is not sure which). Senator Moe told them he would oppose a Rule 40 motion in the rules committee. Senator Novak pointed out that after Friday he would need a 60 percent majority of the whole Senate in order to withdraw the bill from the environment committee, so he had to take action before then. Merle Anderson said he would try to talk Senator Novak out of attempting a Rule 40 motion in the Wednesday rules meeting.

Before the rules committee meeting that afternoon, Senator Moe let Senator Novak know that, if Senator Novak did not attempt a Rule 40 motion in the rules committee on Wednesday and the environment committee did not pass the bill, he would call a rules committee meeting on Friday.

When Mr. Howard came over later that afternoon, he agreed to a finite limit of 17 casks in order to win over votes of the ten who had opposed the bill. Mr. Seck is not sure whether Senator Merriam was present at that meeting or came later, but when he did come and was informed of Mr. Howard's new position, he said that the group would be interested in hearing what Mr. Howard had to say. Mr. Howard was then asked to return to the Capitol.

Senator Merriam then went over to Room 237 and asked the group if they were interested in hearing from Mr. Howard. They said they were. Vic Moore then went over and asked them to be civil when speaking to Mr. Howard. Senator Moe, Mr. Howard, Merle Anderson, and Mr. Seck followed shortly. Mr. Seck remembers that Senators Mondale, Finn, Janet Johnson, Frederickson, Riveness, Price, Chandler, and Morse were present when he arrived. Senator Anderson arrived later. Mr. Seck doesn't recall anyone leaving while Mr. Howard was present.

After Mr. Howard and the others from Senator Moe's office had left the meeting, the group of ten continued.

On Thursday morning, Senators Merriam and Riveness came to Senator Moe's office with a proposal from the group of ten. In addition to Senator Moe and Mr. Seck, Vic Moore, and Merle Anderson were present. Mr. Howard may have been there too. In response to the group's proposal, NSP made a counter offer that Senator Merriam said he could personally support but that he wanted to discuss with the group.

Sometime on Thursday afternoon, Mr. Seck went down to Room 23K where the group of ten was meeting. It appeared to him that all ten were present, but he can't be sure. The purpose of his visit was to let them know that Senator Dean Johnson was floating a proposal to tie workers' compensation reform to the Prairie Island bill.

Later Thursday afternoon, Senator Lessard came to Senator Moe's office to find out whether or not he needed to schedule an environment committee meeting. Senator Moe suggested that he should think about tentatively scheduling a committee meeting for that night.

Thursday evening sometime between 7:00 p.m. and 9:00 p.m., Mr. Seck attending the drafting session that was going on in Room 21. John Fuller and Hans Bjornson were the drafters and Senators Janet Johnson, Anderson, Chandler, Finn, Frederickson, Price, and Morse were present in addition to Mr. Seck and Vic Moore. Most of the members were present during the entire time Mr. Seck was there, which lasted about an hour to an hour and a half. Senator Moe showed up toward the end and became very upset at the procedure of so many members giving two different drafters so many instructions. He said it was taking far longer than it should. He was especially upset at the addition of an issue he had not previously discussed, which was the requirement that the state transfer 1,200 acres of land in Goodhue County to the Mdwakanton Sioux Tribe if an alternate storage site away from Prairie Island could not be found.

At the committee meeting where the amendments were considered, Senator Lessard declined to permit public testimony, since there had already been extensive public hearings.

The Senate Environment and Natural Resources committee met on Friday, March 11, 1994 at 10:00 A.M. in Room 15, Capitol. The following members were present:

Lessard, Chair
Chandler, Vice Chair
Anderson
Benson
Berg
Dille
Finn
Frederickson
Johnson, J.
Laidig
Merriam
Mondale
Morse
Novak
Olson
Pariseau
Price
Riveness

Senator Lessard called the meeting to order at 10:12 a.m. Senator Lessard stated we would take two hours of testimony from proponents and two hours of testimony from opponents. He called on Senator Novak for S.F. 1706, relating to Prairie Island. Senator Novak stated this bill surrounds the nuclear power plant in Red Wing and it is a re-referral from the Jobs, Energy and Community Development committee. Senator Novak went through bill summary. He stated in the bill we mandate that NSP has to bring on 150 megawatts of wind. Right now we have 10 megawatts. In the last section of the bill, it states that never again would another plant be brought into the State of Minnesota. He stated that the two main issues are dry cast itself and Mississippi River.

Senator Novak referred to the Prairie Island Nuclear Plant Fact Sheet. "SEE ATTACHMENT A." He stated Prairie Island supplies 20% of Nsp customer's energy. Senator Novak stated that he wanted to show the video of a news program that was on WCCO Dimension this week. He also passed out a list of endorsements - "See Attachment B" and a poll that was in the Minneapolis Star Tribune - "See Attachment C."

Laura McCarten, Manager of Regulatory Projects, NSP. "See Attachment D." Ms. McCarten stated the spent fuel storage pool at the plant will be full this year. Without additional spent fuel storage capacity provided by dry casks, Unit 1 will have to shut down in May of 1995 and Unit 2 in January of 1996. She stated their dry cask proposal has been subjected to a full EIS by the Minnesota EQB. She stated that all state reviews have found that their proposal is safe, would have no significant environmental impact, is necessary and is in the public interest. She added the proposed dry cask storage facility has received a license from the NRC after a thorough three year review. Ms. McCarten explained that the casks are made of steel, with walls 9½ inches thick. They stand 17 feet tall, are 8½ feet in diameter and weigh 122 tons when loaded with spent fuel. It is simply a steel container with a bolted-on lid.

Senator Chandler passed out a letter sent to him by Laura McCarten. "SEE ATTACHMENT E."

Ms. McCarten stated that if the legislature denies use of dry cask storage. Prairie Island must shut down. And, if that happens - several consequences follow. First, the cost of electricity will increase, aid emissions will increase, decrease in the margin of reliability of service to their customers and they would request the necessary approvals to remove all the fuel from the pool and place it in dry storage for that is the better means of fuel storage for a non-operating plant.

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Senator Novak passed out a letter from NSP on "reracking." "See Attachment F."

Ms. McCarten stated a couple areas of the bill they oppose are the section of the bill requiring NSP to shut down the plant if it fails to operate at least 55 percent of the time for three straight years and the provision that requires NSP to spend more money on conservation and force it to cut rates charged to its poorest customers.

Bill Peterson, MN AFL-CIO - Secretary/Treasurer. Mr. Peterson stated if this bill is not passed they would terminate 500 people at Prairie Island and an additional 250 construction workers. Employees would have to be re-trained and it would have a detrimental affect on consumers.

Dave Olson, President, Minnesota Chamber of Commerce. Mr. Olson stated the chamber supports the bill.

Senator Anderson stated there are union members against this issue. She stated union members claim they are being blackmailed by their employers unless they support dry cask.

Mr. Peterson stated he isn't trying to blackmail anyone.

Nancy Mikitta, testifying for Mayor of Red Wing. She stated Red Wing would lost 500 jobs and strongly urged the committee to support the bill.

Jeff Cole, Goodhue County Treasurer. Mr. Cole stated the Goodhue County Board is in support of dry cask storage.

Clay Hovda, Red Wing School District Superintendent. Mr. Hovda states the money the school district would lose is something they couldn't recovery from. He also wants a resolution to U.S. Congressmen from the State Legislature.

Senator Frederickson asked about plans for evacuation if something happens.

Ms. Mikitta stated plans are in place in Red Wing for any disaster.

Don Storm, Commissioner, Public Utilities Commission. Mr. Storm stated there are two essential points. First, continued operation of NSP and its impact to the State of Minnesota and if the legislature does not approve the bill it would force a shutdown of the plant and would not allow for decommissioning of the plant. He stated they went through a rigorous, fair and lengthy process. It was not a referendum on nuclear power, but a service to the citizens of Minnesota. He stated the decision was unanimous. He stated they have now been contacted by a second group in Wyoming interested in permanent storage and has also been made aware today of a third group.

Richard Auld, Ass't. Com., Department of Public Service. Mr. Auld stated it is in the public's best interest to grant NSP the right for safety reasons, alternative storage options and continued operations of the plant.

Pat Blomgren, Division Director, Department of Health. Ms. Blomgren stated they neither support or oppose the bill. She stated they have a public disclosure role to look at health issues and risks to the public. She stated there is one or possibly less than one chance of cancer in population of 100,000. She stated human health issues are negligible.

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Senator Finn asked if Commissioner Storm and Mr. Auld were brought in to speak for the Governor's position.

Commissioner Storm stated he wanted to be on record that the Governor and him have never discussed Prairie Island.

Dan Mjolsness, Coordinator, Citizen Alliance for Reliable Energy. "See Attachment G." Mr. Mjolsness stated the Prairie Island facility has been a good neighbor. He asked the committee to consider scientific evidence.

