

BY OVERNIGHT DELIVERY AND E-MAIL

September 29, 2014

Linda M. Baldwin
General Counsel
New York State Department of State
Counsel's Office
One Commerce Plaza
99 Washington Street
Albany, NY 12231-0001

Re: **New York State Department of State File #F-2012-1028**
Consistency Certification for Entergy Nuclear Indian Point 2 and
Entergy Nuclear Indian Point 3 License Renewal Application

Dear Ms. Baldwin:

In our recent conversations, we have discussed the intent of Entergy Nuclear Indian Point 2, LLC, Entergy Nuclear Indian Point 3, LLC and Entergy Nuclear Operations, Inc. (collectively, "Entergy") to submit new and updated information for consideration by the New York State Department of State (the "Department") in connection with the Department's federal consistency review of Nuclear Regulatory Commission ("NRC") license renewal ("License Renewal") for Indian Point Units 2 and 3 ("Indian Point"). We also discussed whether further consultation between Entergy and the Department would be appropriate in connection with the Department's federal consistency review and whether it would be prudent for the parties to agree upon a further stay of the period for the Department to issue its determination on consistency beyond the current deadline of December 31, 2014.

With this letter Entergy is making significant new filings for consideration by the Department in its federal consistency review. Entergy is also proposing that the parties agree to a further stay of the deadline for the Department to make its determination. Entergy believes that a further stay of federal consistency review is necessary and appropriate at this time owing to:

- (a) the extent and complexity of the filings accompanying this letter; and

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(b) the need for Entergy and the Department to conduct further consultations to address the supplemental filings and other matters.

In addition, while we understand that the Department's position is that there is no need for a stay on account of NRC's pending preparation of a supplement to its Final Supplemental Environmental Impact Statement ("FSEIS") concerning aquatic impacts of Indian Point, we respectfully request that the Department reconsider that position. However, we wish to underscore that, wholly aside from the pendency of NRC's FSEIS supplement, a stay is warranted for reasons (a) and (b).

I. The Supplemental Submittals Accompanying This Letter.

The first supplemental filing accompanying this letter demonstrates the contribution of Indian Point operations to electric grid stability, to economic health regionally and locally, and to avoiding greenhouse gas emissions, among other things—all of which are overarching federal and state interests that must be weighed by the Department in its federal consistency review. During its consultation session with the Department on December 3, 2013, Entergy urged the Department to weigh in its review process the important federal and state interests served by License Renewal, many of which are expressly recognized in the New York Coastal Management Program ("CMP"). The Department gave no indication that national security, national economic, or national energy interests within the coastal zone, or the state's overarching goals and interests as articulated by the CMP, would be taken into account by the Department as it considers the consistency of License Renewal with individual CMP policies. In fact, the Department indicated its belief that no such weighing of interests was appropriate. Entergy continues to request that the Department take these national and state interests into account, as contemplated by the Coastal Zone Management Act and as reflected within the CMP itself. To that end, Entergy is providing with this letter a memorandum,¹ a chronological document describing the federal and state interests served by License Renewal,² and a series of supporting documents.³

The second supplemental filing accompanying this letter provides a roadmap of evidence previously introduced in a proceeding before the New York State Department of Environmental Conservation ("NYSDEC") that may bear on federal consistency review. This evidence was submitted to NYSDEC within the context of NYSDEC's adjudication of NYSDEC Staff's proposal to modify Entergy's State

¹ See enclosed memorandum entitled "Request to the New York State Department of State To Consider National and State Interests Served by Indian Point License Renewal," dated September 26, 2014.

² The document is entitled "Historical Record of Federal Actions (and Corresponding State Actions) Supporting the Siting, Construction, and Operation of Indian Point Energy Center," dated September 26, 2014 (the "Historical Record").

³ A list of the documents submitted herewith in support of the Historical Record is attached to the Historical Record.

