

IPRenewal NPEmails

From: Waters, Roger M. [rwater1@entergy.com]
Sent: Wednesday, November 05, 2014 12:56 PM
To: Wentzel, Michael; Turk, Sherwin; Pickett, Douglas; Lew, David; Stewart, Scott; linda.baldwin@dos.ny.gov; William.Sharp@dos.ny.gov; kari.gathen@dos.ny.gov; Jeff.Herter@dos.ny.gov; Gregory.Capobianco@dos.ny.gov; Jeffrey.Zappieri@dos.ny.gov; Glew Jr, William; Dowell, Kelli; Gray, Dara F; Healy, Martin R <mhealy@goodwinprocter.com> (mhealy@goodwinprocter.com)
Cc: Dacimo, Fred R. (CAE)
Subject: IPEC License Renewal - Withdrawal of December 17, 2012 CSM Act Consistency Certification.
Attachments: NL-14-140 final.pdf

Attached is a copy of the subject letter. The original is being mailed to the NRC Document Control Desk and NYS .

Roger Waters

IPEC Regulatory Assurance
914-254-7714

Hearing Identifier: IndianPointUnits2and3NonPublic_EX
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Subject: IPEC License Renewal - Withdrawal of December 17, 2012 CSM Act Consistency Certification.
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From: Waters, Roger M.

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Fred Dacimo
Vice President
Operations License Renewal

NL-14-140

November 5, 2014

U.S. Nuclear Regulatory Commission
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Attn: Linda M. Baldwin, General Counsel

**Subject: WITHDRAWAL OF DECEMBER 17, 2012 COASTAL ZONE MANAGEMENT
 ACT CONSISTENCY CERTIFICATION
 Indian Point Nuclear Generating Unit Nos. 2 & 3
 NRC License Nos. DPR-26 and DPR-64
 NRC Docket Nos. 50-247 and 50-286
 New York State Department of State File #F-2012-1028**

References:

1. Entergy Letter from Fred Dacimo to NRC Document Control Desk, "Supplement to License Renewal Application – Compliance with Coastal Zone Management Act" (July 24, 2012) (NL-12-107) (ML12207A122).
2. Indian Point LR Hearing – IPEC – "Transmittal of Consistency Certification Pursuant to the Coastal Zone Management Act" (December 17, 2012) (ML13015A037).
3. Attachment 1: "Transmittal Letter of Consistency Certification Pursuant to the Coastal Zone Management Act" - Indian Point Nuclear Generating Unit Nos. 2 & 3 - (December 17, 2012)(ML12352A343).
4. Attachment 2: "Consistency Certification for Entergy Nuclear Indian Point 2 and Entergy Nuclear Point 3 License Renewal Application" - (December 17, 2012) (ML12352A342).
5. Attachment 4: "Entergy Federal Consistency Assessment Form and Supporting Information for License Renewal Application" - (December 17, 2012) (ML13095A474).
6. "Notification of Entergy's Consistency Pursuant to the Coastal Zone Management Act" (December 17, 2012) (ML12352A341).

7. "Proposed Schedule for the Review of Additional Information." (November 3, 2014)
(ML14254A207).

Dear Ladies and Gentlemen:

This letter is submitted by Entergy Nuclear Operations, Inc., Entergy Nuclear Indian Point Unit 2, LLC, and Entergy Nuclear Indian Point Unit 3, LLC (collectively, "Entergy"), in connection with license renewal for Indian Point Units 2 and 3 (collectively, "IPEC"). As summarized in the July 24, 2012, Supplement to the IPEC License Renewal Application ("LRA"), and as set forth in Section 9.3 of the LRA, Entergy has determined that IPEC already has obtained the necessary consistency reviews from the State of New York, and that license renewal will not result in coastal effects that are substantially different than the effects previously reviewed by New York State and found to be consistent with applicable policies of the New York Coastal Management Plan ("NYCMP"). Accordingly, Entergy explained that it need not, in connection with the LRA, certify IPEC's consistency with the NYCMP or obtain the concurrence of the New York State Department of State ("NYSDOS") with that certification. Entergy also noted that the NYCMP independently exempts IPEC from review under the federal Coastal Zone Management Act ("CZMA") and the NYCMP because the NYCMP's grandfathering clause applies to IPEC.

In December 2012, Entergy concluded that it was prudent, in the alternative to its above-described positions, to file a consistency certification pursuant to the CZMA, under a full reservation of rights with respect to the above-described positions. Thus, on December 17, 2012, in accordance with 15 C.F.R. § 930.57(a), Entergy provided a consistency certification to the Nuclear Regulatory Commission ("NRC") and furnished a copy of the consistency certification and necessary data and information to NYSDOS.

By this letter, Entergy is withdrawing the consistency certification that it had provided to NRC (with a copy furnished to NYSDOS) on December 17, 2012. Entergy is doing so because the NRC Staff announced on November 4, 2014, that it will be issuing in March 2016 a supplement to its Final Supplemental Environmental Impact Statement ("FSEIS Supplement") concerning IPEC license renewal (and in particular addressing, among other things, new information concerning aquatic impacts),¹ which is substantially after the current December 31, 2014, deadline for NYSDOS to object to or concur with Entergy's December 17, 2012, consistency certification. Unless the previous review or grandfathering issues are first and finally resolved in Entergy's favor, Entergy intends to file a new consistency certification after NRC issues the FSEIS Supplement. That new consistency certification will initiate NYSDOS's review process, and will allow the FSEIS Supplement to be part of the record before NYSDOS and, should NYSDOS object to the new certification, the Secretary of Commerce on appeal.

