

IPRenewal NPEmails

From: Gray, Dara F [DGray@entergy.com]
Sent: Tuesday, January 17, 2012 7:16 PM
To: Green, Kimberly
Subject: RE: RE Indian Point Biological Opinion
Attachments: Letter to NYSDEC Staff re NMFS Final BiOp.pdf

Kim
Here is the letter. It had a number of attachments but I believe you should have them all, and I didn't want to kill our emails. If you need something else on this, please let me know (as I know you have a bit of catching up to do).
Thanks

From: Green, Kimberly [<mailto:Kimberly.Green@nrc.gov>]
Sent: Tuesday, January 17, 2012 10:51 AM
To: Gray, Dara F
Cc: IPRenewal NPEmails
Subject: RE: RE Indian Point Biological Opinion

Hi Dara,

No rush. I knew you were at the hearings. Any time is fine—it's just for our information.

Thanks,
Kim

From: Gray, Dara F [<mailto:DGray@entergy.com>]
Sent: Tuesday, January 17, 2012 10:25 AM
To: Green, Kimberly
Cc: IPRenewal NPEmails
Subject: Re: RE Indian Point Biological Opinion

Hi Kim
I am at DEC 401 Hearings but will try and get you the original submittal package tonight.

From: Green, Kimberly [<mailto:Kimberly.Green@nrc.gov>]
Sent: Tuesday, January 17, 2012 09:14 AM
To: Gray, Dara F
Cc: IPRenewal NPEmails <IPRenewal.NPEmails@nrc.gov>
Subject: RE: RE Indian Point Biological Opinion

Hi Dara,

I've looked through the NYSDEC Letter to Entergy and saw that a letter is referenced in which Entergy applied for a permit for incidental take from NYSDEC (November 21, 2011). I am not aware that the NRC has a copy of this letter (i.e., I could not locate it in ADAMS). We would like to have a copy for our information. Could you please send a copy at your convenience?

Thanks,
Kim

From: Gray, Dara F [<mailto:DGray@entergy.com>]
Sent: Tuesday, January 10, 2012 5:14 PM

To: Green, Kimberly; Curry, John J

Cc: Turk, Sherwin; ksutton@morganlewis.com; Dacimo, Fred R.; Zoli, Elise N; Glew Jr, William; Dowell, Kelli

Subject: RE Indian Point Biological Opinion

Hi Kim

First let me introduce myself – I am the Environmental Lead at Indian Point. Although you were previously the Safety PM for our license renewal, I have only dealt with the environmental side of the house and we have not had an opportunity to work together in the past – so I thought an introduction would be helpful.

In keeping with my previous dealings with Drew Stuyvenberg, I wanted to keep you informed of any developments which could be related to Indian Point's License Renewal Environmental Issues. Therefore, I am forwarding to you a copy of the letter we received from NYSDEC in regards to their recently promulgated NYS Endangered Species Incidental Take Permits (historically, NYSDEC has relied on NMFS for regulating takes of endangered species but recently promulgated regulations which require a NYS Permit, as well.)

Since NMFS recently prepared a Biological Opinion regarding the potential for Indian Point to "take" shortnose sturgeon, this was submitted to NYSDEC as our application for a permit under NYSDEC (consistent with their practice of deferring to NMFS). The attached letter indicates that NYSDEC is requesting that we submit a formal application to them for the incidental take of shortnose sturgeon, which could occur as a result of IPEC operations. Our plan is to be fully responsive to NYSDEC's request and submit the additional information within the 60 day time frame outlined in the letter.

If you have any questions, please feel free to contact me. Due to the NYSDEC 401 Water Quality Certification hearings, I will be out of the office, so emails are the best way to reach me.

Thanks and look forward to working with you.

Dara Gray, REM

Chemistry/Environmental

Indian Point Energy Center

(914) 254-8414

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Subject: RE: RE Indian Point Biological Opinion
Sent Date: 1/17/2012 7:15:55 PM
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From: Gray, Dara F

Created By: DGray@entergy.com

Recipients:
"Green, Kimberly" <Kimberly.Green@nrc.gov>
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Return Notification: Yes
Reply Requested: Yes
Sensitivity: Normal
Expiration Date:
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November 21, 2011

VIA FEDEX

New York Department of Environmental
Conservation
Special Licenses Unit
625 Broadway
Albany, NY 12233-4752

Mr. Alec Ciesluk
New York State Department of Environmental
Conservation, Region 3
Regional Permit Administrator
21 South Putt Corners Road
New Paltz, NY 12561-1620

Re: Indian Point License Water Quality Certification

Dear Sir/Madam:

On behalf of Entergy Nuclear Indian Point 2, LLC, Entergy Nuclear Indian Point 3, LLC, and Entergy Nuclear Operations, Inc. (collectively, “Entergy”), I am writing to inform you that the National Marine Fisheries Service’s (“NMFS”) has issued a Final Biological Opinion and Authorized Take Statement (collectively, the “renewed BiOp”) authorizing the incidental take of shortnose sturgeon during the twenty-year license renewal periods for Indian Point, commencing on September 28, 2013 (Indian Point 2) and December 12, 2015 (Indian Point 3). Enclosed is a copy of that final renewed BiOp, as well as Entergy’s major supporting technical information for the determination issued by NMFS. As detailed below, Entergy hereby submits the enclosed materials in supplement to its April 6, 2009 Section 401 WQC Joint Application and Attachments (and supporting submittals).