Senator Chandler stated he wants specific questions that were asked on the survey. He doesn't care about the percentage of responses, but what the actual questions were.

Tom Payne, Radiation Bio-Physicist. Mr. Payne stated the two questions the committee members need to ask themselves are is this a detriment to the environment and will it harm our natural resources. He stated this is a highly regulated area. He stated radiation level for dry cask is below concern. He added that dry cask is designed to prevent leaking and spillage. He added that contamination is not a problem.

Lisa DePas, Red Wing. Ms. DePas stated it is possible to live in Red Wing and not have anything to do with Prairie Island. She stated she has done a lot of private research on this issue. She added that Minnesota should be looking into wind power. She stated if living near nuclear storage means it's a waste dump - then Red Wing is already a waste dump.

Senator Frederickson asked Dr. Payne about the effect of fuel rods with 20 feet. Dr. Payne stated at close distances - someone would be hurt.

Don Gerdesmeier, D.R.I.V.E. Mr. Gerdesmeier testified in support of S.F. 1706

Jim Nichols, Lake Benton. Mr. Nichols stated he lives on the Buffalo Ridge and passed out handouts on wind.

LeRoy Stansgaard, Pipestone County. He suggested the committee look at alternative energy sources.

Carl Hanschild, Lincoln County. He stated they have a deteriorating population in Lincoln County and they look forward to more employment with wind sources.

Senator Johnson passed out letter from Vestas. "See Attachment I."

Frank Chesley, Red Wing. Mr. Chesley asked the committee to support the bill.

Edward Miller, Red Wing. Mr. Miller stated this is a utility that has a conscience. He said committee should focus on nuclear waste already there - it doesn't get rid of fuel rods. "See Attachment J."

Buss Anderson, Koch Refining. Mr. Anderson stated they compete with 175 refineries in the state. \$400 million spent in the state. He said we need to keep competitive advantage for low-cost, effective dry storage.

Senator Lessard stated we would now start with opponents.

Robert D. Pollard, Union of Concerned Scientists. "See Attachment K." Mr. Pollard stated he was a former employee of NRC. He said NSP may have underestimated the cost of safety

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standards. He added the nuclear plant will not run efficiently for 40 years based on previous NRC reports with no technology currently available to determine efficiency and safety. He testified there is an effort to relax safety regulations by NRC. NRC is systematically going through their regulations to relax safety regulations in order to save money. He doesn't believe Prairie Island will close. He said NRC will probably not require further - more extensive safety standards and waste will be on Prairie Island "longer than the predictable future."

Senator Riveness asked about already existing waste and how we deal with residual waste. Mr. Pollard stated casks are better and a strategy would be to stop making waste, and store it in dry casks but not on Prairie Island.

Senator Merriam asked why the NRC has protected the nuclear industry? Mr. Pollard stated he doesn't understand why this has happened, the nuclear navy does a good job and the answer to the question comes with the history of the NRC.

Senator Merriam asked if it is a technical problem that we can't store waste safely? Mr. Pollard stated it's a combination of a political and technical problem. If we use nuclear power we should do it safely. He personally does not believe that it will or can be stored safely.

Senator Finn asked if there was a NRC decommissioning plan or process? Mr. Pollard stated NSP must do a decommissioning plan but within 60 years. Utilities will apply for possession license. He added the fuel can stay where it is.

Senator Morse asked how soon we could get all the fuel in dry casks? Mr. Pollard stated 10 years.

Senator Morse and Price questioned the Anderson Law. He stated currently utilities are required to buy as much insurance as possible and should that not cover it - other plants need to cover the costs?

Senator Frederickson asked about recycling and reprocessing? Mr. Pollard stated the U.S. has decided not to reprocess for various reasons. France and Great Britain are reprocessing. The reality is the economics.

Senator Chandler questioned process once casks live out their life? Mr. Pollard stated an assessment is done whether they can still function, otherwise new casks need to be used, old ones become part of low-level waste and rods have to be removed.

Senator Pariseau asked if the problem with the U.S. not reprocessing is because of a lack of a good U.S. energy policy? Mr. Pollard stated he doesn't believe so, reprocessing doesn't make sense economically.

Darilynn Lehto and Tom Anzalc, Prairie Island Tribal Council. Ms. Lehto testified regarding the Tribe's values and needs; money is not the issue. She stated they value their land and fear being a "nuclear experiment."

David Morris, Institute for Local Self-Reliance. "See Attachment L." Mr. Morris testified he believes we will have the power to replace Prairie Island. He said renewables are available and urged a set date to stop producing nuclear waste.

Paul Hanson, Isaak Walton League. Mr. Hanson testified their Red Wing Chapter supports NSP, however their position is to oppose the proposal. "See Attachment M."

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Richard A. Duncan, Faegre & Benson. "See Attachment N." Mr. Duncan testified on court precedent and on the control of the casks and their expansion being retained by the state.

Craig Johnson, Clean Water Action. Mr. Johnson stated they are against S.F. 1706.

John Dunlop, American Wind Energy Association. Mr. Dunlop stated they have not taken a position for or against the bill.

Linda MacRunnels, Co-Chair, Prairie Island Religious Taskforce. "See Attachment O." She stated they are very concerned that NSP and others are ready to honor tribal sovereignty only when it suits their purposes. She stated with two reactors at Prairie Island, they believe that racism is and has been part of their state's decision-making process. She urged the committee not to store additional nuclear waste at Prairie Island. She said racism is never in the public's best interest.

Andy Otness, League of Women Voters. "See Attachment Q." Ms. Otness stated they oppose the legislation for four reasons: 1) location in flood plain; 2) NSP hasn't provided all of the details; 3) history and 4) policy that minimizes waste and asks for conservation.

Meeting adjourned at 3:30 P.M.

Colleen Bonniwell, Minneapolis. Ms. Bonniwell stood up and tried to testify. "See Attachment R." She said environmental justice affirms the sacredness of Mother Earth.

This meeting was taped.

Sandi Brown
Sandi Brown

Bob Lessard
Bob Lessard, Chair

1

A bill for an act

2 relating to public utilities; providing legislative
3 authorization of the construction of a facility for
4 the temporary dry cask storage of spent nuclear fuel
5 at Prairie Island nuclear generating plant; providing
6 conditions for any future expansion of storage
7 capacity; approving the continued operation of pool
8 storage at Monticello and Prairie Island nuclear
9 generating plants; requiring development of wind
10 power; regulating nuclear power plants; requiring
11 increased conservation investments; providing
12 low-income discounted electric rates; appropriating
13 money; amending Minnesota Statutes 1992, sections
14 216B.16, by adding a subdivision; 216B.241,
15 subdivision 1a; and 216B.243, by adding subdivisions;
16 proposing coding for new law in Minnesota Statutes,
17 chapter 216B.

18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

19

ARTICLE 1

20

RADIOACTIVE WASTE MANAGEMENT FACILITY AUTHORIZATION

21

Section 1. [LEGISLATIVE AUTHORIZATION FOR INDEPENDENT

22

SPENT FUEL STORAGE INSTALLATION AT PRAIRIE ISLAND.]

23

The legislature recognizes that:

24

(1) the Minnesota environmental quality board on May 16,

25

1991, reviewed and found adequate a final environmental impact

26

statement ("EIS") on the proposal to construct and operate a dry

27

cask storage facility for the temporary storage of spent nuclear

28

fuel from the Prairie Island nuclear generating plant;

29

(2) the nuclear regulatory commission reviewed and approved

30

a safety analysis report on the facility and on October 19,

31

1993, granted a license for the facility; and

1 (3) the public utilities commission in docket no.
2 E002/CN-91-91 reviewed the facility and approved a limited
3 certificate of need approving the use of 17 casks.

4 The Minnesota legislature in compliance with Minnesota
5 Statutes, section 116C.72, hereby ratifies and approves the EIS
6 and the limited certificate of need and authorizes the use of 17
7 casks at Prairie Island in accordance with the terms and
8 conditions of the certificate of need.

9 Sec. 2. [ADDITIONAL CASK LIMITATIONS.]

10 The public utilities commission may authorize an increase
11 in the dry cask storage capacity at Prairie Island beyond the 17
12 casks authorized by section 1 only upon:

13 (1) completion of an environmental impact statement,
14 prepared by the environmental quality board pursuant to
15 Minnesota Statutes, section 116D.04; and

16 (2) completion of a certificate of need proceeding before
17 the commission pursuant to Minnesota Statutes, section 216B.243.

18 Sec. 3. [ADDITIONAL LEGISLATIVE AUTHORIZATION LIMITATION.]

19 If any public utilities commission authorization to
20 increase dry cask storage capacity would accommodate operation
21 of the Prairie Island nuclear generating plant beyond the year
22 2014, then, the authorization to increase dry cask storage
23 capacity at Prairie Island would again be subject to legislative
24 authorization pursuant to Minnesota Statutes, section 116C.72.

