

NRR-PMDAPEm Resource

From: Sharp, William (DOS) [William.Sharp@dos.ny.gov]
Sent: Friday, December 26, 2014 12:26 PM
To: James, Lois; Pickett, Douglas; Dean, Bill; Stewart, Scott; Patel, Ami; Wentzel, Michael; Turk, Sherwin; Lew, David
Cc: Gathen, Kari (DOS); Herter, Jeff (DOS); Capobianco, Gregory L (DOS); Zappieri, Jeffrey D (DOS); Fred R. Dacimo (fdacimo@entergy.com); William B. Glew, Jr. (wglew@entergy.com); Dowell, Kelli (kdowell@entergy.com); Gray, Dara F (DGray@entergy.com); 'Healy, Martin R'; Hogan, Chris M (DEC); 'david.kaiser@noaa.gov'
Subject: Agreement- New York State Department of State File #F-2012-1028: Consistency Certification for Indian Point
Attachments: Agreement of December 24, 2014.pdf

Ms. Lois James
c/o Division of License Renewal
Office of Nuclear Reactor Regulation
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

December 26, 2014

Re: Federal Consistency Review for Entergy
Nuclear Indian Point 2,

LLC and Entergy Nuclear

Indian Point 3, LLC, and Entergy Nuclear

Operations, Inc. (Entergy)

Docket Nos. 50-247-LR and 50-286-LR

ASLBP No. 07-858-03-LR-BD01

DPR-26, DPR-64

(DOS File # F-2012-1028)

Dear Ms. James:

For your records, enclosed please find a copy of an Agreement entered into between the New York State Department of State (DOS) and Entergy, pursuant to 15 C.F.R. § 930.60(b), which, among other things, stays the federal consistency review for a period beginning December 24, 2014 and ending on June 30, 2015.

At the expiration of this period, there will be 7 days remaining in the coastal consistency review period. Unless the Agreement is extended by mutual agreement between the parties, DOS will issue its decision on or before July 7, 2015.

Please contact me at (518)474-6740 if you have any questions or wish to discuss.

Sincerely,

Linda M. Baldwin
General Counsel

Enc.

Hearing Identifier: NRR_PMDA
Email Number: 1795

Mail Envelope Properties (BN3PR09MB0386AAB172C388112A9C9D20C6520)

Subject: Agreement- New York State Department of State File #F-2012-1028:
Consistency Certification for Indian Point
Sent Date: 12/26/2014 12:26:19 PM
Received Date: 12/26/2014 12:26:13 PM
From: Sharp, William (DOS)

Created By: William.Sharp@dos.ny.gov

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"Gathen, Kari (DOS)" <Kari.Gathen@dos.ny.gov>
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"Capobianco, Gregory L (DOS)" <Gregory.Capobianco@dos.ny.gov>
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"Zappieri, Jeffrey D (DOS)" <Jeffrey.Zappieri@dos.ny.gov>
Tracking Status: None
"Fred R. Dacimo (fdacimo@entergy.com)" <fdacimo@entergy.com>
Tracking Status: None
"William B. Glew, Jr. (wglew@entergy.com)" <wglew@entergy.com>
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"Dowell, Kelli (kdowell@entergy.com)" <kdowell@entergy.com>
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Files

MESSAGE

Agreement of December 24, 2014.pdf

Size

3195

Date & Time12/26/2014 12:26:13 PM
137174**Options****Priority:**

Standard

Return Notification:

No

Reply Requested:

No

Sensitivity:

Normal

Expiration Date:**Recipients Received:**

AGREEMENT
**BETWEEN ENTERGY NUCLEAR OPERATIONS, INC., ENTERGY NUCLEAR
INDIAN POINT 2, LLC, ENTERGY NUCLEAR INDIAN POINT 3, LLC, AND
THE NEW YORK STATE DEPARTMENT OF STATE**

Entergy Nuclear Operations, Inc., Entergy Nuclear Indian Point 2, LLC, and Entergy Nuclear Indian Point 3, LLC (together, "Entergy") and the New York State Department of State ("Department") hereby enter into an Agreement as follows:

WHEREAS, on December 17, 2012, Entergy provided a consistency certification under the federal Coastal Zone Management Act ("CZMA") to the Nuclear Regulatory Commission ("NRC"), and furnished a copy of the consistency certification and necessary data and information to the Department;

WHEREAS, Entergy has also asserted that Indian Point Energy Center ("IPEC") is not subject to consistency review by the Department due to "grandfathering" and "previous review" positions currently under review by the New York State courts and NRC Staff, respectively;

WHEREAS, on June 28, 2013, the Department notified Entergy it had deemed the certification with supporting information complete as of June 20, 2013, such that the six-month deadline under 16 U.S.C. § 1456(c)(3)(A) for the Department to object to or to concur with the certification commenced on June 20, 2013;

WHEREAS, on October 9, 2013 and January 9, 2014, Entergy and the Department agreed to stay that deadline, such that the applicable deadline was ultimately extended to December 31, 2014;

WHEREAS, on November 5, 2014, Entergy submitted a letter to NRC and the Department, stating that Entergy's certification is withdrawn;