More specifically, in the BiOp, NMFS has confirmed that continued operation of Indian Point is not likely to jeopardize the continued existence of shortnose sturgeon.¹ In particular, the BiOp recognizes that the Hudson River shortnose sturgeon population has grown by approximately

¹ See BiOp, p. 61.

GOODWIN PROCTER

New York Department of Environmental Conservation
Special License Unit
November 21, 2011
Page 2

400% since 1979,² with a present estimated abundance of 61,057 individuals.³ This represents impressive growth since 1979 when the scientific community estimated the species' Hudson River abundance to be approximately 6,000 individuals.⁴ Indeed, NMFS noted that the most current studies of that population "suggest that the population is relatively healthy, large, and particular in habitat use and migratory behavior."⁵ Notably, this period of growth in the Hudson River shortnose sturgeon population has coincided with Indian Point's own commercial operation consistent with NMFS's 1979 Biological Opinion and Authorized Take Statement (the "current BiOp"), providing decades of evidence that such operation does not affect the species in a negative manner. NMFS has both confirmed that impressive growth and has reached the well-supported scientific and regulatory conclusion that the continued operation of Indian Point during the proposed license-renewal term will have similar, negligible impacts.⁶

Based on the conclusions noted above, the renewed BiOp includes an incidental take statement pursuant to Section 9 of the Endangered Species Act governing Indian Point's operation during the proposed twenty-year license renewal term.⁷ We understand that it has been the longstanding practice of NYSDEC to adopt NMFS-issued BiOps in satisfaction of New York's own endangered species laws and regulations. Indeed, this has been NYSDEC's practice to date with respect to Indian Point: Prior to its submission for a license renewal extension and § 401 water quality certification, Indian Point's historical incidental take of shortnose sturgeon was governed pursuant to NMFS's prior 1979 BiOp. Further, New York State recognition of NMFS's Renewed BiOp would honor the terms and spirit of NYSDEC's April 20, 1992 Cooperative Agreement with NMFS for the Conservation of Threatened and Endangered Species, an agreement we understand remains in effect.

Accordingly, Entergy hereby submits the enclosed materials as a supplement to its April 6, 2009 Section 401 WQC Joint Application and Attachments (and supporting submittals). It is

² *See id.*, p. 20 (citing Bain, *et al.* 2000).

³ *See id.*

⁴ It is important to note that the 1979 abundance estimate and more recent abundance estimates should not be directly compared due to differing estimation methodologies. In 2000, Dr. Mark Bain of Cornell University calculated abundance estimates for each time-period with consistent methodology, yielding an estimate of 400% population growth, (Bain *et al.* 2000). It is this apples-to-apples comparison that Entergy refers to on page 1 of this Letter.

⁵ *See id.* (citing Bain, *et al.* 1998).

⁶ *See id.*, pp. 61-67.

⁷ *See id.*

GOODWIN PROCTER

New York Department of Environmental Conservation
Special License Unit
November 21, 2011
Page 3

Entergy's continuing belief that NYSDEC Staff's Notice of Denial with respect to ECL Article 11 - § 11-0535 (Issue for Adjudication No. 4) can be resolved prior to a hearing, and issuance of the renewed BiOp underscores that NYSDEC has reasonable assurances regarding endangered species during the license renewal period for Indian Point.⁸ To the extent NYSDEC Staff believes that the NMFS-issued renewed BiOp is not sufficient to satisfy NYSDEC's endangered species law, please consider this letter and enclosure an application for an incidental take permit for the taking of shortnose sturgeon during the license-renewal period (under the existing Water Quality Certification Application form). For the reasons stated above, and supported by the materials contained herein, we believe it is unequivocally clear that Indian Point is entitled to such a permit.

Please do not hesitate to contact Dara Gray at Entergy or me at your convenience to discuss these materials


Very truly yours,

Elise N. Zoli

ENZ:bfb

Enclosures

cc: Hon. Maria E. Villa (*via e-mail and first class mail*)
Hon. Daniel P. O'Connell, (*via e-mail and first class mail*)
Service List (*via e-mail*)

LJB/A/2234307.2

⁸ Nothing in this letter is meant to alter, nor should it be interpreted to alter, Entergy's positions that the Staff's April 2, 2010 Notice of Denial improperly denied the Indian Point WQC application with respect to endangered species or that NYSDEC has waived its opportunity to certify Entergy's compliance with state water quality standards by failing to act on Entergy's WQC application within one year as required by the Clean Water Act.