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Pollutant Discharge Elimination System (“SPDES”) permit to require cooling towers and NYSDEC’s adjudication of whether Entergy should receive a water quality certification under section 401 of the Clean Water Act. The evidence addresses issues such as the adverse electric system, air quality (including climate change), and economic impacts of closing Indian Point. Moreover, if the Department rejects Entergy’s contention that water quality issues are within the purview of NYSDEC rather than the Department,⁴ then this second submission also provides a guide to evidence in the NYSDEC proceeding concerning aquatic impacts and the infeasibility and adverse electric system, environmental and economic impacts of technologies and operational measures that NYSDEC Staff has proposed for Indian Point’s cooling water intake structure. Thus, without conceding that the Department has authority to base its decision on such matters, Entergy is providing with this letter a memorandum⁵ summarizing evidence in the NYSDEC hearing record (which continues to be developed because the NYSDEC hearing has not yet concluded), together with exhibits and other evidence admitted in the NYSDEC proceeding.⁶

In making these supplemental submissions, Entergy continues to assert the objections and reservations of rights under state and federal law as set forth in its correspondence dated March 31, 2014, and in its other filings with the Department.

II. A Further Stay of Review Will Allow Consultation Between Entergy and the Department in Accordance with the Governing Regulations

The federal consistency review process under the National Oceanic and Atmospheric Administration (“NOAA”) regulations contemplates an open and good faith dialogue between the federal license applicant and the state agency aimed at resolving potential objections to certification.⁷ Entergy has

⁴ During its consultation session with the Department on December 3, 2013, Entergy discussed the reasons why its historic and future compliance with its State Pollutant Discharge Elimination System (“SPDES”) permits issued by NYSDEC for Indian Point conclusively demonstrates Indian Point’s compliance with the water quality policies of the CMP in connection with License Renewal. At the December 3, 2013, consultation session, the Department and Entergy agreed that, as part of the pending NYSDEC adjudicatory hearing regarding Indian Point, NYSDEC will determine what, if any, new technologies may be appropriate at Indian Point under the federal and state Clean Water Acts. Thus, Entergy submits that NYSDEC—not the Department—is charged by New York law with deciding whether any such new technology is consistent with the CMP.

⁵ See enclosed memorandum entitled “Evidence Presented to the New York Department of Environmental Conservation Regarding Possible Future Implementation of Technological Improvements at Indian Point,” dated September 26, 2014 (“NYSDEC Evidence Summary”).

⁶ A list of the evidence submitted in support of the NYSDEC Evidence Summary is attached to the NYSDEC Evidence Summary.

⁷ See, e.g., 15 C.F.R. § 930.4 (“applicants should cooperate with State agencies to develop conditions that, if agreed to during the State agency’s consistency review period . . . would allow the State agency to concur with the federal action.”);

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suggested that such a dialogue is appropriate in this case, and has repeatedly asked the Department to identify whatever specific concerns the Department may have with Entergy's certification.⁸ The purpose of Entergy's inquiries is to determine whether, consistent with the intent of the regulations, Entergy might agree to terms that would address the Department's concerns and thereby enable the Department to issue a concurrence. To date, the Department has neither identified any specific concerns with Entergy's consistency certification, nor indicated an intention to concur with that certification. Unless the Department communicates an intention to concur, a further stay would provide a necessary opportunity for the Department and Entergy to engage in dialogue concerning relevant matters, including but not limited to the supplemental submittals.

III. A Further Stay of Review Will Not Delay NRC's Decision on License Renewal.

By law, the NRC Staff cannot complete its review process for License Renewal until the supplemental FSEIS is completed.⁹ Moreover, the Atomic Safety and Licensing Board ("ASLB") likely will not resolve the matters pending before it with respect to License Renewal before 2016 based upon the current schedule.¹⁰ Additional time would be added to the ASLB schedule if there are appeals or the

15 C.F.R. § 930.62(d) ("During the period when the State agency is reviewing the consistency certification, the applicant and the State agency should attempt, if necessary, to agree upon conditions, which, if met by the applicant, would permit State agency concurrence."); 15 C.F.R. § 930.111 ("In the event a serious disagreement arises, the parties are strongly encouraged to make every effort to resolve the disagreement informally.")

