United States Department of the Interior

OFFICE OF THE SECRETARY
Office of Environmental Policy and Compliance
Custom House, Room 244
200 Chestnut Street
Philadelphia, Pennsylvania 19106-2904

IN REPLY REFER TO:

March 3, 2009

ER08/1285

Chief Rulemaking, Directives Editing Branch
U.S. NRC
Mail Stop T6-D59
Washington, D.C. 20555-0001

RE: Draft Generic Environmental Impact Statement, NUREG-1437, Supplement 37, for the License Renewal of Three Mile Island Nuclear Station, Unit 1; Dauphin County, Pennsylvania.

Dear Sir / Madame:

The Department of the Interior (Department) has reviewed the above-referenced Notice, dated December 9, 2008, regarding Three Mile Island Nuclear Station located in Londonderry Township, Dauphin County, Pennsylvania. AmerGen, LLC, proposes to renew its license to operate a nuclear power project at the existing Three Mile Island Nuclear Station.

The following comments are provided pursuant to the Endangered Species Act of 1973 (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq*.) to ensure the protection of federally listed endangered and threatened species, and the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 *et seq*.) to ensure protection of other fish and wildlife resources.

FEDERALLY LISTED SPECIES

Except for occasional transient species, no federally listed or proposed, threatened or endangered species under our jurisdiction are <u>known</u> to occur within the project impact area. Therefore, based on currently available information, no biological assessment or further consultation under the Endangered Species Act is required with the Fish and Wildlife Service. Should project plans change, or if additional information on listed or proposed species becomes available, this determination may be reconsidered.

BALD EAGLE

Bald eagles are known to occur in the vicinity of the Three Mile Island facility. Although the bald eagle has been removed from the federal *List of Endangered and Threatened Wildlife*, and is therefore no longer protected under the Endangered Species Act, it continues to be protected under the Bald and Golden Eagle Protection Act (Eagle Act) and the Migratory Bird Treaty Act (MBTA). Both acts protect bald eagles by prohibiting killing, selling or otherwise harming

eagles, their nests or eggs. The Eagle Act also protects eagles from disturbance. "Disturb" means to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, 1) injury to an eagle; 2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior; or 3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior.

On June 4, 2007, the Service released several important documents related to the protection of bald eagles under the Eagle Act, including 1) a final rule establishing a regulatory definition of "disturb"; 2) a final environmental assessment of the "disturb" regulation; 3) *National Bald Eagle Management Guidelines*; and 4) a proposed rule to establish a permit for the take of bald and golden eagles. The proposed rule would establish regulations for issuing permits to take bald and golden eagles where the take is associated with, and not the purpose of, otherwise lawful activities. A second permit type would provide for permits to take bald and golden eagle nests for safety emergencies (of humans or eagles). All of these documents can be found at http://www.fws.gov/migratorybirds/baldeagle.htm.

A bald eagle nest is located approximately three miles northwest from the Three Mile Island facility. In addition, bald eagles are continuing to expand their breeding range along the Susquehanna River, and therefore may be found in previously undocumented locations near the facility. Consequently, we recommend that the applicant carefully evaluate the project type, size, location and layout in light of the *National Bald Eagle Management Guidelines* to determine whether or not bald eagles might be disturbed as a direct or indirect result of this project. If it appears that disturbance may occur, we recommend that the applicant consider modifying the project to be consistent with the *Guidelines*. If the applicant has questions about when and how to obtain a permit because he or she believes that the proposed project will disturb bald eagles, and he or she is not able to implement measures to avoid disturbance, please contact the Fish and Wildlife Service Migratory Bird Permit Program at 413-253-8643 or permitsr5mb@fws.gov.

Lastly, the applicant should incorporate state-of-the art methods to prevent raptor electrocution and collisions (see *Suggested Practices for Avian Protection on Power Lines: the State of the Art in 2006*, available from the Avian Power Line Interaction Committee at http://www.aplic.org). Siting new power lines as far as possible from known eagle nests would help reduce the electrocution/collision risk, as would equipping existing or new lines with features that would prevent raptor electrocution and collisions.