WHEREAS, on November 21, 2014, the Department sent a letter to Entergy stating that the November 5, 2014 withdrawal was not effective, including a concern that, if the Department did not make a determination on the December 17, 2012 certification before December 31, 2014, the Department will be "presumed" to have concurred with the certification under 16 U.S.C. § 1456(c)(3)(A);

WHEREAS, on December 1, 2014, Entergy sent a response letter to the Department explaining the withdrawal was effective and offering to address the Department's concerns regarding a "presumed" concurrence by stipulating that Entergy would not argue (and indeed would affirmatively represent to the contrary) that the Department would be presumed to concur with the December 17, 2012 certification by failing to object to it on or before December 31, 2014;

WHEREAS, Entergy has stated that, absent a full and final resolution of the previous review and/or grandfathering issues in its favor, Entergy intended to file a new consistency certification within 60 days after the NRC's issuance of the pending final supplemental environmental impact statement supplement ("FSEIS Supplement"), and that the Department would have its full rights to object to or to concur with that new consistency certification within the time periods allowed by law;

WHEREAS, Entergy continues to adhere to its position that the November 5, 2014 withdrawal is and will remain effective, and does not intend by executing this Agreement to abandon,

prejudice, compromise, or undermine its position on withdrawal in any respect, including its ability to file a revised consistency certification after the NRC issues the FSEIS Supplement;

WHEREAS, the Department does not agree that the CZMA and its regulations permit Entergy to withdraw its consistency certification at this time while its renewal application is still pending before the NRC;

WHEREAS, no tribunal or court will have resolved the parties' dispute regarding the effectiveness of the withdrawal on or before December 31, 2014;

WHEREAS, the New York Appellate Division, Third Department, issued a decision on December 11, 2014, reversing the Supreme Court's decision that the Indian Point license renewal application is not exempt from federal consistency review and instead holding that the application is exempt from such review under the plain text of New York's Coastal Management Program;

WHEREAS, the Department intends to file, on or before December 30, 2014, a motion for reargument or leave to appeal the December 11, 2014 decision ("Department Challenge To Grandfathering Decision");

WHEREAS, no order will have been issued on the Department Challenge To Grandfathering Decision before December 31, 2014;

WHEREAS, in the absence of an agreement that is acceptable to the Department, the Department intends to issue a consistency determination in connection with the December 17, 2012 consistency certification on or before December 31, 2014;

WHEREAS, Entergy contends that any objection by the Department to the December 17, 2012 consistency certification would be null and void because, according to Entergy, no consistency certification is pending to which an objection could be made; and

WHEREAS, the parties wish to preserve their respective positions on the effectiveness (or, from the Department's standpoint, the ineffectiveness) of the withdrawal while allowing the Department to pursue the Department Challenge To Grandfathering Decision;

NOW, THEREFORE, the parties agree as follows:

1. Assuming that the Department is correct that Entergy's November 5, 2014 withdrawal of the certification was not effective: Entergy and the Department shall be deemed to have agreed to a stay as of December 24, 2014, pursuant to 15 C.F.R. § 930.60(b), of the Department's review period regarding the December 17, 2012 certification until June 30, 2014 (the period from the date of effectiveness of this Agreement through June 30, 2014 shall be referred to as the "Deemed Stay Period"). The Deemed Stay Period will begin on December 24, 2014, and will end on June 30, 2015. At the end of the Deemed Stay Period, there will be 7 days remaining in the coastal consistency review period and the Department will issue a consistency determination on or before July 7, 2015, absent any further extension of time.
2. Assuming that Entergy is correct that Entergy's November 5, 2014 withdrawal of the certification was effective: Entergy will file a new consistency certification for the operating license renewal application within 60 days of the issuance of the final FSEIS

Supplement unless the previous-review and/or grandfathering issues have been fully and finally resolved in Entergy's favor before that time.

3. In all events, Entergy will affirmatively represent to any agency or tribunal that the Department cannot be presumed to have concurred with the December 17, 2012 certification under 16 U.S.C. § 1456(c)(3)(A) by having failed to object to it on or before December 31, 2014, and Entergy will make no contrary statement suggesting that the Department can be presumed to have concurred with that certification.
4. In all events, the Department stipulates that the Department will not issue an objection to, or take any other action (aside from the Department Challenge To Grandfathering Decision and any action to resolve the parties' dispute regarding the effectiveness of Entergy's November 5, 2014 withdrawal) affecting, the December 17, 2012 consistency certification until the last day of the Deemed Stay Period.
5. This Agreement may be executed in counterparts.
6. The effective date of this Agreement shall be the day upon which the latter of the Department or Entergy signs this Agreement.
7. This Agreement may not be used for any purpose in any judicial, administrative, or regulatory proceeding except for the limited purpose of enforcing its terms.

ENTERED INTO AND AGREED UPON BY:

DATE: 12/24/14



Martin Healy, Esq.
Goodwin Procter LLP

*On behalf of Entergy Nuclear Operations,
Inc., Entergy Nuclear Indian Point 2, LLC,
and Entergy Nuclear Indian Point 3, LLC*

DATE: 12/24/2014



Linda M. Baldwin
General Counsel
New York State Department of State