25 Sec. 4. [AUTHORIZATION.]

26 To the extent that the radioactive waste management act,
27 Minnesota Statutes, section 116C.72, requires legislative
28 authorization of the operation of certain facilities, this
29 section expressly authorizes the continued operation of the
30 Monticello nuclear generating plant spent nuclear fuel pool
31 storage facility and the Prairie Island nuclear generating plant
32 spent nuclear fuel pool storage facility.

33 Sec. 5. [EFFECTIVE DATE.]

34 This article is effective the day following final enactment.

35

ARTICLE 2

36

ECONOMIC REGULATION OF NUCLEAR POWER PLANTS

1 Section 1. [LEGISLATIVE FINDINGS.]

2 The legislature finds that there is great uncertainty over
3 the means and costs of disposing of radioactive wastes generated
4 at nuclear-powered electric generating plants. Current and
5 future electric ratepayers are at risk to pay for these
6 uncertain and potentially enormous costs. These costs could
7 cause economic hardship for the citizens of this state and
8 damage economic growth. For these reasons the legislature finds
9 it necessary to protect its citizens against these costs. While
10 these potential costs do not currently warrant closing an
11 operating nuclear power plant, they do warrant a moratorium on
12 new nuclear plant construction and closer monitoring of
13 operating nuclear power plants.

14 Sec. 2. Minnesota Statutes 1992, section 216B.243, is
15 amended by adding a subdivision to read:

16 Subd. 3b. [NUCLEAR POWER PLANT; NEW CONSTRUCTION
17 PROHIBITED.] The commission may not issue a certificate of need
18 for the construction of a new nuclear-powered electric
19 generating plant.

20 Sec. 3. Minnesota Statutes 1992, section 216B.243, is
21 amended by adding a subdivision to read:

22 Subd. 9. [NUCLEAR WASTE STORAGE OR DISPOSAL FACILITY.] The
23 commission may not issue a certificate of need for a nuclear
24 waste storage or disposal facility to store or dispose of wastes
25 generated by a nuclear-powered electric generating plant unless
26 the commission finds that there has been developed and that the
27 United States, through its authorized agency, has approved and
28 there exists a demonstrated technology or means for the disposal
29 of high-level nuclear waste. This subdivision applies only if
30 the certificate of need authorizes storage capacity that enables
31 a nuclear-powered electric generating plant to continue
32 operating after the expiration of its original 40-year operating
33 license from the federal government.

34 The requirements in this subdivision are in addition to any
35 other requirement imposed by law for the issuance of a
36 certificate of need.

1 Sec. 4. [216B.244] [NUCLEAR PLANT CAPACITY REQUIREMENTS.]
2 A reactor unit at a nuclear power electric generating plant
3 that has an annual load capacity factor of less than 55 percent
4 for each of three consecutive calendar years must be shut down
5 and cease operating no later than 500 days after the end of the
6 third such consecutive calendar year. For the purposes of this
7 section, "load capacity factor" means the ratio between a
8 reactor unit's average load and its peak load.

9 Sec. 5. [EFFECTIVE DATE.]
10 This article is effective the day following final enactment.

11 ARTICLE 3

12 ALTERNATIVE ENERGY AND CONSERVATION

13 Section 1. Minnesota Statutes 1992, section 216B.241,
14 subdivision 1a, is amended to read:

15 Subd. 1a. [INVESTMENTS, EXPENDITURES, AND CONTRIBUTIONS;
16 REGULATED UTILITIES.] (a) For purposes of this subdivision and
17 subdivision 2, "public utility" has the meaning given it in
18 section 216B.02, subdivision 4. Each public utility shall spend
19 and invest for energy conservation improvements under this
20 subdivision and subdivision 2 the following amounts:

21 (1) for a utility that furnishes gas service, .5 percent of
22 its gross operating revenues from service provided in the state;
23 and

24 (2) for a utility that furnishes electric service, 1.5
25 percent of its gross operating revenues from service provided in
26 the state; and

27 (3) for a utility that furnishes electric service and that
28 operates a nuclear powered electric generating plant within the
29 state, two percent of its gross operating revenues from service
30 provided in the state.

31 (b) The commissioner may require investments or spending
32 greater than the amounts required under this subdivision for a
33 public utility whose most recent advance forecast required under
34 section 116C.54 projects a peak demand deficit of 100 megawatts
35 or greater within five years under mid-range forecast
36 assumptions. A public utility may appeal a decision of the

1 commissioner under this paragraph to the commission under
2 subdivision 2. In reviewing a decision of the commissioner
3 under this paragraph, the commission shall rescind the decision
4 if it finds that the required investments or spending will:

5 (1) not result in cost-effective programs; or

6 (2) otherwise not be in the public interest.

7 (c) Each utility shall determine what portion of the amount
8 it sets aside for conservation improvement will be used for
9 conservation improvements under subdivision 2 and what portion
10 it will contribute to the energy and conservation account
11 established in subdivision 2a. Contributions must be remitted
12 to the commissioner of public service by February 1 of each year.
13 Nothing in this subdivision prohibits a public utility from
14 spending or investing for energy conservation improvement more
15 than required in this subdivision.

16 Sec. 2. [WIND POWER MANDATE.]

17 A public utility, as defined in Minnesota Statutes, section
18 216B.02, subdivision 4, that operates a nuclear powered electric
19 generating plant within this state must by January 1, 2000,
20 either directly or under contract, construct and operate at
21 least 150,000 kilowatts of wind energy conversion systems within
22 the state. "Wind energy conversion system" has the meaning
23 given it in section 216C.06, subdivision 12.

24 Sec. 3. [EFFECTIVE DATE.]

25 Section 1 is effective January 1, 1995.

26 ARTICLE 4

27 MISCELLANEOUS

28 Section 1. Minnesota Statutes 1992, section 216B.16, is
29 amended by adding a subdivision to read:

30 Subd. 14. [LOW-INCOME DISCOUNT ELECTRIC RATES.] A public
31 utility shall provide a 50 percent electric rate discount on the
32 first 300 kilowatt hours consumed in a billing period for a
33 low-income residential customer. For the purposes of this
34 subdivision, "low-income" means a customer who is receiving
35 assistance from the federal low-income home energy assistance
36 program. For the purposes of this subdivision, "public utility"

1 includes only those public utilities with more than 200,000
2 residential electric service customers. The commission may
3 issue orders necessary to implement, administer, and recover the
4 discount rate program on a timely basis.

5 Sec. 2. [216B.246] [DRY CASK NUCLEAR STORAGE; ANNUAL FEE
6 APPROPRIATION.]

7 Subdivision 1. [ANNUAL FEE.] A public utility that stores
8 nuclear waste at the site of the Prairie Island nuclear
9 generating plant in dry casks under a certificate of need issued
10 by the public utilities commission shall pay an annual fee of
11 \$2,200,000 to the state for each calendar year or part thereof
12 that it so stores nuclear waste.

13 The fee must be paid by January 10 following each year it
14 is due. The fee shall be paid to the commissioner of finance
15 and shall be deposited in a separate account in the special
16 revenue fund in the state treasury.

17 The fee imposed by this section expires January 1, 2003,
18 and is not applicable in calendar year 2003 and subsequent years.

19 The commission may issue orders necessary to administer,
20 implement, and recover the fee imposed by this section on a
21 timely basis.

22 Subd. 2. [APPROPRIATION.] All money, including earnings
23 thereon, in the account created under this section is annually
24 appropriated to the commissioner of finance for transfer by
25 March 1 of each year to the Mdewakanton Sioux Tribal Council at
26 Prairie Island. The money may be used by the tribal council for
27 the public purposes of providing public services and
28 infrastructure capital improvements such as roads, schools, and
29 sewers, at the Prairie Island Mdewakanton Sioux community.

30 Sec. 3. [EFFECTIVE DATE.]

31 Section 1 is effective January 1, 1995. Section 2 is
32 effective the day following final enactment.

The Senate Environment and Natural Resources Committee met on Tuesday, March 15, 1994 at 2:00 P.M. in Room 15, Capitol. The following members were present:

Lessard, Chair
Chandler, Vice Chair
Anderson
Benson
Berg
Dille
Finn
Frederickson
Johnson, Janet
Laidig
Merriam
Mondale
Morse
Novak
Olson
Pariseau
Price
Riveness

Senator Lessard called the meeting to order at 2:12 p.m. and called on Senator Novak for S.F. 1706.

Senator Riveness asked Senator Novak if plant were to close - what would happen? Senator Novak stated plant would not be torn down because of federal regulations on waste already there. Senator Riveness asked if there were plans for another use for the plant? Senator Novak stated he doesn't know the specific details on the plant.

