

Information Brief

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**Nuclear Waste Management
and the
Prairie Island Legislation**

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This information brief identifies several important components of the historic "Prairie Island bill" of the 1994 legislative session, and tracks the developments of those components since their enactment.

The 1994 Prairie Island Legislation

In 1991, realizing that spent fuel storage at its Prairie Island plant was near capacity, Northern States Power Company (NSP) sought approval to store radioactive waste in 48 above-ground dry casks. In 1993, the Public Utilities Commission (PUC), in partially granting NSP's request, approved 17 casks. Upon appeal, the Minnesota Court of Appeals found that legislative approval was also necessary.¹ In the next legislative session, with a considerable amount of controversy and tension, the legislature passed Laws 1994, Chapter 641, commonly known as the "Prairie Island bill." This legislation had several important components, including:

**Authorization of Dry Cask Storage
Establishment of an Alternate Storage Site
Renewable Energy Mandates**

**Legislative Electric Energy Task Force
Low-Income Discounted Electricity Rates**

This information brief discusses each of these components, as well as identifying a number of related legislative initiatives which have been debated and acted upon by the legislature since the passage of the Prairie Island bill, but which have not been adopted.

¹ The Minnesota Court of Appeals determined that the proposed Independent Spent Fuel Storage Installation (ISFSI) was a "radioactive waste management facility" within the meaning of Minn. Stat. § 116C.71, subdivision 7. As a result, NSP was required to obtain express legislative authorization to be allowed to operate or construct the facility. Minn. Stat. § 116C.72.

Authorization of Dry Cask Storage

The legislature affirmed the PUC's decision, and authorized NSP to store its spent nuclear fuel in 17 storage casks.² Five casks were approved for use immediately. However, several conditions were placed on the authorization for the other twelve.

In order to use the next four casks, the utility was required:

- ▶ to obtain a determination by the Environmental Quality Board (EQB) that NSP had made a good faith effort to find a site for an alternative spent nuclear fuel facility in Goodhue County away from Prairie Island;
- ▶ to file a license application with the Nuclear Regulatory Commission (NRC) for the alternate storage site;³ and
- ▶ to construct, contract for construction and operation, or purchase 100 megawatts of wind power.

In October 1996, the EQB found that NSP had met all of these requirements and authorized NSP to fill the four additional casks.

To obtain authorization to fill the remaining eight casks, the legislature required NSP to fulfill certain mandates regarding the development of renewable resources.

Establishment of an Alternate Storage Site

In the Prairie Island bill, the 1994 legislature directed NSP to identify and construct an alternate site for the storage facility in Goodhue County, away from Prairie Island. In order to do this, NSP was required to obtain a "certificate of site comparability" from the EQB. Prior to issuing such a certificate, the board was required to find that the alternate Goodhue County site was comparable to the Prairie Island facility.⁴ However, in October of 1996, the EQB denied NSP's request for a certificate of site comparability, finding no site comparable to the present one.⁵ This decision did not affect the board's determination that NSP had made a good faith effort to implement the alternate site.

² It is important to note that 17 storage casks will not permit the utility to continue operation of the Prairie Island plant until the end of the license period. According to the Department of Public Service, Prairie Island currently has storage capacity to about 2003. A shutdown at that time would be 10 years before the units' licenses expire.

³ Minn. Stat. § 116C.771

⁴ Minn. Stat. § 116C.80

⁵ The EQB concluded that no site would be comparable to the existing site because of the risks involved in the transportation and handling of the nuclear waste required to move it to another location.

The decision to deny the application for a certificate of site comparability was challenged by the Mdewakanton Dakota Tribal Council at Prairie Island, but was upheld by the Minnesota Court of Appeals in May of 1997. The tribal council appealed the appellate court's decision, but the Minnesota Supreme Court declined to hear the appeal. NSP has since withdrawn its application to the NRC for federal approval of the alternate storage site.