⁸ See, e.g., letter of Martin R. Healy on behalf of Entergy to Fred J. Anders, Chief, Natural Resources Management Bureau, dated July 31, 2013, requesting an adjudicatory hearing process if the Department reaches a tentative decision to object to License Renewal; letter of Martin R. Healy on behalf of Entergy to Linda M. Baldwin, the Department's General Counsel, dated September 19, 2013, describing a proposed consultation process with the Department and suggesting the possibility of NOAA's mediation assistance; letter of Martin R. Healy on behalf of Entergy to Linda M. Baldwin, the Department's General Counsel, dated November 8, 2013, describing a proposed consultation process with the Department; letter of Martin R. Healy on behalf of Entergy to Linda M. Baldwin, the Department's General Counsel, dated December 20, 2013, describing a further consultation process.

⁹ See 10 C.F.R. § 54.29(b) (indicating that the NRC may not issue a renewed license until it finds, among other things, that any applicable requirements of Subpart A of 10 C.F.R. Part 51 have been satisfied); 10 C.F.R. § 51.94 (stating that the final environmental impact statement, together with any comments and any supplement thereto, will accompany the application through, and be considered in, the Commission's decisionmaking process, and be made a part of the record of the appropriate adjudicatory proceeding).

¹⁰ See NRC Staff's 31st Status Report in Response to the Atomic Safety and Licensing Board's Order of February 16, 2012 at 2 (Sept. 2, 2014) (discussing status of proceeding and stating that the NRC Staff's SER Supplement 2 will not be issued until November 2014 at the earliest, and that further hearings should await the NRC Staff's completion of its supplemental safety review), available at NRC ADAMS Accession No. ML14245A618; Licensing Board Scheduling Order (July 1, 2010) (unpublished), available at NRC ADAMS Accession No. ML101820387; Licensing Board Order (Requesting Briefs on

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admission of additional contentions. Thus, even with a further stay of the deadline for the Department to make its federal consistency determination, the Department's decision whether to concur with or object to License Renewal still will be made in advance of NRC's License Renewal decision and will not delay that NRC decision.

IV. NRC's FSEIS Supplement Will Provide Important New Information About Aquatic Resources.

Important new information about the effect of Indian Point operations on aquatic resources will be forthcoming in the FSEIS supplement being prepared by NRC. We respectfully request that the Department reconsider its position, stated during our conference call of September 12, 2014, that consideration of that information need not be part of federal consistency review.

On January 16, 2013, the Department issued a letter concluding that Entergy's certification and supporting documents lacked certain necessary data and information required for the Department to undertake federal consistency review. The certification and supporting documents were deemed deficient by the Department because they lacked:

- [(i)] the Final Supplemental Environmental Impact Statement (FSEIS) related to license renewal of Indian Point Nuclear Generating Units 2 and 3, Volume 4, which pertains to aquatic impacts (including impacts to endangered species) to coastal resources, as well as
- [(ii)] *any other EIS supplements prepared for this license renewal application* (emphasis added).¹¹

On June 20, 2013, the Department received Volume 4 of the FSEIS relating to aquatic impacts and notified Entergy that federal consistency review began on that date. On December 3, 2013, during its consultation session with Entergy, the Department emphasized that concerns about the aquatic impacts of Indian Point operations would be a central focus of its federal consistency review.

Thus, the Department itself has previously determined that NRC's FSEISs are "necessary data and information" within the meaning of the NOAA regulations¹² and that such data are of critical importance

NYS-39/RK-EC-9/CW-EC-10 and CW-SC-4) (Sept. 17, 2014) (requesting further briefing by parties on pending proposed waste confidence contentions), available at NRC ADAMS Accession No. ML14260A241.

¹¹ Letter of Fred J. Anders, Chief, Natural Resources Management Bureau, to Mr. Fred Dacimo, Indian Point Energy Center, dated January 16, 2013.

¹² If the new supplemental FSEIS on aquatics is not, in fact, "necessary data and information" within the meaning of the NOAA regulations at 15 C.F.R. § 930.58, then logically the Department had no right under 15 C.F.R. § 930.60(a) unilaterally

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to the Department's federal consistency review. Volume 4 of the FSEIS was considered so important that the Department would not undertake federal consistency review without it. Only after the Department's receipt of Volume 4 of the FSEIS on June 20, 2013, did the Department commence federal consistency review.