Senator Berg asked what the cost difference is in producing electricity by natural gas. Senator Novak stated he was not sure and that this bill brings an end to nuclear power, but does it in a more rational period of time.

Senator Merriam asked if he could ask Laura McCarten from NSP some questions.

Senator Merriam asked about Ms. McCarten's credentials and to explain both eventualities - either with approval or no approval. Ms. McCarten stated she is a nuclear engineer and has worked for NSP for 9 years. With approval, NSP would be able to continue operating with 17 casks through 2001. Every two years they would be subject to go through the review process. If it isn't approved, they would shut down and start decommissioning the power plant, put all spent fuel into storage and would maintain the storage until a permanent deposit is found or private interim storage. Senator Merriam asked if approval is not granted - one reactor would close in May of 95 and one in January of 96 and wondered why this is the only option. Ms. McCarten stated if they felt reracking or building a new pool was better than dry cask - they would have had them in place before the shutdown. However, she stated there is not enough time. Senator Merriam asked about steam generators. Ms. McCarten stated that operating the plant as Westinghouse said - did not suffice. She stated they spent over \$60 million dollars bring the plant to their standards which was paid by ratepayers.

Senator Riveness asked why we cannot have a time certain to stop nuclear reactors. Ms. McCarten stated the reason is because all the information they have to date is that the plant is necessary and safe. It is looked at every two years and it's not prudent for them to make that decision. Their decision is made on the best information they have available. Senator Riveness asked if she had a choice between not receiving approval or receiving approval till a certain year with phase out - what would she prefer? Ms. McCarten stated that puts her in a very difficult position and stated she would prefer to continue like it is now and looked at every two years.

Senator Morse asked when do they expect federal approval for permanent disposal? Ms. McCarten stated not before 2010 and it could be five to 10 years after that. Senator Morse said, if we do not approve the bill - you will open again in the future.

Senator Novak stated this bill gets away from nuclear power. There is a specific transitional plan to get away from nuclear power on a rational time line.

Senator Benson asked about the transporting of spent fuel from Montana to Illinois. Ms. McCarten stated it was all transported safely.

Senator Frederickson asked about the cask licenses. Ms. McCarten stated the license is good for 25 years and then you go back and inspect it. Senator Frederickson asked if it isn't possible for the license to run out before permanent storage is found. Ms. McCarten stated that is a possibility. She stated if they were found to be safe - they would continue using the same casks.

Senator Finn pointed out this bill allows for 31 casks authorized by the PUC. He thinks the legislature in statute has the right.

Senator Novak explained that is why we create certain state agencies. He added they are created by the legislature to study or perform specific duties.

Senator Finn asked when the waste would be removed from the State of Minnesota? Senator Novak stated he honestly believes there will be a permanent facility. He suggested everyone go and visit Yucca Valley and New Mexico. He thinks the Mescalera proposal will go forward.

Senator Berg moved on Page 6, delete section 2
Page 6, line 31, after the period delete the new language and delete line 32. MOTION DEFEATED.

Senator Novak moved SCS1706A26 - AMENDMENT PASSED.

Senator Dille stated he wanted to make a few points to the bill. 1) economics and fleecing the poor worker, 2) taxpayers - property tax the plant pays, 3) ratepayers, 200-400 million increase in rates, and 4) effect on stockholders.

Senator Dille passed out amendment on wounded birds. "See SCS1706A21". He later withdrew the amendment.

Senator Laidig stated there is a variety of criticism about casks and changes in alternative energy.

Senator Novak stated the bill asks for permission for dry cask. He stated it's a trigger mechanism for progress in these areas including wind energy, biomass, rates for low-income people and CIP (Conservation Improvement Programs).

David Morris, Institute for Local Self-Reliance. Mr. Morris stated in the State of Iowa they require 200 megawatts of wind. He questioned NSP's projection in renewables.

Senator Morse stated he has a number of concerns. He thinks NSP is trying to play it both ways. He added they should have looked at re-racking. He said the bill institutionalizes nuclear power. He said the safety issue is not predominate with him. He believes casks are better than pools, however this bill offers both. He thinks the bill attempts to get away from EIS and they need to pursue other renewables.

Environment and Natural Resources Committee
Page Three
March 15, 1994

Senator Lessard stated his concern was not passing this bill and the effect it would have on the people who work at Prairie Island.

Senator Riveness stated this has been a tough issue for him. He stated so we aren't sitting here in 2002 doing the same thing, it's time NSP anticipates the change and starts making advances toward that goal. He stated he is voting against the bill.

Senator Novak moved that S.F. 1706, as amended, be passed and asked for a roll call vote. Those voting in the affirmative were: Lessard, Benson, Joanne, Berg, Dille, Laidig, Novak, Olson and Pariseau. Those voting in the negative were: Anderson, Chandler, Finn, Frederickson, Janet Johnson, Merriam, Mondale, Morse, Price and Riveness.

Senator Dille moved that S.F. 1706, as amended, be passed and referred to the Finance Committee without recommendation.

Senator Chandler spoke against this motion and stated committee members should vote the same way and vote this motion down.


Roll call on the motion: Those voting in the affirmative were: Lessard, Benson, Joanne, Berg, Dille, Laidig, Novak, Olson and Pariseau. Those voting in the negative were: Anderson, Chandler, Finn, Frederickson, Johnson, J.B., Merriam, Mondale, Morse, Price and Riveness. Motion Defeated.

The meeting adjourned at 4:15 p.m.

This meeting was taped.



Sandi Brown



Bob Lessard

1 M...^{Delle}..... moves to amend S.F. No. 1706 as follows:
2 Page 6, line 22, before "All" insert "Except as provided in
3 subdivision 3,"
4 Page 6, after line 29, insert:
5 "Subd. 3. [WOUNDED BIRD FACILITY.] \$200,000 of each annual
6 fee received under subdivision 1 is annually appropriated to the
7 board of regents of the University of Minnesota for the
8 construction and operation of a veterinary medicine facility in
9 the Buffalo Ridge region of Minnesota to treat wounded migratory
10 birds and birds of prey."

1 M.....^{Nowak}..... moves to amend S.F. No. 1706 as follows:

2 Page 5, after line 23, insert:

3 "Sec. 3. [BIOMASS POWER MANDATE.]

4 A public utility, as defined in Minnesota Statutes, section
5 216B.02, subdivision 4, that operates a nuclear powered electric
6 generating plant within this state must by January 1, 1999,
7 develop and operate a biomass fueled electric generating plant
8 within this state of 50,000 kilowatts or more, using biomass
9 supplies that are compatible with existing crop rotation systems
10 used by Minnesota farmers."

11 Page 5, line 24, delete "3" and insert "4"

S.F. 1706 Motion - Finance

Amendment

S.F. _____

H.F. _____

Without Recommendation Resolution

NAME	YES	NO	PASS	ABSENT
LESSARD	X			
ANDERSON		X		
BENSON, J.	X			
BERG	X			
CHANDLER		X		
DILLE	X			
FINN		X		
FREDERICKSON		X		
JOHNSON, J.B.		X		
LAIDIG	X			
MERRIAM		X		
MONDALE		X		
MORSE		X		
NOVAK	X			
OLSON	X			
PARISEAU	X			
PRICE		X		
RIVENESS		X		

AYES

8

NAYS

10

Motion Carried _____

Motion Lost _____

Requested by

Dille

Supported by _____

S.F. 1706 Final Vote

Amendment

S.F. _____

H.F. _____

Resolution _____

NAME	YES	NO	PASS	ABSENT
LESSARD	X			
ANDERSON		X		
BENSON, J.	X			
BERG	X			
CHANDLER		X		
DILLE	X			
FINN		X		
FREDERICKSON		X		
JOHNSON, J.B.		X		
LAIDIG	X			
MERRIAM		X		
MONDALE		X		
MORSE		X		
NOVAK	X			
OLSON	X			
PARISEAU	X			
PRICE		X		
RIVENESS		X		

AYES

8

NAYS

10

Motion Carried _____

Motion Lost _____

Requested by

Senator Novak

Supported by _____

The Senate Environment and Natural Resources Committee met on Thursday, March 24, 1994 at 7:00 P.M. in Room 15, Capitol. The following members were present:

Lessard, Chair
Chandler, Vice Chair
Anderson
Benson
Berg
Dille
Finn
Frederickson
Johnson, Janet
Laidig
Merriam
Mondale
Morse
Novak
Olson
Pariseau
Price
Riveness

Senator Lessard called the meeting to order at 8:55 p.m.

Senator Merriam moved that having voted on the prevailing side for S.F. 1706, he moved to reconsider the vote. He stated he wants the bill reconsidered to show the compromise that has been worked out. Senator Merriam offered the A46 amendment. He said the amendment provides for an iron clad agreement with NSP for 17 casks and no further casks for either Prairie Island or Monticello unless they are decommissioned. He said this prohibits reracking and it is a contractual agreement between the state and NSP to bind both parties by this legislation and the Mdwakanton Sioux - as the third party. He stated they must first ship out dry cask storage before pools and once they are shipped - the casks must be decommissioned. Senator Merriam moved amendment.