¹ In its Proposed Schedule for the Review of Additional Information on November 4, 2014, NRC Staff identified March 2016 as the scheduled date for issuance of a final supplement to the FSEIS. See, letter of Christopher G. Miller, Director, Division of License Renewal, Office of Nuclear Reactor Regulation, to Vice President, Operations, for Entergy, dated November 3, 2014, regarding "Proposed Schedule for the Review of Additional Information." ML 14254A207. See also 79 Fed. Reg. 52058 (Sept. 2, 2014) (notice of NRC intent to prepare an FSEIS supplement).

NYSDOS previously determined that NRC FSEIS supplements constitute “necessary data and information” for purposes of its review of the consistency certification under the CZMA, and on that basis determined that Entergy’s December 17, 2012, consistency certification and supporting information was “incomplete.” See ML 13095A466 (letter of Fred J. Anders, Chief, Natural Resources Management Bureau, to Mr. Fred Dacimo, Indian Point Energy Center, dated January 16, 2013). As NYSDOS explained in its January 16, 2013, letter:

[NYSDOS] is notifying Entergy and [NRC] . . . that necessary data and information was not received allowing [NYSDOS] to initiate review of [IPEC license renewal] in accordance with 15 CFR Part 930, Subpart D. . . . Pursuant to 15 CFR Section 930.60 and the State of New York’s federally approved Coastal Management Program (CMP), initiation of review of activities requiring authorizations from federal agencies does not begin until [NYSDOS] receives all of the necessary data and information enabling it to assess and undertake its review of the coastal effects of activities. The regulations at 15 CFR Section 930.58 and the CMP describe the necessary data and information to be included with a consistency certification and provided to [NYSDOS]. . . . In particular, [NYSDOS] requests copies of [i] the . . . FSEIS related to [IPEC] license renewal . . . , 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.*

Id. (emphasis added). Consistent with this position, NYSDOS deemed Entergy’s consistency certification and supporting information complete only when the NRC issued FSEIS supplement, Volume 4, on June 20, 2013. See ML 13218A122 (letter of Jeffrey Herter, NYSDOS Assistant Chief, Natural Resources Management Bureau, to Mr. Fred Dacimo, dated June 28, 2013). NYSDOS’s determination that the NRC’s FSEIS Volume 4 supplement was necessary for consistency review to commence also comports with prior NYSDOS determinations that NRC FSEISs for nuclear plant license renewals constitute “necessary data and information,”² and with NYSDOS’s identification, both prior to³ and after⁴ Entergy’s December 17, 2012, consistency certification, of aquatic impacts as going

² See, e.g., ML 080110129 (letter of Andrew Kasius, NYSDOS’s Coastal Energy Facilities Specialist, to Jim Costedio, Entergy’s Manager for Licensing, dated January 10, 2008 (acknowledging (1) the withdrawal of Entergy’s initial consistency certification for the James A. FitzPatrick Nuclear Power Plant in Scriba, New York, in order to await NRC’s preparation of an FSEIS, and (2) that “the final [FSEIS] is necessary data and information that [NYS]DOS requires to commence the six-month coastal consistency review period under the NYCMP and 15 C.F.R., Sections 930.58(a) and 903.60(a)(2)”)).

³ See letter of Jeffrey Zappieri, Supervisor, Consistency Review Unit, to Ms. Dara Gray, Entergy, dated February 1, 2009 (actually sent on February 1, 2010) (“re-licensure of Indian Points unit 2 and 3 may continue or exacerbate ongoing [effects] on these two SCFWHs [significant coastal fish and wildlife habitats] and, as such, the effects of re-licensure on these SCFWH should be quantified and analyzed”; “the increased risk to the fish and wildlife resources of NY’s coastal zone due to the on-site storage and eventual transport of hazardous materials associated with nuclear generating operations should be considered”; “assessment of recreational fish and wildlife resources should be provided that compares the current state of these resources with the expected state of these resources should nuclear operations cease at the end of the current licensing term.”).

⁴ See letter of Martin R. Healy on behalf of Entergy to Linda M. Baldwin, General Counsel for NYSDOS, dated December 20, 2013 (“the Department indicated that [the impact of Indian Point operations on fisheries resources] is a core issue that bears upon several policies of the New York Coastal Management Plan”).

to the very core of consistency review and bearing upon its review of several policies of the NYCMP.

Because NYSDOS's consideration of IPEC's consistency certification without the benefit of the FSEIS Supplement (and NRC's evaluation of new aquatic information) would be premature and would be based on an incomplete record, Entergy is withdrawing IPEC's consistency certification and terminating NYSDOS's review of that certification under the CZMA. As noted above, Entergy intends file a new consistency certification that takes into account the FSEIS Supplement promptly after the FSEIS Supplement has been issued by NRC. Upon submittal of such a new consistency certification, the CZMA review process will begin afresh, such that NYSDOS will be able to review the certification within the full timeframe allowed by law.

We appreciate NRC Staff's continued commitment to providing the FSEIS Supplement on a timely basis.

Sincerely,



FRD/rw

cc: Mr. Michael Wentzel, Environmental Project Manager, U.S. Nuclear Regulatory Commission
Mr. Sherwin E. Turk, NRC Office of General Counsel, Special Counsel
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