

September 10, 2007

NOTE TO: FILE

FROM: Jessie Muir, Project Manager
Environmental Branch B
Division of License Renewal
Office of Nuclear Reactor Regulation

SUBJECT: SUMMARY OF TELECONFERENCE WITH THE NEW YORK STATE
DEPARTMENT OF ENVIRONMENTAL CONSERVATION IN SUPPORT OF
THE NRC STAFF'S REVIEW OF THE JAMES A. FITZPATRICK NUCLEAR
POWER PLANT LICENSE RENEWAL

On Friday, August 17, 2007, the U.S. Nuclear Regulatory Commission staff (NRC or staff) conducted a teleconference with the New York State Department of Environmental Conservation (NYSDEC). The following people participated in the teleconference:

Roy Jacobson	NYSDEC
Christina Dowd	NYSDEC
Jessie Muir	NRC
Michael Masnik	NRC
Sarah Lopas	NRC
Briana Balsam	NRC

The purpose of this teleconference was to answer questions from NYSDEC regarding the James A. FitzPatrick Nuclear Power Plant (JAFNPP) Draft Supplement Environmental Impact Statement (DSEIS), NUREG-1437 Supplement 31, published for comment in June 2007. NYSDEC wanted clarification on the aquatic resources review before drafting their comments on the DSEIS. Questions related to (1) area of analysis for aquatic impacts; (2) area of analysis for cumulative impacts; and (3) mitigation language.

Mr. Jacobson's first question concerned the reasoning behind our scale of analysis in determining a level of impact to aquatic resources from entrainment and impingement. Mr. Jacobson explained that with regard to NYSDEC's permitting goals, they prefer to see impacts based on a more localized area rather than impacts on an entire population, which is the approach the NRC has taken in the JAFNPP DSEIS. Dr. Masnik explained that, generally, the NRC considers the impacts on a population level for the entire water body, in this case, Lake Ontario, as this is also the level at which most fishery data is available.

Mr. Jacobson further explained that NYSDEC doesn't view entrainment and impingement in terms of impact to whole fish populations. Rather, any decrease in entrainment and impingement levels as a result of the implementation of best available technology (BTA) is desirable, regardless of the significance level of the initial impact.

Mr. Jacobson's second question was related to area of analysis for cumulative impacts and asked why the impacts of the proposed action to aquatic resources were evaluated on a larger

scale (all of Lake Ontario) than the cumulative impacts, which were analyzed within a 50-mile radius from JAFNPP. Dr. Masnik responded that this concern is something that the NRC should consider for revision in the final SEIS.

Mr. Jacobson asked why the NRC included mitigation measures for those impacts determined to be small in significance. Dr. Masnik explained our obligation under the National Environmental Policy Act (NEPA) to evaluate mitigation measures for all impacts, regardless of significance, and that though mitigation measures may have been considered for impacts determined to be of small significance, they were not expected to provide enough of a benefit to warrant implementation.

Once NRC staff answered NYSDEC's questions, the staff asked about the status of the State's review of the applicant's 401 Certification, State Pollutant Discharge Elimination Systems (SPDES) permit renewal application, and Coastal Zone certification.

The Coastal Zone certification will be made by the Department of State after they receive the Final SEIS, as explained by Christina Dowd.

New York State can still require information regarding BTA under §704.5. The State is expecting some data from the applicant in January and then hopes to make their determination by April 2008. Mr. Jacobson was unsure whether or not the State would issue the 401 Certification with, before, or after the new SPDES permit.

A BTA determination was already made for JAFNPP regarding impingement, but the State has yet to make a determination for entrainment. The BTA determination is based on aquatic resources but under their State NEPA requirements, the State would look at other issues when making the determination.

/RA/

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Docket No. 50-333

ADAMS Accession No.: **ML072480636**

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