Senator Novak spoke in favor of amendment.

AMENDMENT PASSED.

Senator Riveness moved SCS1706A-45. Senator Riveness moved correction on Page 1, line 16, delete "the remaining 13" and insert "a total of 17"

Senator Johnson wants clarification on lines 14 to 16.

Senator Dille asked about the 100-year flood plain.

Senator Novak stated he opposes the amendment.

Senator Riveness renewed his motion. **AMENDMENT PASSED.**

Senator Chandler states he opposes this bill and will fight like hell to kill this bill on the floor.

Senator Morse asked if we were taking testimony.

Senator Lessard said no.

Senator Novak moved that S.F. 1706, as amended, be recommended to pass and he requested a roll call vote. Those voting in the affirmative were: Lessard, Benson, Berg, Chandler, Dille, Finn, Frederickson, Laidig, Merriam, Mondale, Morse, Novak, Olson, Pariseau, Price and Riveness. Those voting in the negative were: Anderson and Johnson, J.B. **BILL PASSED 16-2.**

Meeting adjourned at 9:45 p.m.

This meeting was taped.

Environment and Natural Resources Committee
Page Two
March 24, 1994

Sandi Brown
Sandi Brown

Bob Lessard
Bob Lessard

Passed

03/24/94

Amendment

[COUNSEL] JCF

SCS1706A46

1 M..... moves to amend S.F. No. 1706 as follows:
2 Page 2, line 4, before "The" insert "Except as provided in
3 section 5"
4 Page 2, delete lines 10 to 24 and insert:
5 "(a) Except as provided under paragraph (b), dry cask
6 storage capacity for high-level nuclear waste within the state
7 may not be increased beyond the 17 casks authorized by section 1.
8 (b) This section does not prohibit a public utility from
9 applying for or the public utilities commission from granting a
10 certificate of need for dry cask storage to accommodate the
11 decommissioning of a nuclear power plant within this state.
12 Sec. 3. [PRAIRIE ISLAND RERACKING.]
13 The nuclear waste storage pool at Prairie Island may not be
14 reracked to increase the pool storage capacity."
15 Page 2, after line 32, insert:
16 "Sec. 5. [CONTRACTUAL AGREEMENT.]
17 The authorization for up to 17 dry casks contained in
18 section 1 is not effective until the state and the public
19 utility operating the Prairie Island nuclear plant enter into an
20 agreement binding the parties to the terms of sections 2 and 3.
21 The Mdewakanton Sioux Tribal Council at Prairie Island is an
22 intended third-party beneficiary of this agreement and has
23 standing to enforce the agreement.
24 Sec. 6. [SHIPMENT PRIORITIES; PRAIRIE ISLAND.]
25 If a storage or disposal site becomes available outside of
26 the state to accept high-level nuclear waste stored at Prairie
27 Island, the waste contained in dry casks shall be shipped to
28 that site before the shipment of any waste from the spent
29 nuclear fuel storage pool. Once waste is shipped that was
30 contained in a cask, the cask must be decommissioned and not
31 used for further storage."
32 Page 3, delete lines 20 to 36
33 Page 5, line 19, delete "by January 1, 2000"
34 Page 5, line 22, after "state" insert "by January 1, 2000,
35 and an additional 150,000 kilowatts by January 1, 2005"
36 Page 6, delete lines 5 to 29

03/24/94

[COUNSEL] JCF

SCS1706A46

- 1 Page 6, line 31, delete "Section 2 is"
- 2 Page 6, delete line 32
- 3 Renumber the sections in sequence and correct the internal
- 4 references
- 5 Amend the title accordingly

Handwritten initials

1 M..... moves to amend S.F. No. 1706 as follows:

2 Page 2, line 6, before "17" insert "up to"

3 Page 2, line 8, after the period, insert "Up to four of the

4 casks may be used at the approved Prairie Island site if the

5 public utility operating Prairie Island immediately commences

6 and pursues with due diligence the approval and licensure of an

7 alternative site that:

8 (1) is located outside the 100-year floodplain;

9 (2) is not within an area that meets the criteria developed

10 by the commissioner of natural resources under Minnesota

11 Statutes, section 103H.101, for identifying sensitive

12 groundwater areas; and

13 (3) minimizes risk of transport to the extent practicable.

14 If an alternative site is licensed by December 31, 1997:

15 (1) the contents of the four casks at Prairie Island shall

16 be transferred to the alternative site and ^{a total of 17} ~~the remaining 13~~

17 casks may be used at the alternative site without further

18 legislative approval;

19 (2) the four casks used at Prairie Island shall be

20 decommissioned; and

21 (3) no dry cask storage is authorized at Prairie Island.

22 If an alternative site is not licensed, legislative

23 approval is again required for the remaining 13 casks. If an

24 alternative site is not licensed and dry cask storage eliminated

25 at Prairie Island by December 31, 1997, the state must, by

26 purchase or condemnation, acquire 1200 contiguous acres of land

27 in Goodhue county by December 31, 1999, for transfer without

28 consideration to the United States in trust for the Mdewakanton

29 Sioux Tribe at Prairie Island. The state shall also provide

30 relocation assistance to members of the Mdewakanton Sioux Tribe

31 residing at Prairie Island for relocation to the land acquired

32 and transferred by the state."

ROLL CALL

SF

Final Passage

Amendment

S.F.

1764

H.F.

Resolution

NAME	YES	NO	PASS	ABSENT
LESSARD	X			
ANDERSON		X		
BENSON, J.	X			
BERG	X			
CHANDLER	X			
DILLE	X			
FINN	X			
FREDERICKSON	X			
JOHNSON, J.B.		X		
LAIDIG	X			
MERRIAM	X			
MONDALE	X			
MORSE	X			
NOVAK	X			
OLSON	X			
PARISEAU	X			
PRICE	X			
RIVENESS	X			

AYES

16

NAYS

2

Motion Carried

Motion Lost

Requested by

Novak

Supported by

1994	MARCH							1994
S	M	T	W	T	F	S		
	1	2	3	4	5			
6	7	8	9	10	11	12		
13	14	15	16	17	18	19		
20	21	22	23	24	25	26		
27	28	29	30	31				

Room 23K Reservation Log
 Marge Collins, Senate Finance Committee
 from **MARCH 21**

MONDAY, MARCH 21 80/288	TUESDAY, MARCH 22 81/284	WEDNESDAY, MARCH 23 82/283
7	7-8 <i>Blank</i>	7-8 <i>Blank</i>
7:15	7:15	7:15
7:30	7:30	7:30
7:45	7:45	7:45
8	8	8
8:15	8:15	8:15
8:30	8:30	8:30
8:45	8:45	8:45
9	9	9
9:15	9:15	9:15
9:30	9:30 - 11 <i>Hattinger Senior Fed</i>	9:30 <i>[scribble]</i>
9:45	9:45	9:45
10	10	10
10:15	10:15	10:15
10:30	10:30	10:30
10:45	10:45	10:45
11	11	11
11:15	11:15	11:15
11:30	11:30	11:30
11:45	11:45	11:45
12	12	12-3 <i>Kyrtta = ARCC - MU Comm Cell. Pres.</i>
12:15	12:15	12:15
12:30	12:30	12:30
12:45	12:45	12:45
1	1	1
1:15	1:15	1:15
1:30	1:30	1:30
1:45	1:45	1:45
2	2	2
2:15	2:15	2:15
2:30	2:30	2:30
2:45	2:45	2:45
3	3	3
3:15	3:15	3:15
3:30	3:30	3:30
3:45	3:45	3:45
4-5 <i>Ellen Anderson</i>	4-5 <i>Ellen Anderson</i>	4
4:15	4:15	4:15
4:30	4:30	4:30
4:45	4:45	4:45
5	5	5
5:15	5:15	5:15
5:30	5:30	5:30 <i>Conte of ID</i>
5:45	5:45	5:45
6	6	6
6:15	6:15	6:15
6:30	6:30	6:30
6:45	6:45	6:45
7	7	7
7:15	7:15	7:15
7:30	7:30	7:30
7:45	7:45	7:45
8	8	8
		8:15

Les Beer

422-3436
 Kyrtta = ARCC -
 MU Comm Cell.
 Pres.

