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Denise M. Sheehan  
Commissioner

September 5, 2007

Chief, Rules and Directives Branch  
Division of Administrative Services  
Mail Stop T-6 D59  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555 - 0001

6/14/07  
72FR 32924  
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2007 SEP -5 AM 9:38

RULES AND DIRECTIVES  
BRANCH  
ENR/DC

RE: **James A. FitzPatrick Nuclear Power Plant  
NRC License Renewal Application  
Supplemental Environmental Impact Statement (SEIS)**

Dear Sir/Madam:

Attached please find a copy of the Department's comments regarding the Draft Supplemental Environmental Impact Statement. The Department appreciates the opportunity to comment and looks forward to participating in the license renewal process.

Please contact me if you have any questions regarding the Department's comments.

Sincerely,

*Christopher M. Hogan*

Christopher M. Hogan  
Project Manager

cc: B. Little  
A. Peterson, NYSEDA  
D. Harrison, Entergy  
M. Rogers, Entergy  
J. Muir, NRC

SONSI Review Complete  
Template = ADM-013

E-RIDS = ADM-03  
Cde = J.M. Muir (JMM)

**New York State Department of Environmental Conservation  
Comments on the Draft Supplemental Environmental Impact Statement  
James A. FitzPatrick Nuclear Power Plant**

- 1) Page 4-13,14 - Draft NUREG-1437, Supplement 31.– The NRC should not use fish populations in the entire water body (Lake Ontario) to determine the significance of impacts regarding impingement and entrainment. NRC uses the following standards to categorize environmental impacts (10 CFR Part 51 (Footnote 3, Table B-1)):
  - SMALL - Environmental effects are not detectable or are so minor that they will neither destabilize nor noticeably alter any important attribute of the resource.
  - MODERATE - Environmental effects are sufficient to alter noticeably, but not to destabilize, important attributes of the resource.
  - LARGE - Environmental effects are clearly noticeable and are sufficient to destabilize important attributes of the resource.While it is logical to look at fish when analyzing potential impingement and entrainment impacts from the continued operation of FitzPatrick, NRC standards do not require a broad scale evaluation limited to consideration of lake-wide fish populations. There is no indication that all fish species being impinged and entrained at FitzPatrick function as a single lake-wide population. Moreover, New York State is entrusted with the conservation of fisheries resources at a finer scale (i.e., New York State). Thus, a conservative approach focusing on local abundance of fish seems more appropriate. In fact, NRC used just such of an approach when considering cumulative impacts. In that case, NRC considered cumulative impacts within a 50-mile radius of FitzPatrick (Page 4-47 - Draft NUREG-1437, Supplement 31).
  
- 2) Page 4-14 - Draft NUREG-1437, Supplement 31.– References to factors contributing to fish populations in the Mississippi River (LaJeone and Monzingo 2000) lend little support for factors contributing to fish mortality in Lake Ontario. The ecological systems are completely different and have different fish species, water quality parameters, and flow dynamics.
  
- 3) Page 4-15,21 - Draft NUREG-1437, Supplement 31.– The following changes would improve New York's position for requiring mitigation (if appropriate) while still reflecting NRC staff conclusions:
  - Original Wording:* However, the NRC staff concluded that none of the mitigation measures considered would be beneficial enough to reduce the significance of adverse entrainment {impingement} impacts to the Lake Ontario fishery.
  - Proposed Wording:* However, the NRC staff concluded that none of the mitigation measures considered would eliminate adverse entrainment {impingement} impacts and would not reduce the significance level below SMALL.