



Entergy Nuclear Northeast

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Anthony J Vitale
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NL-17-015

January 24, 2017

U.S. Nuclear Regulatory Commission
ATTN: Document Control Desk
Washington, DC 20555-0001

SUBJECT: Notice of Withdrawal of Previous Review Claim Pursuant to the New York Coastal Management Program and Coastal Zone Management Act
Indian Point Nuclear Generating Unit Nos. 2 & 3
Docket Nos. 50-247 and 50-286
License Nos. DPR-26 and DPR-64

REFERENCES:

1. Entergy Letter from Fred Dacimo to NRC Document Control Desk, "License Renewal Application" (Apr. 23, 2007) (NL-07-039) (ML071210507)
2. Generic Environmental Impact Statement for License Renewal of Nuclear Plants: Regarding Indian Point Nuclear Generating Unit Nos. 2 and 3 (NUREG-1437, Supplement 38, Vol. 1) (Dec. 2010) (ML103350405)
3. Entergy Letter from Fred Dacimo to NRC Document Control Desk, "Supplement to License Renewal Application — Compliance with Coastal Zone Management Act" (July 24, 2012) (NL-12-107) (ML12207A122)
4. Motion and Memorandum by Applicant Entergy Nuclear Operations, Inc. for Declaratory Order That It Has Already Obtained the Required New York State Coastal Management Program Consistency Review of Indian Point Units 2 and 3 for Renewal of the Operating Licenses (July 30, 2012) (ML12212A383)
5. Entergy Letter from Fred Dacimo to NRC Document Control Desk, "Transmittal of Consistency Certification Pursuant to the Coastal Zone Management Act" (Dec. 17, 2012) (NL-12-181) (ML13015A037)
6. State of New York Attorney General Letter from J. Sipos to the ASLB, Attach. 1 (Nov. 6, 2014) (ML14310A346)
7. New York State Department of State Letter to Fred Dacimo, "Coastal Zone Management Act Consistency Determination" (Nov. 6, 2015) (ML15314A013)

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8. Letter from Sanford I. Weisburst to David Kaiser, NOAA, "Purported Objection of New York State Department of State Dated November 6, 2015" (Nov. 10, 2015)
9. Letter from Lois Schiffer, General Counsel, U.S. Dep't of Commerce, to Sanford I. Weisburst, Esq. and Linda Baldwin, Esq., "Response to Letter-Requests under the Coastal Zone Management Act in the Matter of Entergy Nuclear Operation, Inc." (Nov. 25, 2015) (ML16334A360)

Dear Sir or Madam:

Entergy Nuclear Operations, Inc.'s (Entergy) license renewal application (LRA) (Reference 1), as originally filed, and the Final Supplemental Environmental Impact Statement (FSEIS) (Reference 2) issued by the Nuclear Regulatory Commission (NRC) related to the LRA, anticipated that license renewal of Indian Point Unit 2 (IP2) and Unit 3 (IP3) would require a consistency determination by the State of New York (State) pursuant to the Coastal Zone Management Act (CZMA). Entergy subsequently re-evaluated how the CZMA applied to the pending LRA and, as a result, on July 24, 2012, supplemented the Environmental Report (ER) appended to the LRA to state that the LRA is not subject to further consistency review by the State because renewal would not result in coastal effects that are substantially different than effects previously reviewed by the State. (Reference 3)

Shortly thereafter, on July 30, 2012, Entergy filed a motion with the Atomic Safety and Licensing Board (Board) seeking a declaratory order (Motion) that it had already obtained the required consistency review of IP2 and IP3 for renewal of the operating licenses. (Reference 4) Meanwhile, Entergy concluded that it was prudent, in the alternative, to file a consistency certification pursuant to the CZMA, and did so on December 17, 2012. (Reference 5) On June 12, 2013, the Board denied Entergy's Motion, but held that the Motion might be re-filed after consultations between the NRC Staff and the State, pursuant to 15 C.F.R. § 930.51(e). *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), Board Order (Granting New York's Motions, Denying Clearwater's Motion, and Denying CZMA Motions) (unpublished) (June 12, 2013) (ML13163A233). The Staff has since engaged in consultations with the New York State Department of State (NYS DOS) and Entergy, and the matter is still under Staff consideration.