Conte of ID

1994	APRIL							1994
S	M	T	W	T	F	S		
							1 2	
3	4	5	6	7	8	9		
10	11	12	13	14	15	16		
17	18	19	20	21	22	23		
24	25	26	27	28	29	30		

to MARCH 27

THURSDAY, MARCH 24 83/282	FRIDAY, MARCH 25 84/284	SATURDAY, MARCH 26 85/286
7	7	7 Passover begins at sundown
7:15	7:15	7:15
7:30	7:30	7:30
7:45	7:45	7:45
8	8	8
8:15	8:15	8:15
8:30	8:30	8:30
8:45	8:45	8:45
9	9	9
9:15	9:15	9:15
9:30	9:30	9:30
9:45	9:45	9:45
10	10	10
10:15	10:15	10:15
10:30	10:30	10:30
10:45	10:45	10:45
11	11	11
11:15	11:15	11:15
11:30	11:30	11:30
11:45	11:45	11:45
12-2 PT mtg	12	12
12:15	12:15	12:15
12:30	12:30	12:30
12:45	12:45	12:45
1	1	1
1:15	1:15	1:15
1:30	1:30	1:30
1:45	1:45	1:45
2	2	2
2:15	2:15	2:15
2:30	2:30	2:30
2:45	2:45	2:45
3	3	3
3:15	3:15	3:15
3:30 Mennon	3:30	3:30
3:45	3:45	3:45
4	4	4
4:15	4:15	4:15
4:30	4:30	4:30
4:45	4:45	4:45
5	5	5
5:15	5:15	5:15
5:30 PT mtg	5:30	5:30
5:45 Mennon	5:45	5:45
6	6	SUNDAY, MARCH 27 86/288
6:15	6:15	Palm Sunday
6:30	6:30	Passover
6:45	6:45	
7	7	
7:15	7:15	
7:30	7:30	
7:45	7:45	
8	8	
8:15	8:15	
8:30	8:30	
8:45	8:45	

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DIRECTOR

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State of Minnesota

June 2, 1994

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MAJA WEIDMANN

To: Senator Carol Flynn
Senator Sheila M. Kiscaden
Senator LeRoy A. Stumpf
Senator Roy W. Terwilliger

From: Peter S. Wattson, Senate Counsel *PSW*
296-3812

Subj: Past Proceedings of the Special Committee on Ethical Conduct

The predecessor of the Special Committee on Ethical Conduct, known as the Lobbyist Registration Committee, met in 1974 to consider a complaint by Senator Charles A. Berg that a lobbyist, Gordon Forbes, had exerted undue influence on Senator Berg's secretary, Ms. Betty Henry. The committee held several hearings in closed session but did not conclude its proceedings before the 1974 session adjourned. The committee asked for authority to continue its investigation during the 1974 interim, but did not hold any further hearings or take any action.

The Special Committee on Ethical Conduct met in 1975 to consider a complaint by Senators Nicholas D. Coleman and Robert Ashbach that Senate employees had been improperly soliciting campaign contributions. The committee conducted several hearings and found that improper conduct had occurred. It issued recommendations to curtail solicitation of campaign contributions by Senate employees.

In March of 1987, Senators Gary W. Laidig and Fritz Knaak filed a sworn complaint that Senators Douglas J. Johnson and Ron Dicklich had failed to disclose to the Senate their knowledge that the FBI had been investigating a firm named Endotronics, Inc., before the Senate voted on a bill that would have made the firm eligible for a \$24 million loan from the State. The two senators withdrew their sworn complaint before the committee met to consider it.

Senator Carol Flynn
June 2, 1994
Page 2

In April of 1987, the committee met to consider a letter from Senators Duane Benson and Fritz Knaak requesting an advisory opinion on the conduct of Senators Johnson and Dicklich in the Endotronics case. The committee issued an advisory opinion as follows:

A member of the Senate who asks another member to support a proposal should, to the best of the member's ability, inform the other member of all relevant, extraordinary and significant facts the first member knows that directly affect an individual or company benefiting from the proposal.

Later in April of 1987, the committee received a complaint from former Senator Carl Jensen that Senator Knaak's campaign workers had stolen Mr. Jensen's lawn signs during the 1986 campaign. Mr. Jensen was pursuing essentially the same complaint in a civil action in Ramsey County District Court. No member ever filed a complaint, and the committee did not pursue the matter further.

On April 8, 1993, Senator James P. Metzen and the other members of the Committee on Governmental Operations and Reform filed a sworn complaint against Senator Charles A. Berg. The complaint alleged that at the conclusion of the hearing on Friday, April 2, on S.F. No. 104 Senator Berg had suggested that "some of the committee members got bought off." The complaint charged that Senator Berg's comments were "scurrilous, derogatory, totally false, are unbecoming an individual member of the Minnesota Senate, and bring disrepute to the Minnesota Senate as an institution." On April 27, 1993, all twelve members who had signed the original complaint withdrew the complaint on the ground that Senator Berg's remarks did not constitute a violation of the Senate rules.

On May 13, 1993, one day after he had apologized to the Senate for having tainted it with public ridicule by allowing others to use the Senate's long-distance telephone access code for personal calls, Senator Sam G. Solon submitted himself to the Special Committee on Ethical Conduct for appropriate disciplinary action. A criminal investigation was undertaken by the Attorney General. When it appeared that Jennifer Pruden, an employee in the Attorney General's office, was one of those who had used Senator Solon's office phone to make long-distance personal calls, and that the Ramsey County Attorney's ex-wife was a close friend of Chuck Westin, another person who had used Senator Solon's telephone access code to make personal calls, the investigation was turned over to the Olmsted County Attorney. On February 24, 1994, the Olmsted County Attorney announced that his investigation of persons who had used Senator Solon's long-distance telephone access was complete and that he was filing criminal charges against Chuck Westin and Jennifer Pruden, but not against Senator Solon or the others who had used his Senate telephone access for their personal or private business. On March 21, 1994, the Special Committee on Ethical Conduct, which then consisted of Senators Flynn, Frederickson, Novak, and Terwilliger, recommended to the Committee on Rules and Administration a Senate resolution that Senator Solon be required to apologize and make restitution to the Senate (which he had already done) and be reprimanded. On March 23, 1994, the Rules Committee recommended the resolution to pass, and it was adopted by the Senate on March 24, 1994.

Senator Carol Flynn
June 2, 1994
Page 3

On November 4, 1993, Senator Duane D. Benson filed a sworn complaint against Senators Betzold, Cohen, Kroening, Luther, Marty, Metzen, Morse, Pappas, and Reichgott that they had misused the nonprofit postal permits held by the State DFL Party and the Fourth Congressional District DFL Party. Both Senator Benson and Senator Marty asked to be removed from the Committee on Ethical Conduct because of this complaint, Senator Benson for that issue only and Senator Marty for the balance of 1994. Senator Frederickson and Senator Flynn were appointed to replace them.

On February 16, 1994, Senator Terwilliger filed a sworn complaint against Senator Chandler. The complaint alleged that Senator Chandler, who during 1993 was employed by the law firm of Opperman, Heins, Paquin, and whose wife, Kathleen Chandler was employed by the firm as a lobbyist on issues before the Senate, had voted to support the interests of his firm's clients and had failed to disclose those potential conflicts of interest. On April 20, 1994, Senator Terwilliger withdrew his complaint, saying he no longer believed that Senator Chandler had had a conflict requiring disclosure or recusal and expressing his regret that he had inadvertently misrepresented Senator Chandler's voting record in several respects and inaccurately stated that he failed to notify the Senate as required by Minnesota Statutes, section 10A.07.

On February 28, 1994, Senator Chandler filed a sworn complaint against Senator Terwilliger, alleging that Senator Terwilliger's complaint contained false and misleading statements about Senator Chandler's voting record and that the allegation that Senator Chandler had "made no disclosure on potential conflicts of interest" was false. On April 21, 1994, Senator Chandler withdrew his complaint, saying that it was now apparent to him that any inaccurate representations made with respect to his voting record were inadvertent or based upon inaccurate information provided to Senator Terwilliger by others.

Enclosed for your information is a copy of the rules that the Committee adopted on March 18, 1994, to govern its proceedings.

PSW:cg
Enclosure

**COMMITTEE ON ETHICAL CONDUCT
RULES OF PROCEDURE**

1. All proceedings of the Committee will be conducted in accordance with Senate Rule 75.
2. Upon receipt of a properly executed complaint, the chair will notify the accused and the other members of the Committee.
3. The Committee will try to complete its work and report to the Senate before adjournment.
4. While the Committee is proceeding in executive session, all members, staff, and witnesses shall keep the proceedings of the Committee in confidence, except that after each meeting the chair shall make available to the public a brief statement about the general subject of the Committee's inquiry for that meeting.
5. Witnesses will be called at the request of any member of the Committee.
6. As soon as the agenda for a meeting has been finalized committee members and the public will be notified. If a meeting will be in executive session, the notice will so state.
7. All evidence provided by witnesses will be under oath.
8. Evidence presented at hearings conducted by the Committee will be in the following order:
 - a. Evidence provided by complainant.
 - b. Evidence provided by accused.
 - c. Evidence requested by Committee.
 - d. Rebuttal evidence by complainant or accused.
9. The order of procedure on the testimony of each witness will be as follows:
 - a. Testimony by the witness either in the form of a statement or in response to questions by the party calling the witness.
 - b. Examination of the witness by members of the Committee or Committee counsel.
 - c. Cross-examination of the witness by the accused or in case of witnesses for the accused, by the complainant.
 - d. Additional examination in the same order as a, b, and c.

