

IPRenewal NPEmails

From: Sharp, William (DOS) [William.Sharp@dos.ny.gov]
Sent: Thursday, September 24, 2015 2:01 PM
To: James, Lois; Pickett, Douglas; Dean, Bill; Scott.Stewart@nrc.gov; Patel, Ami; Wentzel, Michael; Turk, Sherwin; Lew, David; Fdacimo@entergy.com; wglew@entergy.com
Cc: Baldwin, Linda (DOS); Gathen, Kari (DOS); Allen, Sandra (DOS); Capobianco, Gregory L (DOS); Zappieri, Jeffrey D (DOS); Herter, Jeff (DOS); david.kaiser@noaa.gov
Subject: [External_Sender] Agreement- New York State Department of State File #F-2012-1028
Attachments: Second Extension Agreement fully executed 9.24.15.pdf

September 24, 2015

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

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:

Please accept for your files the attached agreement, dated September 24, 2015, between the New York State Department of State and Entergy Nuclear Operations, Inc., Entergy Nuclear Indian Point 2, LLC, and Entergy Nuclear Indian Point 3, LLC.

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: IndianPointUnits2and3NonPublic_EX
Email Number: 5304

Mail Envelope Properties (BLUPR09MB0930548C6E29DF7D5172DA96C6430)

Subject: [External_Sender] Agreement- New York State Department of State File
#F-2012-1028
Sent Date: 9/24/2015 2:01:29 PM
Received Date: 9/24/2015 2:01:42 PM
From: Sharp, William (DOS)

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

Recipients:

"Baldwin, Linda (DOS)" <Linda.Baldwin@dos.ny.gov>
Tracking Status: None
"Gathen, Kari (DOS)" <Kari.Gathen@dos.ny.gov>
Tracking Status: None
"Allen, Sandra (DOS)" <Sandra.Allen@dos.ny.gov>
Tracking Status: None
"Capobianco, Gregory L (DOS)" <Gregory.Capobianco@dos.ny.gov>
Tracking Status: None
"Zappieri, Jeffrey D (DOS)" <Jeffrey.Zappieri@dos.ny.gov>
Tracking Status: None
"Herter, Jeff (DOS)" <Jeff.Herter@dos.ny.gov>
Tracking Status: None
"david.kaiser@noaa.gov" <david.kaiser@noaa.gov>
Tracking Status: None
"James, Lois" <Lois.James@nrc.gov>
Tracking Status: None
"Pickett, Douglas" <Douglas.Pickett@nrc.gov>
Tracking Status: None
"Dean, Bill" <Bill.Dean@nrc.gov>
Tracking Status: None
"Scott.Stewart@nrc.gov" <Scott.Stewart@nrc.gov>
Tracking Status: None
"Patel, Ami" <Ami.Patel@nrc.gov>
Tracking Status: None
"Wentzel, Michael" <Michael.Wentzel@nrc.gov>
Tracking Status: None
"Turk, Sherwin" <Sherwin.Turk@nrc.gov>
Tracking Status: None
"Lew, David" <David.Lew@nrc.gov>
Tracking Status: None
"FDacimo@entergy.com" <FDacimo@entergy.com>
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"wglew@entergy.com" <wglew@entergy.com>
Tracking Status: None

Post Office: BLUPR09MB0930.namprd09.prod.outlook.com

Files	Size	Date & Time
MESSAGE	2038	9/24/2015 2:01:42 PM
Second Extension Agreement fully executed 9.24.15.pdf		230685

Options

Priority:

Standard

Return Notification:

No

Reply Requested:

No

Sensitivity:

Normal

Expiration Date:

Recipients Received:

SECOND EXTENSION 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 a Second Extension 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 Second Extension 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, on December 24, 2014, Entergy and the Department agreed to a further stay of the Department's review period, such that the applicable deadline was extended to July 7, 2015;

WHEREAS, on June 30, 2015, Entergy and the Department agreed to an initial extension of the further stay, such that the applicable deadline was ultimately extended to October 5, 2015;

WHEREAS, no tribunal or court will have resolved the parties' dispute regarding the effectiveness of the withdrawal on or before October 5, 2015;

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, on June 4, 2015, the Court of Appeals granted the Department's Motion for Leave to Appeal from the Third Department's December 11, 2014 decision, and the Department intends to pursue that appeal ("Department Challenge To Grandfathering Decision");

WHEREAS, the Court of Appeals will not have issued its decision before October 5, 2015;

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 October 5, 2015;

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, and the parties agree that this Second Extension Agreement is in their mutual interest;

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 September 28, 2015, pursuant to 15 C.F.R. § 930.60(b), of the Department's review period regarding the December 17, 2012 certification until October 30, 2015 (the period from the date of effectiveness of this Second Extension Agreement through October 30, 2015 shall be referred to as the "Deemed Additional Extended Stay Period"). The Deemed Additional Extended Stay Period will begin on September 28, 2015, and will end on October 30, 2015. At the end of the Deemed Additional Extended 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 November 6, 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 Extended Stay Period.
5. This Second Extension Agreement may be executed in counterparts.
6. The effective date of this Second Extension Agreement shall be the day upon which the latter of the Department or Entergy signs this Second Extension Agreement.
7. This Second Extension 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: _____

9/21/15



William Glew, Jr., Esq.
Entergy Services, Inc.

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

DATE: _____

9/24/15



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