SPECIFIC COMMENTS

Section 2.2.7 Threatened and Endangered Species and Section 4.7 Threatened or Endangered Species. The DEIS (pages 4-8 and 4-9) indicates that the osprey (*Pandion haliaetus*) is one of the eleven State-listed threatened or endangered species that have been determined to be species of special concern for the TMI-1 site of the license renewal project. The DEIS (pages 4-8 and 4-9) states that mitigation measures for the osprey (and other species) currently in place at the TMI-1 site include nest construction and placement, and that "these current mitigation measures are found to be adequate." However, in a previous section, the DEIS contradicts this conclusion, claiming (page 2-40) that nesting relocation efforts by the State-listed, threatened osprey (*Pandion haliaetus*) have been unsuccessful, citing AmerGen

(2008) as the reference. It would benefit the public for the final EIS to include more specific information as to why such relocation efforts may not be successful, and include the results of scientific studies on such efforts, such as the undated US Geological Survey (USGS) citation which indicates that "ospreys typically pair for life and use the same nest site in successive years." The USGS reference also includes other relevant information and cites several additional references that may be useful in the analyses and evaluation of proposed mitigation measures to be included in the final EIS, such as studies which indicate that "Colonies [of ospreys] may arise in secure areas such as islands or lakes, but most pairs tend to be solitary nesters, separated from other nests by tens to hundreds of kilometers (McVey et al., 1993)." Available scientific information regarding nesting relocation measures would be important considerations for identifying appropriate mitigation measures and measuring the severity of the impact from the proposed project.

Table 2-6, pages 2-41 through 2-49. The correct designation in the footnote on page 2-49 for a State-listed threatened species should be "PT" and not "ST" as currently listed.

Section 2.4 References, page 2-76. The link to the U.S. Fish and Wildlife Service (2008a) citation (for ospreys) is not correct. The correct link should read as follows: http://www.fws.gov/chesapeakebay/osprey.html.

Conclusions

The applicant should be directed to clarify or gather additional information on the questions identified above. This may entail conducting appropriate field studies to obtain site-specific information. We also ask that the Commission continue to coordinate with the Fish and Wildlife Service throughout the license renewal process.

Thank you for the opportunity to review and comment on this Draft Environmental Impact Statement. If you have any questions regarding this matter, please contact Lloyd Woosley of the USGS Environmental Affairs Program at (703) 350-8797, or Jennifer Kagel of the U. S. Fish and Wildlife Service's Pennsylvania Field Office at 814-234-4090.

Sincerely,

Michael T. Chezik
Regional Environmental Officer

REFERENCES

USGS. No date. "Biological and ecotoxicological characteristics of terrestrial vertebrate species residing in estuaries - osprey". U.S. Geological Survey Patuxent Wildlife Research Center (PWRC), Laurel, Maryland, http://www.pwrc.usgs.gov/bioeco/osprey.htm

McVey, M., K. Hall, P. Trenham, A. Soast, L. Frymier, and A. Hirst. 1993. *Wildlife Exposure Factors Handbook, Volume I*. U.S. Environmental Protection Agency, Washington D.C., EPA/600/R-93/187a.

cc:

Larry Miller
U.S. Fish and Wildlife ServiceMid-Atlantic Fishery Resource Office
P.O. Box 67000
1601 Elmerton Avenue
Harrisburg, PA 17110-9299

Lloyd Woosley
Chief of the USGS Environmental Affairs Program
U.S. Geological Survey
Reston, VA 20192

Mark Hartle
Pennsylvania Fish and Boat Commission
450 Robinson Lane
Bellefonte, PA 16823-9620

U.S. Fish and Wildlife Service
(ATTN: Jennifer Kagel)
Pennsylvania Field Office
315 S. Allen Street, Suite #322
State College, PA 16801