10. The committee will consider all evidence that is competent, relevant, and material, and will not be strictly bound by the rules of evidence applicable to judicial proceedings.
11. All parties and witnesses are entitled to appear with counsel.
12. Tape recordings and minutes of proceedings in executive session shall be kept confidential until the Committee has concluded the confidential portion of its inquiry and shall then be made available to the public through the Legislative Reference Library and the Secretary of the Senate as provided in Rule 65.
13. Relevant portions of the taped record of Committee proceedings will be transcribed at the request of any member of the Committee, subject to the requirements of confidentiality while the Committee is meeting in executive session.
14. A witness will be furnished a certified transcript of the witness' testimony upon request and at the witness' expense.
15. The Committee, after hearing all evidence, will make findings of fact and recommendations to the Senate in accordance with Rule 75.
16. Findings of fact will be based upon a fair preponderance of the evidence.
17. The burden of proving a violation of Rule 75 is on the complainant.
18. After action by the Senate on recommendations of the Committee, all evidence will be returned to its proper owner.

PSW:lar

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JOAN E. WHITE

To: Senator Carol Flynn, Chair
Special Committee on Ethical Conduct

From: Peter S. Wattson, Senate Counsel *PSW*
296-3812

Subj: Appropriate Disciplinary Action

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Senate Rule 75 requires that, “[i]f, after investigation, the [Special Committee on Ethical Conduct] finds [a] complaint substantiated by the evidence, it shall recommend to the Senate appropriate disciplinary action.” This memorandum updates my memorandum of December 8, 1993, outlining the choices the committee has when deciding upon “appropriate disciplinary action.”

1. Expulsion

The Minnesota Constitution, article IV, § 7, provides:

Each house may determine the rules of its proceedings, sit upon its own adjournment, punish its members for disorderly behavior, and with the concurrence of two-thirds expel a member; but no member shall be expelled a second time for the same offense.

The United States Senate has expelled only 15 members, one during the late 1700s for disloyal conduct and 14 during the Civil War for disloyalty to the Union. The United States House of Representatives has expelled only four members, three during the Civil War for disloyalty and one in 1980 after he was convicted of bribery and conspiracy in office. J. Maskell, *Expulsion and Censure Actions Taken by the Full Senate Against Members*, CRS Report to Congress (1993).



2. Censure

In addition to authorizing the Senate to expel a member, section 7 also authorizes the Senate to "punish its members for disorderly behavior." The United States Senate has used the identical authority in the federal constitution to censure a member. A resolution of censure, adopted by the U.S. Senate, may use that term or others, such as "condemn" or "denounce," to describe the Senate's disapproval of a member's conduct. Maskell, *supra*, at CRS-10.

a. Condemnation

In 1929, the United States Senate condemned Senator Hiram Bingham for placing on the payroll of a committee an employee of a trade association that had a direct interest in the legislation before the committee. The employee was given access to secret committee deliberations because of his position. Senator Bingham was an unsuccessful candidate for re-election in 1932. Maskell, *supra*, at CRS-4, CRS-11 n.53.

Senator Joseph R. McCarthy was removed as chairman of the Permanent Subcommittee on Investigations and condemned by the United States Senate in 1954 for his "contemptuous" conduct toward a subcommittee that had investigated his finances in 1952 and for his abuse of the committee that had recommended his censure. He died in office in 1957. *Id.*

b. Censure

Senator Thomas Dodd was censured by the United States Senate in 1967 for personal use of campaign funds. He was an unsuccessful candidate for re-election in 1970. Maskell, *supra*, at CRS-5, CRS-11 n.53.

Representative Randy Staten was censured by the Minnesota House of Representatives in 1986 for deliberately and repeatedly failing to file accurate campaign finance reports and for pleading guilty to a charge of felony theft. JOURNAL OF THE HOUSE 7456-75 (1986).¹

¹ The Minnesota Constitution, art. IV, § 6, says that "senators and representatives must be qualified voters of the state . . ." Article VII, § 1, says that a convicted felon is not eligible to vote, unless restored to civil rights. Article IV, § 6, makes each house the judge of the eligibility of its own members. That judgment is made by a majority vote. The House's Select Committee on the Staten Case found that, although Representative Staten was convicted of a felony, his sentence of 90 days in jail was within the limits for a misdemeanor and therefore, under Minn. Stat. § 609.13, was deemed a misdemeanor, rather than a felony. Therefore, he could not be disqualified by a majority vote, but could only be expelled by a two-thirds vote. The Select Committee recommended that he be expelled, but the vote to expel him failed 80-52 (90

c. Denunciation

Senator Herman Talmadge was denounced by the United States Senate in 1979 for converting campaign funds to personal use, claiming excess reimbursements for his expenses, and failing to file accurate financial disclosures and reports. He was defeated for re-election in 1980. *Id.*

Senator David Durenberger was denounced by the United States Senate in 1990 for using a book-selling scheme to evade the Senate's limit on honoraria and for billing the Senate for lodging in a condominium he owned. On September 16, 1993, he announced that he would not seek re-election. Maskell, *supra*, at CRS-6, CRS-11 n.53.

3. Reprimand

On March 24, 1994, the Minnesota Senate reprimanded Senator Sam G. Solon for providing the Senate's long-distance telephone access code to others and for allowing others to use his Senate office and telephone to make calls on their own personal and private business. 1994 JOURNAL OF THE SENATE 7024-27 (daily ed. Mar. 24, 1994).

The United States Senate Committee on Ethics reprimanded Senator Alan Cranston, a member of the "Keating Five," in 1991. S. Rep. No. 102-223, 102nd Cong., 1st Sess. 36 (1991). He did not seek re-election.

The full United States Senate has chosen not to use the term "reprimand" because:

It just does not mean anything. It means what you might call just a slap on the wrist. It does not carry any weight.

Senator John Stennis, Chairman of the Select Committee on Standards and Conduct, 113 *Cong. Rec.* 16984 (June 22, 1967), quoted in Maskell, *supra*, at CRS-18.

The United States House of Representatives, on the other hand, has made a custom of including in a censure resolution a requirement that the censured member to go down before the bar and be publicly "reprimanded" by word of mouth by the Speaker. *Id.*

4. Apology

Senator Solon apologized to the Senate that his "indiscretion in giving out the Senate's credit card number" had "tainted this body with public ridicule." He admitted to the Special Committee on Ethical Conduct that his conduct was inappropriate.

5. Payment of a Fine

Mason's Manual says that, in order to compel attendance at a session, a house "may inflict such censure or pecuniary penalty as may be deemed just." *Mason's Manual of Legislative Procedure*, § 561, ¶ 5 (1989). I presume this broad power to punish a member would apply to discipline for other improper conduct as well as for missing meetings.

The civil fine imposed by the Ethical Practices Board for violations of the campaign spending laws ranges from the amount of the excess spending (for inadvertent violations) to four times the amount of the excess (for more serious violations). Minn. Stat. § 10A.28.

6. Restitution

Senator Solon repaid the Senate the amount of his excess telephone charges. He did not pay the Senate any compensation for the embarrassment it suffered.

7. Loss of Privileges

a. Removal as Committee Chair

One of the most important privileges afforded to a senior member of the Senate is the opportunity to serve as chair of a standing committee. Removal from that position of honor and trust would be a severe punishment to the member removed.

The only member of Congress I have found who was removed from his position as a committee chair was Senator Joseph R. McCarthy in 1954. COMPTON'S ENCYCLOPEDIA, ONLINE EDITION (downloaded from America Online, November 22, 1993). Two other committee chairs resigned under pressure from their caucus. In 1974, U.S. Representative Wilbur Mills resigned as chairman of the House Ways and Means Committee after he appeared on stage with Fanne Foxe to congratulate her on a striptease performance and it became clear his caucus would not retain him as chair when the next

Congress reconvened. He did not seek re-election in 1976. CONGRESSIONAL QUARTERLY, CONGRESS AND THE NATION 1973-76, VOL. IV, 764 (1977). In 1976, U.S. Representative Wayne Hays resigned as chairman of the House Administration Committee for employing Elizabeth Ray in a secretary's position to serve as his mistress. Speaker O'Neill had bluntly told Hays he must resign immediately. *Id.* at 779-80.