NRC is already in the process of preparing a further supplement to the FSEIS to address, among other things, new aquatic impact data associated with License Renewal. On July 17, 2014, during a conference call held in the ASLB proceeding with respect to License Renewal, Counsel for NRC Staff confirmed NRC's intent to prepare such a supplemental FSEIS. NRC's Counsel indicated that a schedule for preparation of the FSEIS supplement will be issued in the fall of 2014, and that the FSEIS supplement will be available for public review during 2015.¹³

One of the core NRC purposes for preparing a supplemental FSEIS dealing with aquatic impacts of License Renewal is to provide all relevant decision-makers with a sound basis for decision-making with respect to License Renewal. The Department's decision with respect to Indian Point is far too important not to be based on the most current information. Although in our conference call of September 12, 2014, you made clear the Department's current position that it has all information needed to make a determination on Entergy's certification, we respectfully urge that a further stay of the deadline for the Department's consistency determination is necessary to allow the Department to have the benefit of NRC's supplemental FSEIS on aquatic impacts.

In all events, for the additional reasons set forth above in sections I, II and III of this letter, a further extension of the Department's deadline to render a consistency determination is also warranted so that the Department can review the enclosed new submittals and consult with Entergy on those submittals and other matters.

to suspend federal consistency review between December 17, 2012, when the Consistency Certification was submitted, and June 20, 2013, when the first supplemental FSEIS for aquatic issues was completed by NRC and submitted to the Department. If the Department lacked authority under the NOAA regulations to suspend federal consistency review because the supplemental FSEIS was not "necessary data and information," then it follows that the six-month federal consistency review period began on December 17, 2012, and expired on June 17, 2013, resulting in a consistency concurrence by the Department by operation of law. *See* 15 C.F.R. § 930.62(a).

¹³ *See, e.g.*, statements made on July 17, 2014, by Sherwin E. Turk, Counsel for NRC Staff, to the Administrative Judges in the ASLB proceeding with respect to License Renewal, and subsequent written submittals by NRC Staff to the ASLB including in a "Status Report" dated September 2, 2014. *See also* 79 Fed. Reg. 52058 (Sept. 2, 2014) (notice of NRC intent to prepare an FSEIS supplement).

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Conclusion.

A further stay of federal consistency review is necessary to provide Entergy and the Department additional time to engage in further consultations to address: (a) any questions the Department may have about the certification or supplemental submissions; (b) any requests the Department may have for additional information; (c) any concerns the Department may have about consistency of License Renewal with the CMP; and (d) whether there are conditions or alternatives that should be identified and agreed upon to assure the consistency of License Renewal with the CMP. We also believe that a further stay will allow the Department to consider the important new information about aquatic resources that will be contained in the forthcoming NRC supplemental FSEIS although, again, a stay is warranted even aside from this consideration.

For the foregoing reasons, Entergy respectfully requests that the Department enter into an agreement to stay federal consistency review. Entergy suggests that a stay of federal consistency review from October 20, 2014, until April 20, 2015, would be appropriate at this time.

Please feel free to contact me if you have any questions about this request or if I can be of any assistance.

Sincerely,



Martin R. Healy

MRH

cc:

- U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk (w/encl.—hard copy and CD of supporting documents)
- Douglas V. Pickett, Senior Project Manager, NRC NRR DORL (w/encl.—only CD of supporting documents)
- William M. Dean, Regional Administrator, NRC Region 1 (w/encl.—only CD of supporting documents)
- NRC Resident Inspectors Office (w/encl.—only CD of supporting documents)
- William Sharp, Principal Attorney (w/encl.—only CD of supporting documents)
- Kari Gathen, Associate Attorney (w/encl.—only CD of supporting documents)
- Jeffrey Herter, Assistant Bureau Chief, Division of Development (w/encl.—only CD of supporting documents)

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Gregory Capobianco, Director, Division of Development (w/encl.—only CD of supporting documents)

Jeffrey Zappieri, Supervisor, Consistency Review Unit (w/encl.—only CD of supporting documents)

Fred Dacimo, Vice President License Renewal, Indian Point Energy Center (w/encl.—only CD of supporting documents)

William B. Glew, Jr., Associate General Counsel, Entergy Services, Inc. (w/encl.—only CD of supporting documents)

Kelli Dowell, Assistant General Counsel, Environmental, Entergy Services, Inc. (w/encl.—only CD of supporting documents)

Dara Gray, Chemistry/Environmental, Indian Point Energy Center (w/encl.—only CD of supporting documents)