



Entergy Nuclear Northeast
Indian Point Energy Center
450 Broadway, GSB
P.O. Box 249
Buchanan, NY 10511-0249
Tel (914) 254-6700

Anthony J Vitale
Site Vice President

NL-17-051

April 25, 2017

U.S. Nuclear Regulatory Commission
ATTN: Document Control Desk
11555 Rockville Pike, TWFN-2F1
Rockville, MD 20852-2738

SUBJECT: Final Supplemental Environmental Impact Statement
New York State Department of State Concurrence with Consistency Certification
Indian Point Nuclear Generating Unit Nos. 2 & 3
Docket Nos. 50-247 and 50-286
License Nos. DPR-26 and DPR-64

- REFERENCES:**
1. State of New York Department of State Coastal Zone Management Act Consistency Determination, "Concurrence with Consistency Certification" (March 2, 2017) (attached)
 2. Entergy Letter from Fred Dacimo to NRC Document Control Desk, "License Renewal Application" (Apr. 23, 2007) (NL-07-039) (ML071210507)
 3. 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)
 4. 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)
 5. 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)
 6. 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)
 7. State of New York Attorney General Letter from J. Sipos to the ASLB, Attach. 1 (Nov. 6, 2014) (ML14310A346)
 8. New York State Department of State Letter to Fred Dacimo, "Coastal Zone Management Act Consistency Determination" (Nov. 6, 2015) (ML15314A013)
 9. 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)

A128
NRR

10. 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)
11. New York State Department of State Letter to Fred Dacimo, "Withdrawal of Objection to Coastal Zone Management Act Consistency Certification" (Jan. 17, 2017)
12. Letter from Sanford I. Weisburst to L. Schiffer, NOAA, "Objection under Coastal Zone Management Act of New York State Department of State dated November 5, 2015" (Jan. 18, 2017)
13. Entergy Letter from Anthony Vitale to the NRC Document Control Desk, "Notice of Withdrawal of Previous Review Claim Pursuant to the New York Coastal Management Program and Coastal Zone Management Act" (Jan. 24, 2017) (NL-17-015) (ML17030A037)
14. Entergy Letter from Fred Dacimo to New York State Department of State, "Consistency Certification for Entergy Nuclear Indian Point 2 and Entergy Nuclear Indian Point 3 License Renewal Application" (Jan. 31, 2017) (NL-17-018) (ML17060A614)
15. New York State Department of State Letter to Fred Dacimo, "Received Federal Consistency Assessment Form – Began Review" (Feb. 6, 2017)

Dear Sir or Madam:

This letter is submitted by Entergy Nuclear Operations, Inc., Entergy Nuclear Indian Point 2, LLC, and Entergy Nuclear Indian Point Unit 3, LLC (collectively, "Entergy"), as it relates to license renewal of Indian Point Units 2 and 3 (respectively, "IP2" and "IP3"; collectively, "IPEC"). The purpose of this letter is to formally submit to the Nuclear Regulatory Commission ("NRC") the final New York State ("State") Department of State Coastal Zone Management Act ("CZMA") consistency determination for purposes of IP2 and IP3 license renewal. (Reference 1 and enclosed as Attachment 1) Entergy also provides a brief history of the CZMA consistency determination in this license renewal proceeding, given the duration of the proceeding.

Entergy's license renewal application ("LRA") (Reference 2), as originally filed, and the Final Supplemental Environmental Impact Statement ("FSEIS") (Reference 3) issued by the NRC related to the LRA, anticipated that license renewal of IP2 and IP3 would require a consistency determination by the State pursuant to the 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 4)

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 5) Entergy subsequently 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 6) On June 12, 2013, the Board denied Entergy's Motion, but held that the Motion may 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). The Staff thereafter engaged in consultations with the New York State Department of State ("NYSDOS") and Entergy, but never formally documented the results of those consultations.

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 7) 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 ("NYCMP") exempts both IP2 and IP3 from further review, and therefore also exempts them from the CZMA, by virtue of grandfathering provisions of the NYCMP. Entergy subsequently sought a declaratory ruling from NYSDOS that IP2 and IP3 were exempt from review under the NYCMP, but on January 9, 2013, NYSDOS issued its determination that IP2 and IP3 are subject to the NYCMP for purposes of license renewal. Entergy challenged that determination in state court and on December 13, 2013, the State of New York Supreme Court, Albany County, issued a decision confirming NYSDOS's position. Entergy then appealed that decision, and 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).