On November 5, 2014, Entergy notified NYSDOS and the NRC that Entergy was voluntarily withdrawing its consistency certification, with the intention to re-file it once NRC had issued FSEIS Supplement 2 that is to include updated aquatic impacts data. (Reference 6) NYSDOS subsequently disputed that Entergy had the ability to withdraw the certification, taking the position that the original certification remained pending.

Entergy's July 24, 2012 ER supplement also stated that the New York Coastal Management Plan exempts both IP2 and IP3 from further review, and therefore also exempts them from the CZMA, by virtue of grandfathering provisions of the NYCMP. On December 11, 2014, the State of New York Supreme Court, Appellate Division, Third Department, issued a decision agreeing with Entergy's position, holding that "Indian Point Nuclear Generating Unit No. 2 and Indian Point Nuclear Generating Unit No. 3 are exempt from New York's Coastal Management Program." *Entergy Nuclear Operation, Inc. v. N.Y. State Dep't of State*, 125 A.D.3d 21, 26 (N.Y.

App. Div. 2014). NYSDOS subsequently appealed that decision to the New York Court of Appeals (New York's highest court). The New York Court of Appeals issued its decision on the grandfathering issue on November 21, 2016. *Entergy Nuclear Operation, Inc. v. N.Y. State Dep't of State*, No. 179, slip op. (N.Y. Nov. 21, 2016).

In parallel, on November 6, 2015, NYSDOS objected to Entergy's December 17, 2012 consistency certification. (Reference 7) In response, on November 10, 2015, Entergy sought a determination from the National Oceanic and Atmospheric Administration (NOAA) that NYSDOS's objection was invalid and, in the alternative, sought an extension of time to file a notice of appeal. (Reference 8) On November 25, 2015, NOAA issued Entergy an extension of time to file its Notice of Appeal to NYSDOS's objection until 60 days after a decision by the New York Court of Appeals. (Reference 9)

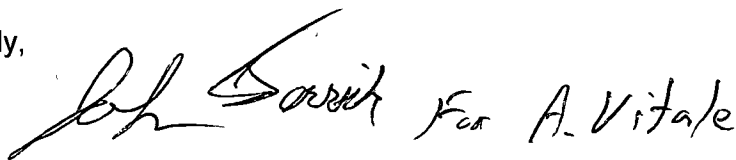
Pursuant to an agreement between Entergy and NYSDOS, among other parties, dated January 9, 2017, regarding the planned cessation of operation of IP2 and IP3, NYSDOS withdrew its challenge to Entergy's November 5, 2014 withdrawal of its consistency certification, and will proceed as if the withdrawal became effective on November 5, 2014, thereby (1) rendering NYSDOS's November 6, 2015 objection moot and of no effect and (2) requiring Entergy to submit a new certification. In accordance with that agreement, Entergy will submit a new consistency certification for NYSDOS review by January 31, 2017. NYSDOS will issue its decision on the new consistency certification within 30 days after submission.

As a result of the above actions, there is no need at this time for Entergy to pursue arguments regarding previous review or for the Staff, State, and NRC to engage in further consultations on previous review. Entergy, on January 18, 2017, also notified NOAA that it no longer plans to pursue an appeal of NYSDOS's objection.

There are no new commitments being made in this submittal.

Should you have any questions concerning this report, please contact Mr. Robert W. Walpole, Licensing Manager, at (914) 254-6710.

Sincerely,



AJV/rl

cc: Mr. Daniel H. Dorman, Regional Administrator, Region I, NRC
Ms. Jane Marshall, Acting Branch Chief, NRR/DLR, NRC
Mr. William Burton, Senior Project Manager, NRR/DLR, NRC
Mr. Douglas Pickett, Senior Project Manager, NRR/DORL, NRC
Mr. Sherwin E. Turk, Special Counsel, OGC, NRC
Ms. Bridget Frymire, New York State Department of Public Service
Mr. John B. Rhodes, President and CEO NYSERDA
Ms. Rossana Rosado, Secretary of State, NYSDOS
NRC Resident Inspector's Office