Renewable Energy Mandates

Wind: The 1994 legislature required NSP to "construct and operate, purchase, or contract to construct and operate" 425 MW of wind power capacity according to the schedule in table 1:

In addition to the 425 MW of mandated wind capacity, the legislature required the PUC to order NSP to construct or purchase an additional 400 MW of wind generation by December 31, 2002, if wind power is determined to be the least cost option in the PUC's resource planning process. The PUC will likely make this consideration in NSP's 1997 Resource Plan.

Table 1

Wind Power Mandate Schedule

225 MW	December 31, 1998
200 MW	December 31, 2002
400 MW	December 31, 2002 (if wind power is found to be the least cost alternative)

House Research Department

As mentioned above, NSP was required to have 100 MW of the first 225 MW of new wind resources under construction or under contract by December 31, 1996, to meet the criteria imposed by the legislature for approval of the use of casks 6 through 9.⁶ In June of 1995, NSP announced the selection of Zond Systems, Inc.⁷ as the supplier of this 100 MW of wind capacity. After numerous delays,⁸ NSP and Zond finalized their contract for 100 MW wind generation in the fall of 1996. The PUC approved the contract on April 11, 1997. On July 29, 1997, NSP announced that Enron Renewable Energy Corporation (EREC) had also been selected to supply the additional 125 MW required by December 31, 1998.

A controversy has developed over where the wind energy conversion systems (the facilities that use wind to generate electricity) will be located. The wind power mandate statute requires:

⁶ Minn. Stat. § 116C.771

⁷ Zond was later purchased by Enron Corporation, and has been renamed Enron Renewable Energy Corporation.

⁸ A losing bidder requested an investigation of the NSP-Zond contract and NSP also faced legal challenges over siting and wind rights acquisition.

- ▶ 225 megawatts of electric energy installed capacity generated by wind energy conversion systems within the state by December 31, 1998; and
- ▶ an additional 200 megawatts of installed capacity so generated by December 31, 2002.

The statute explicitly requires the first 225 MW to be located in Minnesota. However, the statute is less clear as to the required location of the additional 200 MW. The controversy is centered on the ambiguity of the term "so generated." Does this refer only to the requirement that the electric energy be generated by wind energy conversion systems, or does the phrase include the requirement that the wind power be generated by systems within the state?

The 1996 legislature passed a bill⁹ amending the wind mandate statute, to specify that the entire 425 MW was to be generated by wind energy conversion systems located in Minnesota. However, Governor Carlson vetoed that legislation due to his belief that this requirement was anti-competitive and would result in higher rates to utility customers. Recently, the PUC voted to construe the wind mandate statute to require only the first 225 MW to be generated by systems located in Minnesota, and that the additional 200 MW could be generated by systems located outside the state.

Biomass: In addition to the wind power mandates, the Prairie Island bill required NSP to acquire 125 MW of "farm grown closed loop" biomass power by December 31, 2002 in two installments. The statute required NSP to "construct and operate, purchase, or contract to construct and operate" 50 MW by December 31, 1998 and 75 MW by December 31, 2002.¹⁰ However, the 1995 legislature amended this section to require both increments to be under contract by December 31, 1998.¹¹

In January 1996, NSP notified the PUC that it intended to reject the two bids it had received on the first 50 MW of biomass because the utility believed the prices were unreasonable, and because the 1996 legislature might change some of the mandate's requirements.¹² The PUC approved NSP's request in May of 1996, and permitted the company to conduct competitive negotiations with developers to supply the biomass generation.

NSP is currently negotiating with Minnesota Valley Alfalfa Producers for 75 MW of biomass generation. In NSP's opinion, this will satisfy the requirement for the first 50 MW and 25 MW of the remaining 75 MW requirement. In early 1997, NSP obtained approval from the PUC to acquire the remaining 50 MW of biomass through a similar negotiation process, rather than through competitive bidding.