On November 6, 2015, NYSDOS "issued an objection" to Entergy's December 17, 2012 consistency certification. (Reference 8) In response, on November 10, 2015, Entergy sought a determination from the National Oceanic and Atmospheric Administration ("NOAA") that NYSDOS's objection was invalid given Entergy's withdrawal of the consistency certification and, in the alternative, sought an extension of time to file a notice of appeal. (Reference 9) 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 10) The New York Court of Appeals issued its decision on the grandfathering issue on November 21, 2016, overturning the lower court decision. *Entergy Nuclear Operation, Inc. v. N.Y. State Dep't of State*, No. 179, slip op. (N.Y. Nov. 21, 2016).

On January 9, 2017, Entergy and NYSDOS, among other parties, entered into an agreement regarding the planned early cessation of operation of IP2 and IP3. Pursuant to that agreement, NYSDOS, on January 17, 2017, withdrew its challenge to Entergy's November 5, 2014 withdrawal of its consistency certification (Reference 11), and agreed to 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. On January 18, 2017, Entergy notified NOAA that Entergy's request that the NYSDOS November 6, 2015 objection be deemed invalid was moot, and that Entergy did not plan to pursue any appeal of the November 2015 objection. (Reference 12) Entergy further provided the NRC, on January 24, 2017, with a notice of withdrawal of its previous review claim. (Reference 13) On January 31, 2017, Entergy submitted a new consistency certification for NYSDOS review. (Reference 14)

On February 6, 2017, NYSDOS notified Entergy that it had received Entergy's consistency certification, and that the 15-day public comment period would begin on February 15, 2017 and end on March 2, 2017. (Reference 15) On March 2, 2017 NYSDOS notified Entergy that it had completed its evaluation of the Federal Consistency Assessment Form, certification, project information, public comments and publicly available information in connection with the IP2 and IP3 LRA. Pursuant to the CZMA and its implementing regulations at 15 C.F.R. 960.63, NYSDOS concurred with Entergy's consistency certification. (Reference 1) A copy of the NYSDOS March 2, 2017 Concurrence is included as Attachment 1 to this letter.

Accordingly, Entergy has received a consistency determination by the State pursuant to the CZMA, and this issue is finally resolved for purposes of IP2 and IP3 license renewal.¹

There are no new commitments being made in this submittal.

If you have any questions, or require additional information, please contact Mr. Robert Walpole at 914-254-6710.

Sincerely,



AJV/rl

Attachment: State of New York Department of State Coastal Zone Management Act
Consistency Determination, "Concurrence with Consistency Certification" (March
2, 2017)

cc: Mr. Daniel H. Dorman, Regional Administrator, NRC Region I
Mr. Sherwin E. Turk, NRC Office of General Counsel, Special Counsel
Mr. William Burton, NRC Senior Project Manager, Division of License Renewal
Mr. Douglas Pickett, NRR Senior Project Manager
Ms. Bridget Frymire, New York State Department of Public Service
Mr. John B. Rhodes, President and CEO NYSERDA
NRC Resident Inspector's Office

¹ As noted in Section 1.5 of the FSEIS, one other state-level issue—consistency with State water quality standards—must also be resolved for purposes of license renewal. Entergy will provide the NRC with a separate notification of the final resolution of that issue.

ATTACHMENT TO NL-17-051

**State of New York Department of State Coastal Zone Management Act Consistency
Determination, "Concurrence with Consistency Certification" (March 2, 2017)**

**ENTERGY NUCLEAR OPERATIONS, INC.
INDIAN POINT NUCLEAR GENERATING UNIT NOS. 2 AND 3
DOCKET NOS. 50-003, 50-247 AND 50-286**

STATE OF NEW YORK
DEPARTMENT OF STATE

ONE COMMERCE PLAZA
99 WASHINGTON AVENUE
ALBANY, NY 12231-0001
WWW.DOS.NY.GOV

ANDREW M. CUOMO
GOVERNOR

ROSSANA ROSADO
SECRETARY OF STATE

March 2, 2017

Mr. Fred Dacimo, Vice President
Operations License Renewal
Entergy Nuclear Northeast, Indian Point Energy Center
450 Broadway, GSB - P.O. Box 249
Buchanan, NY 10511-0249

Re: F-2017-0010
Coastal Zone Management Act Consistency
Determination
Indian Point Nuclear Generating Unit Nos.
2 & 3 NRC License Nos. DPR-26 and DPR-64
NRC Docket Nos. 50-247 and 50-286
Concurrence with Consistency Certification

Dear Mr. Dacimo:

The New York State Department of State (NYSDOS) has completed its evaluation of the Federal Consistency Assessment Form, certification, project information, public comments and publicly available information in connection with the application submitted by Entergy Nuclear Operations, Inc., Entergy Nuclear Indian Point 2, LLC, and Entergy Nuclear Indian Point 3, LLC (collectively Entergy) to the Nuclear Regulatory Commission (NRC) to renew Facility Operating Licenses DPR-26 and DPR-64 for Indian Point Nuclear Generating Unit 2 and Unit 3, respectively, for an additional 20 years. Entergy's certification states that the above referenced Project complies with, and will be conducted in a manner consistent with, the enforceable policies of the New York State Coastal Management Program (NYS CMP). Pursuant to the Coastal Zone Management Act (CZMA) and its implementing regulation at 15 C.F.R. §930.63, NYSDOS concurs with Entergy's consistency certification.

