

## Janice Dean

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**From:** Janice Dean  
**Sent:** Thursday, July 26, 2012 1:39 PM  
**To:** 'Burchfield, Bobby'; Turk, Sherwin; 'Bessette, Paul M.'; Phillip Musegaas; Deborah Brancato; Manna Jo Greene; Kathryn Liberatore; John J. Sipos; Karla Raimundi  
**Cc:** Sutton, Kathryn M.; Glew Jr, William; Leland, Matthew; Mizuno, Beth; Ghosh, Anita; Wentzel, Michael; Smith, Maxwell; Threatt, Angela  
**Subject:** RE: Request for on Motion Regarding LRA ER Supplement on CZMA  
**Attachments:** 2006 interstate consistency RPC (complete 254pp).pdf

I am in the process of consulting with state agencies but as I indicated, I will not have any response to share today. I am regretfully out of the office at a funeral tomorrow afternoon so I believe Monday may be a better day to continue our discussion. However, from my initial review it appears that you have failed to address a critical document, the attached New York Department of State's 2006 Routine Program Change which is controlling as to this issue. Please advise on how your proposed motion squares with this document. In the meantime I propose rescheduling today's 2:30pm call to 10am on Monday.

Thank you,  
Janice

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**From:** Burchfield, Bobby [mailto:BBurchfield@mwe.com]  
**Sent:** Wednesday, July 25, 2012 5:00 PM  
**To:** Janice Dean; Turk, Sherwin; 'Bessette, Paul M.'; Phillip Musegaas; Deborah Brancato; Manna Jo Greene; Kathryn Liberatore; John J. Sipos; Karla Raimundi  
**Cc:** Sutton, Kathryn M.; Glew Jr, William; Leland, Matthew; Mizuno, Beth; Ghosh, Anita; Wentzel, Michael; Smith, Maxwell; Threatt, Angela  
**Subject:** RE: Request for on Motion Regarding LRA ER Supplement on CZMA

Janice--

As we discussed this morning, 15 U.S.C. 930.51(e), says "[t]he determination of substantially different coastal effects under paragraphs (b)(3) and (c) of this section is made on a case-by-case basis by the Federal agency after consulting with the State agency, and applicant. The Federal Register discussion of section 930.51(e) is found at 71 Fed. Reg. 795, and states: "NOAA did not intend to use the phrase to have the State agency make the decision on whether coastal effects are substantially different. Thus, to provide clarification, NOAA has amended the section so that the Federal permitting agency makes this determination after consulting with the State and applicant. If a State disagrees with a Federal agency's determination concerning substantially different coastal effects, then the State could either request NOAA mediation or seek judicial review to resolve the factual dispute."

As discussed this morning, we will reconvene the consultation about Entergy's position tomorrow afternoon after your previously scheduled call regarding in limine motions tomorrow at 2. I understand that call should last no more than 30 minutes.

My assistant Angela Threatt will circulate a call in number for a call at 2:30 tomorrow. I will look forward to speaking with you then.

Bobby R. Burchfield  
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8/6/2012

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**From:** Janice Dean [mailto:Janice.Dean@ag.ny.gov]  
**Sent:** Wednesday, July 25, 2012 3:54 PM  
**To:** Burchfield, Bobby; Turk, Sherwin; 'Bessette, Paul M.'; Phillip Musegaas; Deborah Brancato; Manna Jo Greene; Kathryn Liberatore; John J. Sipos; Karla Raimundi  
**Cc:** Sutton, Kathryn M.; Glew Jr, William; Leland, Matthew; Mizuno, Beth; Ghosh, Anita; Wentzel, Michael; Smith, Maxwell  
**Subject:** RE: Request for Consultation on Motion Regarding LRA ER Supplement on CZMA

Bobby, could you please identify a pin cite for your reliance on 71 Fed. Reg. 795 to support the NRC's authority over the CZMA?

Thank you,  
Janice

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**From:** Burchfield, Bobby [mailto:BBurchfield@mwe.com]  
**Sent:** Wednesday, July 25, 2012 11:22 AM  
**To:** Turk, Sherwin; Janice Dean; 'Bessette, Paul M.'; Phillip Musegaas; Deborah Brancato; Manna Jo Greene; Kathryn Liberatore; John J. Sipos; Karla Raimundi  
**Cc:** Sutton, Kathryn M.; Glew Jr, William; Leland, Matthew; Mizuno, Beth; Ghosh, Anita; Wentzel, Michael; Smith, Maxwell  
**Subject:** RE: Request for Consultation on Motion Regarding LRA ER Supplement on CZMA

Thanks again to everyone for being available this morning. We look forward to hearing from you regarding your position on this issue.

