



United States Department of the Interior

FISH AND WILDLIFE SERVICE

3817 Luker Road
Cortland, NY 13045



November 15, 2007

Mrs. Rani Franovich, Branch Chief
Environmental Branch B
Division of License Renewal
Office of Nuclear Reactor Regulation
United States Nuclear Regulatory Commission
Washington, DC 20555-0001

Dear Mrs. Franovich:

This is in regards to the proposed James A. Fitzpatrick Nuclear Power Plant (Plant). The U.S. Nuclear Regulatory Commission (NRC) is evaluating Entergy Nuclear FitzPatrick, LLC's (Entergy) application to renew the Plant's operating license for a period of 20 years. The current license will expire on October 17, 2014. The Plant is located in the Town of Scriba, Oswego County, New York, on the shore of Lake Ontario. Associated transmission lines and substations occur in Oswego and Oneida Counties.

We understand that no major construction, refurbishment, or system, structure, or component replacement activities associated with license renewal are expected. If the NRC approves the license renewal application, the reactors and support facilities, including the cooling system, would be expected to continue to be operated and maintained. Approximately 98 miles (1,270 acres) of transmission line rights-of-way would also be required by personnel from Entergy, the Nine Mile Point Nuclear Station (NMPNS), and the New York Power Authority (NYPA). The majority of line is owned by the NYPA.

Pursuant to Section 7(a)(2) of the Endangered Species Act of 1973 (ESA) (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*), the NRC completed a Biological Assessment (BA) dated May 2007 which addressed the potential project's impacts on, at that time, the Federally-listed threatened bald eagle (*Haliaeetus leucocephalus*); the Federally-listed threatened bog turtle (*Clemmys muhlenbergii*); the Federally-listed endangered Indiana bat (*Myotis sodalis*); and the Federal candidate species, the Eastern massasauga (*Sistrurus catenatus catenatus*). The BA also addressed the Federally-listed endangered Great Lakes breeding population of the piping plover (*Charadrius melodus*) and its designated critical habitat.

In your May 21, 2007, letter and BA, the NRC determined the proposed project may affect but is not likely to adversely affect the bald eagle, bog turtle, Indiana bat, and Eastern massasauga. The Department of the Interior's August 28, 2007, letter to Ms. Jessie Muir, of the NRC, concluded that no further coordination or consultation pursuant to the ESA was required for the bald eagle, Eastern massasauga, or the piping plover. However, the NRC, Entergy, NMPNS, and NYPA should follow the Bald Eagle Management Guidelines found on our website to avoid any impacts

to the bald eagle which continues to receive protection under the Bald and Golden Eagle Protection Act (54 Stat. 250, as amended; 16 U.S.C. 668 *et seq.*).

On June 22, 2007, Ms. Robyn Niver, of this office, and Ms. Muir discussed the proposed project's potential for impacts to the bog turtle and Indiana bat. During that call, the U.S. Fish and Wildlife Service (Service) requested additional information to assist with our understanding of the proposed project. We also requested Geographic Information Systems (GIS) data to better understand the locations of transmission lines and substations.

Based on the additional information provided in an August 20, 2007, letter from Ms. Jessie Muir, of the NRC, we concur that the activities associated with operating and maintaining the Plant and associated transmission lines are not likely to adversely affect the Indiana bat as any adverse effects will be either insignificant (effects which are unable to be meaningfully measured, detected, or evaluated) or discountable (effects extremely unlikely to occur).

We also concur that activities conducted at the Plant are not likely to adversely affect the bog turtle. However, we are unable to concur that transmission line maintenance activities are not likely to adversely affect the bog turtle given our understanding of the project location and activities. We understand that the following activities are likely to occur within rights-of-way: mowing, herbicide application, use of motorized vehicles, and tree-trimming or removal. These activities have the potential to impact bog turtles and/or their habitat. Therefore, we recommend that a qualified surveyor conduct Phase 1 surveys (potential habitat surveys) for any wetlands that may be disturbed during the operating and maintenance of the lines. Some surveys have already been completed in Oswego County that may reduce the ultimate scope of necessary survey work. We understand that NRC does not maintain GIS data for the proposed project and have requested this directly from the NYPA to determine whether any known or previously identified potential habitat for bog turtles occurs within the associated ROWs. You can find Phase 1 guidelines and template reporting forms on our website.* If known sites or potential habitat is present within the ROWs, further coordination/consultation with the Service is required. NYPA can also assume that all wetlands provide habitat for the bog turtle and employ standard avoidance and minimization measures (*e.g.*, timing of activities). Please contact Ms. Niver for further information regarding options for addressing this species. In addition, we request a copy of the NYPA System Right-of-Way Management Plan for further description of maintenance activities.

Should project plans change, or if additional information on listed or proposed species or critical habitat becomes available, these determinations may be reconsidered. The most recent compilation of Federally-listed and proposed endangered and threatened species in New York is available for your information.* Until the proposed project is complete, we recommend that you check our website every 90 days from the date of this letter to ensure that listed species presence/absence information for the proposed project is current.*

The above comments pertaining to endangered species under our jurisdiction are provided pursuant to the ESA. This response does not preclude additional Service comments under any other legislation.

As a reminder, all Federally-listed species, as well as the Eastern massasauga and bald eagle, are also listed by the State of New York. Any additional information regarding the proposed project and its potential to impact listed species should be coordinated with both this office and with the NYSDEC. The NYSDEC contact for the Endangered Species Program is Mr. Peter Nye, Endangered Species Unit, 625 Broadway, Albany, NY 12233 (telephone: [518] 402-8859).

For additional information on fish and wildlife resources or State-listed species, we suggest you contact the appropriate NYSDEC regional office(s) and the New York Natural Heritage Program Information Services.*

If you require additional information please contact Robyn Niver at (607) 753-9334. Future correspondence with us on this project should reference project file 70417.

Sincerely,



for David A. Stilwell
Field Supervisor

*Additional information referred to above may be found on our website at:
<http://www.fws.gov/northeast/nyfo/es/section7.htm>

cc: NYPA, White Plains, NY (Attn: E. Alkiewicz)
NYSDEC, Syracuse, NY (Env. Permits)
NYSDEC, Albany, NY (Endangered Species; Attn: P. Nye)
COE, Auburn, NY