

May 18, 2012

MEMORANDUM TO: Brian E. Holian, Director  
Division of License Renewal  
Office of Nuclear Reactor Regulation

Melanie A. Galloway, Deputy Director  
Division of License Renewal  
Office of Nuclear Reactor Regulation

FROM: Jeremy J. Susco, Acting Chief /RA/  
Environmental Review and  
Guidance Update Branch  
Division of License Renewal  
Office of Nuclear Reactor Regulation

SUBJECT: SECTION 7 CONSULTATIONS THAT EXTEND BEYOND THE  
NRC'S ISSUANCE OF A RENEWED OPERATING LICENSE AND ESA  
SECTION 7(D) FINDINGS

During the NRC staff's review of a license renewal application, the NRC coordinates with the U.S. Fish and Wildlife (FWS) and the National Marine Fisheries Service (NMFS) (collectively, the Services) to determine if any species and habitats protected under the Endangered Species Act of 1973, as amended (ESA), could potentially be affected by the license renewal. Together, the NRC and the Services determine whether consultation under section 7 of the ESA is appropriate. In several instances, section 7 consultation initiated during the review of a particular license renewal application has extended beyond the date that the NRC issued a renewed operating license for that facility.<sup>1</sup> In each of these cases, the NRC's issuance of a renewed license has not affected the staff's participation in the section 7 consultation process or the ability of the Services to make effect determinations and conclude consultation as evidenced by the Services' continuation of the consultation process without objection. Thus, the staff does not anticipate that issuing a renewed license in the future would affect any ongoing section 7 consultations. If, as a result of consultation, the Services suggest modifications to the NRC-licensed facility or other mitigation measures that the NRC and the applicable licensee could implement to avoid adverse effects to listed species, issuing a renewed operating license would not result in changes at a nuclear power plant that would affect the NRC's ability and authority to implement such modifications or mitigation measures. Put another way, the NRC staff has reviewed the potential for the proposed license renewal to constitute (as is stated in 50 CFR 402.09) an irreversible or irretrievable commitment of resources that would foreclose the formulation or implementation of reasonable and prudent alternatives (i.e., mitigation measures to avoid impacts to Federally listed species and designated critical habitat). The staff concludes that license renewal would not constitute such a commitment of resources and would not prevent the NRC or a license renewal applicant from implementing mitigation measures at some future point in time.

<sup>1</sup> To date, section 7 consultation has extended beyond the renewed license issuance date for Wolf Creek Generating Station, Unit 1 (completed 4/2/2012); James A. Fitzpatrick Nuclear Power Plant (completed 10/21/2008); Salem Generating Station, Units 1 and 2 (ongoing); and Hope Creek Generating Station, Unit 1 (ongoing).

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