Entergy initially submitted its consistency certification and request for concurrence in a letter dated December 17, 2012. On June 20, 2013, following receipt of necessary data and information regarding aquatic impacts, NYSDOS commenced consistency review of the application for renewal of the commercial operating licenses for the nuclear facilities. Following a number of stay agreements, Entergy withdrew its consistency certification in a letter dated November 5, 2014 in order to await the NRC's issuance of a final Supplemental Environmental Impact Statement (SEIS) for this activity. NYSDOS responded that it would commence review of the new consistency certification when it receives all necessary data and information.

In a letter dated January 31, 2017, NYSDOS acknowledged receipt of your re-submitted consistency certification and supporting information regarding this activity and the commencement of the six-month coastal consistency review period under the NYCMP and 15 C.F.R. §§ 930.58 (a) and 930.60 (a)(2).



**Department
of State**

The consistency certification and supporting information indicates that, while seeking a 20 year license renewal for the facilities, Entergy has committed to conducting the activity in a manner consistent with the NYSCMP, which conduct differs from the earlier submission. In particular,

- Entergy has agreed that IP2 shall permanently cease operations no later than April 30, 2020, and IP3 shall permanently cease operations no later than April 30, 2021; provided, however, the operation of either IP2, IP3, or both units, may be extended upon the mutual agreement of NYS and Entergy, which shall take account of, and be made in accordance with, applicable law and regulatory requirements.
- Entergy will continue to operate Indian Point's existing multi-speed pumps and optimized Ristroph traveling screens and fish-handling and -return systems, as well as the thermal and flow terms and conditions agreed to between Entergy and the New York State Department of Environmental Conservation ("NYSDEC") staff, which reduce levels of entrainment and impingement of aquatic species.
- Entergy has committed to take each unit's planned refueling and maintenance outage (which typically last approximately 30 unit days) between February 23 and August 23 until Units 2 and 3, respectively, are retired.
- Entergy has committed to conduct a Hudson River Biological Monitoring Program, which currently consists of the Long River Survey, Beach Seine Survey and Fall Shoals Survey performed in the tidal Hudson River (River miles 0-152), as it may be appropriately reduced in scope and magnitude in cooperation with NYSDEC staff, until Units 2 and 3 are retired.

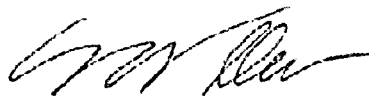
These conditions, which are contained in the joint State Pollutant Discharge Elimination System (SPDES) permit and the Water Quality Certification (CWA §401) issued by NYSDEC, have been submitted to the NRC as commitments in connection with this certification. This consistency certification relies on Entergy's material compliance with such conditions.

Pursuant to 15 CFR § 930.62, and based upon the project information submitted, the Department of State concurs with your consistency certification for this activity.

This concurrence is without prejudice to and does not obviate the need to obtain all other applicable licenses, permits, or other forms of authorization or approval that may be required pursuant to existing State statutes.

The U.S. Department of Commerce and the NRC are being notified of this action by copy of this letter.

Sincerely,



Sandra Allen
Deputy Secretary of State
Office of Planning and Development

Cc's:

Jane Marshall, Division of License Renewal, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001

Sherwin Turk, Office of General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001

William B. Glew, Jr., Esq., Entergy Services, Inc., 440 Hamilton Avenue, White Plains, NY 10601

Jeffrey L. Payne, Ph.D., Director, Office for Coastal Management, 1401 Constitution Avenue, NW, Room 5128, Washington, DC 20230

Paul M. Scholz, Deputy Director, Operations, Office for Coastal Management, 1401 Constitution Avenue, NW, Room 5128, Washington, DC 20230

John King, Deputy Director, Programs, Office for Coastal Management, National Oceanic and Atmospheric Administration, 1401 Constitution Avenue, NW, Room 5128, Washington, DC 20230

David Kaiser, Senior Policy Analyst, Office for Coastal Management, National Oceanic and Atmospheric Administration, 1401 Constitution Avenue, NW, Room 5128, Washington, DC 20230

Lois Schiffer, General Counsel, National Oceanic and Atmospheric Administration, 1401 Constitution Avenue, NW, Washington, DC 20230