⁹ H.F. 374, Laws 1996, ch. 466

¹⁰ Minn. Stat. § 216B.2424

¹¹ Laws 1995, ch. 224

¹² The 1996 legislature did amend the biomass power mandate statute, providing a definition for "farm-grown closed-loop" biomass, as well as providing for short-term exemptions from that definition, to allow for greater flexibility in implementing the mandate. Laws 1996, ch. 450.

The Legislative Electric Energy Task Force

The legislature created the Legislative Electric Energy Task Force (LEETF) as part of the Prairie Island bill, in order to have a joint legislative body whose specific charge was to study future electric energy policy and nuclear waste management issues. The task force was required to develop "detailed, credible, and reliable information" and make recommendations to the legislature by reporting to the chairs of the House and Senate committees responsible for environmental and natural resource issues.¹³

Pursuant to the 1994 legislation, the task force has issued two reports to the chairs of those committees. The first report, a preliminary report issued on September 15, 1995, provides an overview of the status at the time of the energy planning in the state, an analysis of the statutory energy policies and goals in Minnesota, and information on high-level radioactive waste management and transportation.

The second report, titled *Energy Policy, Electric Industry Restructuring and Nuclear Waste Management in Minnesota*, was issued in February of 1997. This report had two parts. The first part is a critique of two studies funded by the task force titled:

- ▶ *Evaluation of the Current Energy System in Minnesota*; and
- ▶ *Evaluation of Emerging Generation Technologies in Minnesota*.

The second part of this report is a compilation of information regarding the management of high-level radioactive waste.

These two reports completed the specific statutory requirements set for the LEETF by the legislature, but the task force is not set to sunset until June 30, 2000. In the 1997 legislative session, the legislature directed the LEETF to review and analyze issues relating to the restructuring or deregulation of the electric industry, and to present recommendations to the legislature by January 15, 1998.¹⁴

¹³ Minn. Stat. § 216C.051

¹⁴ Laws 1997, ch. 191. The statute specifically requires the task force to review, at a minimum, the following issues:

- ▶ impacts on all types of consumers
- ▶ impacts on the state's economy, and regional economies within the state
- ▶ impacts on the reliability and safety of the electricity system
- ▶ environmental impacts
- ▶ impacts on various types of energy suppliers

In addition, the task force is to create an interim subcommittee on utility taxation, and provide recommendations to the legislature on that issue as well.

Low Income Discount Electric Rates

Finally, the Prairie Island law required NSP to provide a 50 percent discount on the first 300 kilowatt hours per month consumed by low-income customers receiving federal low-income home energy assistance.¹⁵

NSP submitted a proposed low-income discount rate in October of 1994, which was approved by the PUC after notice and comment hearings. NSP implemented the low-income rate in January of 1995.

NSP estimated the low-income discount rate would reduce revenues by \$6 million a year. In order to partially offset this cost, NSP eliminated the Conservation Rate Break which gave a credit to residential customers using less than 400 kilowatt hours a month. The remaining revenues are to be recovered from non-residential firm customers. NSP was also required to track the costs and savings of the program and report to the PUC in 1996 and 1997. After discovering errors in the application of the rate, NSP was granted an extension to file its first report with the PUC, until January 30, 1997.

Pending Legislative Issues Relating to the Prairie Island Bill

Since the passage of the 1994 bill, there has been quite a bit of legislative time and attention paid to legislative initiatives that relate to the Prairie Island bill. These initiatives have been unsuccessful to date, but likely will be discussed and debated in future legislative sessions. These issues include:

- ▶ authorization for additional storage (dry casks or additional re-racking of the storage pool) at Prairie Island, to provide storage capacity for the Prairie Island and Monticello nuclear generating facilities past the year 2003;
- ▶ compensation for the Prairie Island Indian Community members for living near the Prairie Island plant, or to purchase land elsewhere for relocating tribal members; and
- ▶ the re-activation of the Governor's Nuclear Waste Council, originally created in 1985 (Minn. Stat. §§ 116C.711 and 712) but currently dormant, to provide discussion, analysis and planning with regard to nuclear waste generation and storage in the state.

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¹⁵ Minn. Stat. § 216B.16, subd. 14