A disadvantage of removing a member as chair of a committee is that it could disrupt the Senate as other members competed to replace him as chair and proposed various other shifts in committee assignments following his removal.

b. Removal from Committee Membership

A senator who was found to have engaged in improper conduct could be removed from membership on one or more standing committees. However, this too could disrupt the Senate as other members competed to fill the vacancy.

c. Reduce Staff

A committee chair has both a Committee Secretary and a Committee Administrative Assistant. One staff could be eliminated. Other members have a secretary, and perhaps a legislative assistant, one of which might be taken away. But any reduction in staff would depart from the staffing pattern for all other members, increase the burden on the remaining staff, and perhaps make it difficult for the Senate to operate, thus harming the other members of the Senate as well.

d. Reduce Miscellaneous Privileges

Other possible punishments would include reducing the member's postage allowance, curbing the member's out-of-state travel, moving the member's office location, and changing the member's parking space.

PSW:ph

cc: Senator Sheila M. Kiscaden
Senator LeRoy A. Stumpf
Senator Roy W. Terwilliger

After the organization of the Senate, all committees of the Senate and members of commissions to be appointed by the Senate authorized by rule, statute, resolution or otherwise, shall be appointed by the Subcommittee on Committees of the Committee on Rules and Administration, unless otherwise provided, subject to confirmation by the Senate. In the appointment of members of conference committees between the two houses, the Subcommittee on Committees of the Committee on Rules and Administration of the Senate shall appoint those who are in accord with the position of the Senate, and whenever practical, give preference to authors of bills in dispute and to members of standing committees in which the bills were considered.

Standing committees

57. The standing committees of the Senate are as follows:

- Agriculture and Rural Development
- Commerce and Consumer Protection
- Crime Prevention
- Education
- Environment and Natural Resources
- Ethics and Campaign Reform
- Family Services
- Finance
- Gaming Regulation
- Governmental Operations and Reform
- Health Care
- Jobs, Energy and Community Development
- Judiciary
- Metropolitan and Local Government
- Rules and Administration
- Taxes and Tax Laws
- Transportation and Public Transit
- Veterans and General Legislation

The Committee on Rules and Administration may constitute a standing Subcommittee on Committees, the report of which within its jurisdiction has the effect of a report of the

main Committee on Rules and Administration. The subcommittee shall consist of five members, one of whom shall be a member of the minority group.

Each standing committee of the Senate, including a subcommittee of the committee, is authorized at any time to sit and act, to investigate and take testimony on any matter within its jurisdiction, to report hearings held by it, and to make expenditures as authorized from time to time by the standing Committee on Rules and Administration. A standing committee, but not a subcommittee, may require by subpoena or otherwise the attendance and testimony of witnesses and the production of correspondence, books, papers, and documents, in the manner provided by Minnesota Statutes, Section 3.153.

Committee meetings

58. All meetings of the Senate, its committees, committee divisions, and subcommittees are open to the public. A meeting of a caucus of the members of any of those bodies from the same political party need not be open to the public. A caucus of the Hennepin County, Ramsey County, or St. Louis County delegation is open to the public. For purposes of this rule, a meeting occurs when a quorum is present and action is taken regarding a matter within the jurisdiction of the body.

To the extent practical, meetings of all committees shall be announced to the public at least three calendar days prior to convening. The notice shall state the name of the committee, the bill or bills to be considered, the place and time of meeting. The notice shall be posted on all Senate bulletin boards in the Capitol and the State Office Building. A notice shall be sent to the House of Representatives for posting as it deems necessary. If the three-day notice requirement cannot be met, known proponents and opponents of the bill shall be given simultaneous notice of the meeting as soon as practicable.

Quorum in committee

59. A majority of its members constitutes a quorum of a committee.

Report of vote in committee

60. Upon the request of a member of a committee or subcommittee to which a bill has been referred, or upon the request of the author of the bill, a record shall be made of the vote on the bill in the committee or subcommittee, including the vote on any amendment or proposed amendment to it, in the committee or subcommittee to which the bill was referred.

Upon request of three members of the committee before the vote is taken, the record of a roll call vote in a standing committee shall accompany the committee report and be printed in the Journal.

Committee action

61. No report of any committee shall be made to the Senate unless it reports action taken at a regular or special meeting of the committee. A report in violation of this rule is out of order.

Employees authorized in the Senate

62. The Committee on Rules and Administration shall establish positions, set compensation, appoint employees, and authorize expense reimbursement for employees as it deems proper to carry out the work of the Senate. At the request of any committee member, an action of the committee shall be submitted as a Senate resolution for adoption by the Senate. A roster of all employees of the Senate, including positions and compensation, shall be kept by the Secretary and shall be open for inspection by the public. The Secretary shall post, in a public place in the Capitol, a notice of every vacant position on the permanent staff of the Senate. The notice must remain posted for at least two weeks, and no vacancy may be filled until the period of posting has elapsed.

Budget and expenditures

63. The Committee on Rules and Administration shall adopt an operating budget for the Senate and refer it to the Committee on Finance.

All propositions for the appointment and payment of employees of the Senate or for expenditures on account of the Legislature, other than those provided by law, shall be referred to the Committee on Rules and Administration without debate.

Authority over employees

64. Except as otherwise provided in these rules, the Committee on Rules and Administration has full and exclusive authority over, and charge of all employees, officers and clerks of the Senate both elective and appointive. The committee has the sole and exclusive power and authority to assign them to duties other than for which they were elected or appointed as the committee may from time to time provide. The committee has power to appoint employees, officers or clerks as it deems proper to exercise the power granted to it by this rule. The committee may make rules and regulations for the government of the employees, officers and clerks as they see fit. In case of violation of an order of the committee by an employee, officer or clerk, or in case of a violation of a rule or regulation made by the committee, or in case of misconduct or omission by an employee, officer or clerk, the Committee on Rules and Administration may hear complaints and discharge the employee, officer or clerk or impose other punishment by way of fine or otherwise upon the employee, officer or clerk as the committee deems just and proper.

Duties of Secretary

65. The Secretary shall keep a correct Journal of the proceedings of the Senate and shall perform other duties assigned to the Secretary. The Secretary shall not permit Journal records, accounts or papers to be taken from the table or out of the Secretary's custody, other than in the

Introduction of visitors

73. No introduction of a visitor or visitors in the galleries shall be made from the floor or rostrum of the Senate.

Smoking

74. No person is permitted to smoke in the Senate Chamber, Retiring Room, hearing rooms, or other spaces under the control of the Senate. There shall be no smoking in the visitors section of the galleries.

Ethical conduct

75. The Subcommittee on Committees shall appoint a Special Committee on Ethical Conduct consisting of four members, two from the majority and two from the minority.

The committee shall serve in an advisory capacity to a member or employee upon written request and shall issue recommendations to the member or employee.

A lobbyist shall not appear before a Senate committee pursuant to his employment unless the lobbyist is in compliance with the law requiring lobbyist registration, Minnesota Statutes, Sections 10A.03 to 10A.06. A lobbyist when appearing before a committee shall disclose to the committee those in whose interest the lobbyist speaks and the purpose of the lobbyist's appearance. A lobbyist shall not knowingly furnish false or misleading information or make a false or misleading statement that is relevant and material to a matter before the Senate or any of its committees when the lobbyist knows or should know it will influence the judgment or action of the Senate or any of its committees thereon. A lobbyist shall not exert undue influence or expend improper sums of money in connection with any legislation.

The committee shall investigate a complaint by a member of the Senate in writing under oath received during a legislative session regarding improper conduct by a member or employee of the Senate or a lobbyist. The committee has the powers of a standing committee to issue subpoenas pursuant

to Minnesota Statutes, Section 3.153. In order to determine whether there is probable cause to believe that improper conduct has occurred, the committee may, by a vote of three of its members, conduct a preliminary inquiry in executive session to which the requirements of Rule 58 do not apply. Upon a finding of probable cause, further proceedings on the complaint are open to the public. If, after investigation, the committee finds the complaint substantiated by the evidence, it shall recommend to the Senate appropriate disciplinary action.

Any person may submit to the Chair of the Committee on Rules and Administration a complaint that members have violated the open meeting requirements of Minnesota Statutes, section 3.055. A member of the Senate may submit the complaint either orally or in writing; others must submit the complaint in writing. Whether the complaint was written or oral, the Chair of the Committee on Rules and Administration shall immediately forward it in writing to the Special Committee on Ethical Conduct without disclosing the identity of the complainant. The complaint must not be further disclosed, except to the members against whom the complaint was made, unless the complaint was made by a member of the Senate in writing under oath, in which case the investigatory procedures of this rule apply.

Members shall adhere to the highest standard of ethical conduct as embodied in the Minnesota Constitution, state law, and these rules.

A member shall not publish or distribute written material if the member knows or has reason to know that the material includes any statement that is false or clearly misleading, concerning a public policy issue or concerning the member's or another member's voting record or position on a public policy issue.