Here is the document Mr. Turk requested.

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**From:** Turk, Sherwin [mailto:Sherwin.Turk@nrc.gov]  
**Sent:** Wednesday, July 25, 2012 10:43 AM  
**To:** Burchfield, Bobby; Janice Dean; 'Bessette, Paul M.'; Phillip Musegaas; Deborah Brancato; Manna Jo Greene; Kathryn Liberatore; John J. Sipos; Karla Raimundi  
**Cc:** Sutton, Kathryn M.; Glew Jr, William; Leland, Matthew; Mizuno, Beth; Ghosh, Anita; Wentzel, Michael; Smith, Maxwell  
**Subject:** RE: Request for Consultation on Motion Regarding LRA ER Supplement on CZMA

Mr. Burchfield – Could you also please send us the 2003 SPDES FEIS for Hudson River power plants (Reference 6 in Entergy's letter of July 24), and if you have not done so already, References 3, 4 and 5.  
Thank you.

*Sherwin E. Turk  
Special Counsel for Litigation  
Office of the General Counsel  
U.S. Nuclear Regulatory Commission  
11555 Rockville Pike  
Mail Stop O15-D21  
Rockville, MD 20852  
(301) 415-1533*

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**From:** Burchfield, Bobby [mailto:BBurchfield@mwe.com]  
**Sent:** Tuesday, July 24, 2012 5:30 PM  
**To:** Janice Dean; 'Bessette, Paul M.'; Turk, Sherwin; Phillip Musegaas; Deborah Brancato; Manna Jo Greene; Kathryn Liberatore; John J. Sipos; Karla Raimundi  
**Cc:** Sutton, Kathryn M.; Glew Jr, William; Leland, Matthew  
**Subject:** RE: Request for Consultation on Motion Regarding LRA ER Supplement on CZMA

I look forward to meeting everyone by telephone tomorrow morning at 10. My contact information is below.

In response to Janice Dean's question, we will elaborate on that issue and others during tomorrow's call. Among the citations supporting a declaratory order are 5 USC 554(e) and 10 CFR 2.319(r).

Also, I am enclosing the documents requested by Deborah Brancato.

Everyone have a good evening.

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**From:** Janice Dean [mailto:Janice.Dean@ag.ny.gov]  
**Sent:** Tuesday, July 24, 2012 3:19 PM  
**To:** 'Bessette, Paul M.'; Turk, Sherwin; Phillip Musegaas; Deborah Brancato; Manna Jo Greene; Kathryn Liberatore; John J. Sipos; Karla Raimundi  
**Cc:** Sutton, Kathryn M.; Burchfield, Bobby; Glew Jr, William  
**Subject:** RE: Request for Consultation on Motion Regarding LRA ER Supplement on CZMA

Thank you. We are looking into this. I'm unfamiliar with a Motion for Declaratory Order; is there a specific regulatory provision you're moving under?

Thank you,  
Janice

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**From:** Bessette, Paul M. [mailto:[pbessette@morganlewis.com](mailto:pbessette@morganlewis.com)]  
**Sent:** Tuesday, July 24, 2012 3:06 PM  
**To:** Turk, Sherwin; Phillip Musegaas; Deborah Brancato; Manna Jo Greene; Kathryn Liberatore; Janice Dean; John J. Sipos; Karla Raimundi  
**Cc:** Sutton, Kathryn M.; Burchfield, Bobby; Glew Jr, William  
**Subject:** Request for Consultation on Motion Regarding LRA ER Supplement on CZMA

Per our recent discussions and request for consultation, please see the attached filing Entergy made earlier today supplementing the LRA ER regarding the Coastal Zone Management Act. We will consult with you concerning a Motion for Declaratory Order we plan to file with our Board later this week regarding the attached supplement. Per our calls, we understand the parties are all available tomorrow at 10 AM. We have attached a conference number below.

Scheduled to begin on July 25 2012 at 10:00 AM EST+ DST (Eastern).  
Please dial a number from the list below;  
215-963-7123, .....(Direct Dial).  
221-7123, .....(Morgan Lewis Inter-Office).  
866-963-7123, .....(US Toll Free).

**When prompted for your access code, enter 5797 on your telephone keypad.**

Thank you,

**Paul M. Bessette**  
**Morgan, Lewis & Bockius LLP**  
1111 Pennsylvania Avenue, NW | Washington, DC 20004-2541  
Direct: 202.739.5796 | Main: 202.739.3000 | Fax: 202.739.3001  
[pbessette@morganlewis.com](mailto:pbessette@morganlewis.com) | [www.morganlewis.com](http://www.morganlewis.com)  
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