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November 8, 2012

FIRST CLASS MAIL AND E-MAIL

Laura Quinn-Willingham
Project Manager
U.S. Nuclear Regulatory Commission
Environmental Projects Branch 2
MailStop: T-6C32
Division of New Reactor Licensing
Office of New Reactors
Washington, D.C. 20555-0001

Re: Proposed Bell Bend Nuclear Power Plant
Environmental Impact Statement Alternative Site Analysis
White Township, New Jersey
Tax Block 7; Lots 3, 4, 5, 11, and part of 16

Dear Ms. Quinn-Willingham,

This letter is in response to your e-mail correspondence dated September 17, 2012, in which you inquired:

1. Under the current framework, where White Township is not conforming to the RMP, who regulates water withdrawals and discharges to the Delaware River from the Martin's Creek site? Would this be regulated through the Highlands Council or the Delaware River Basin Commission?
2. If White Township does become a conforming municipality, does the regulatory authority for withdrawals and discharges to the Delaware River change?

Please be advised that there has been prior correspondence between the Highlands Council and the Mr. Fringer of the U.S. Nuclear Regulatory Commission (USNRC), dated May 10, 2012, as to whether the Highlands Act and effectuating regulatory provisions would permit the construction of a nuclear power plant on the above-referenced parcels in White Township, NJ. It is our understanding that a reply in the affirmative for the Bell Bend facility would require that the USNRC complete an alternative site analysis for the proposed nuclear power plant as a component of the Environmental Impact Statement.

The Highlands Water Protection and Planning Council (Highlands Council) is a New Jersey State agency responsible for planning and management of the Highlands Region in northern New Jersey. The short answer to your question, then and now, bearing in mind the very limited information submitted in support of your request, is that it appears that any proposal for such a facility at the referenced location would be inconsistent with the Highlands Regional Master Plan (RMP), and that the chances of securing the needed approvals would be very limited. The various regulatory provisions at issue and the reasons for this very preliminary finding follow below. There are valid concerns regarding drinking water quality and quantity in this region and any withdrawal of water from the Delaware River would involve determinations from the Highlands Council, the Delaware River Basin Commission (DRBC), and the New Jersey Department of Environmental Protection (NJDEP) whether or not White Township is conforming to the RMP for the Planning Area of the Township.

The Highlands Water Protection and Planning Act, N.J.S.A. 13:20-1 *et seq.* (“Highlands Act”), divides the Highlands Region into two parts: the Preservation Area and the Planning Area. The Preservation Area has development restrictions imposed by the Highlands Act and implemented by NJDEP through its Highlands Rules, N.J.A.C. 7:38-1 et seq. The primary purpose of the development restrictions is to reduce the effects of development on important watershed lands. The Planning Area, wherein the subject parcels are located, is that portion of the Highlands Region where the NJDEP Highlands Rules do not apply, but where the natural resource protection standards of the RMP may apply, and if so, in differing ways depending upon the circumstances. In the event that a municipality requires an amendment of the Wastewater Management, for example, Highlands Water Protection and Planning Act Rules stipulate that the NJDEP shall grant approval “only after receipt from the Highlands Council, of a determination of consistency with the Regional Master Plan” (N.J.A.C. 7:38-1.1(k)). This is true whether property lies in the Preservations Area or the Planning Area and is not conforming to the RMP in the Planning Area. Further, where a Water Allocation Permit is required from NJDEP that affects Highlands Waters the permit must be consistent with the RMP. Finally, where the application involves property for which the affected Highlands municipality has aligned its planning and regulatory program to conform to the RMP, all resource protections and density constraints of the RMP would apply.

With regard to water withdrawals from and discharges to the Delaware River, while White Township at this time is a non-conforming municipality in the Planning Area, where new or amended Wastewater Management Plans or Water Allocation Permits (both issued by NJDEP) are required, consistency with the RMP is required. If this project requires the amendment of a Wastewater Management Plan or a Water Allocation Permit from the NJDEP (either or both appearing likely), specific standards of the RMP will be applied. Moreover, diversions within the Delaware River Basin may need approval from the Delaware River Basin Commission. In addition, development is still subject to other applicable State, county or federal environmental laws and regulations as well as the municipal zoning ordinance and development regulations.

If White Township ultimately chooses to conform its Planning Area to the RMP, no application for development (as defined in the Municipal Land Use Law (N.J.S.A. 40:55D-1 *et seq.*) will be deemed complete or considered for review by the applicable White Township land use board until and unless the applicant has obtained and provided a copy of:

1. A Consistency Determination from the Highlands Council indicating that the application is consistent with the RMP; or
2. A Consistency Determination from the Highlands Council indicating that the application is not consistent with the RMP, accompanied by a certification by the applicant’s

professional(s) that the application has, since review by the Highlands Council, been revised to achieve consistency with the RMP.

A Consistency Review Application can be found on the Highlands Council website at <http://maps.njhighlands.us/consistency/>. A formal Consistency Determination is only performed by the Highlands Council through the Project Review process.

I am hopeful that this information is helpful to the Nuclear Regulatory Commission in understanding the issues involved in performing an alternative site analysis for the proposed Bell Bend nuclear power plant's Environmental Impact Statement. Please do not hesitate to contact Kim Ball Kaiser, Staff Attorney at kim.kaiser@highlands.state.nj.us or (908)-879-6737 ext. 128, should you have additional questions or require further assistance in this regard.

Sincerely,

Gene F. Feyl
Executive Director