

Janice Dean

From: Burchfield, Bobby [BBurchfield@mwe.com]
Sent: Friday, July 27, 2012 4:22 PM
To: Janice Dean; 'Turk, Sherwin'; 'Bessette, Paul M.'; 'Phillip Musegaas'; 'Deborah Brancato'; 'Manna Jo Greene'; Kathryn Liberatore; John J. Sipos; 'Karla Raimundi'
Cc: 'Sutton, Kathryn M.'; 'Glew Jr, William'; Leland, Matthew; 'Mizuno, Beth'; 'Ghosh, Anita'; 'Wentzel, Michael'; 'Smith, Maxwell'; Threatt, Angela
Subject: RE: Reconvening the 2.323(b) Consultation

Janice--

Thank you for your email. You raise several points.

First, the version of New York's Coastal Management Program ("NYCMP") currently on the Department of State's website ("the 2006 version") says on its cover "This document incorporates all the approved routine program changes from 1982 to 2006." The document you circulated yesterday contains a letter of approval from the Department of Commerce dated March 28, 2006. Further, the specific provision you identified in the document circulated yesterday appears in the 2006 version of the NYCMP at section II-9, page 18. Footnote 109 of the 2006 version of the NYCMP states that this provision was added in 2006. In any event, we note that the provision specifying Nuclear Regulatory Commission activities requiring a consistency determination is the same as the provision that was adopted in 1982.

Second, as I stated on our call yesterday, we believe 15 C.F.R. § 930.6(c) applies to New York. By its terms, the regulation is generally applicable to states with CZMA plans, and we are not aware of any authority supporting your statement that 15 C.F.R. § 930.6(c) does not apply to New York. As we discussed, the regulation deems consistency determinations for state permits relating to a project sufficient to constitute consistency concurrence for federal permits if the state permits must meet the policies of the NYCMP. This is the case in New York. Moreover, at section II-4, pages 2-4, the NYCMP identifies several state agencies that are authorized to conduct consistency reviews, including the New York Department of Environmental Conservation, New York Power Authority, and the New York Public Service Commission. When the NRC approved the transfers of IP2 and IP3 to Entergy's affiliates, the New York Power Authority and the Public Service Commission approved the actions as consistent with the NYCMP.

Third, as you noted in our call on Wednesday, Nuclear Regulatory Commission regulations set a 10-day limit to file motions (see 10 C.F.R. § 2.323(a)). Moreover, as we discussed yesterday, a prompt declaratory order is necessary to resolve whether Entergy must obtain another consistency determination from the State. As I stated Wednesday, and reiterated yesterday, Entergy is amenable to a reasonable extension of time for parties to respond to its motion, should a motion for declaratory order prove necessary.

We appreciate your working diligently and in good faith to formulate a position on Entergy's License Renewal Application supplement. We agreed to schedule the next consultation on Monday at your request so that New York would have time sufficient time to provide its position. We look forward to learning it then.

Bobby R. Burchfield
 McDermott Will & Emery LLP
 600 Thirteenth Street, N.W.
 Washington, D.C. 20005-3096
 202-756-8003 (Direct)
 202-591-2751 (Fax)
 703-624-4914 (Cell)
bburchfield@mwe.com

From: Janice Dean [mailto:Janice.Dean@ag.ny.gov]
Sent: Friday, July 27, 2012 11:39 AM

To: Janice Dean; Burchfield, Bobby; 'Turk, Sherwin'; 'Bessette, Paul M.'; 'Phillip Musegaas'; 'Deborah Brancato'; 'Manna Jo Greene'; Kathryn Liberatore; John J. Sipos; 'Karla Raimundi'
Cc: 'Sutton, Kathryn M.'; 'Glew Jr, William'; Leland, Matthew; 'Mizuno, Beth'; 'Ghosh, Anita'; 'Wentzel, Michael'; 'Smith, Maxwell'; Threatt, Angela
Subject: RE: Reconvening the 2.323(b) Consultation

The first line of my email below should read "Bobby stated Entergy's belief that this document was incorporated into the 2006 version of the CMP." Apologies for the confusion.

Janice

From: Janice Dean
Sent: Friday, July 27, 2012 11:27 AM
To: 'Burchfield, Bobby'; Turk, Sherwin; 'Bessette, Paul M.'; Phillip Musegaas; Deborah Brancato; Manna Jo Greene; Kathryn Liberatore; John J. Sipos; Karla Raimundi
Cc: Sutton, Kathryn M.; Glew Jr, William; Leland, Matthew; Mizuno, Beth; Ghosh, Anita; Wentzel, Michael; Smith, Maxwell; Threatt, Angela
Subject: RE: Reconvening the 2.323(b) Consultation

Following up on yesterday's call, I wish to clarify one statement that Bobby made - I shared the 2006 Routine Program Change document and Bobby stated Entergy's belief that this document was incorporated into the 1982 version of the CMP. There is no 2006 version of the New York CMP; there is only the original CMP and the subsequent RPCs (including the one under discussion here).

Also, Bobby raised 930.6(c); this provision, while applicable in certain states, does not apply in New York.

These factual and legal questions/misunderstandings about New York's program cause me to again question Entergy's need for expediting submission of this motion. Entergy has had five years to raise this issue, which is a novel approach (as you know, Entergy did properly observe the State's authority under the CZMA during FitzPatrick's relicensing, which is no different than the situation here), and yet has chosen a particularly busy pre-hearing period in which to raise this. Additionally, Entergy's new counsel has not been entirely respectful of longstanding relicensing deadlines (I cannot recall an instance in which a party has insisted on a consultation call on such a complex issue on a filing deadline day in our many years of working well together). I do not believe Entergy has substantiated its need for expedited treatment of this motion. The two reasons Entergy provides, a manufactured 10-day window from a letter Entergy itself decided to send (which parties have agreed to extend), and alternately a need to file a CZMA application which Entergy has not filed in the five years since submitting its application, do not provide sufficient cause for expedited treatment of this issue.

That said, I am diligently working to formulate a position on Entergy's motion and provide responses to questions Entergy raised in yesterday's call. I have been in touch with two state agencies and staff there are reviewing records on the 2000 and 2001 transfers of the Indian Point facilities as to the CZMA. As I will be regrettably out of the office this afternoon, I do not anticipate having an answer to these questions by Monday's call.

Thank you,
 Janice

Janice A. Dean
 Section Chief, Toxics and Cost Recovery Section
 Office of the New York State Attorney General
 Environmental Protection Bureau
 120 Broadway, 26th Floor
 New York, New York 10271
 (212) 416-8459 direct
 (212) 416-6007 fax

janice.dean@ag.ny.gov

From: Burchfield, Bobby [mailto:BBurchfield@mwe.com]
Sent: Thursday, July 26, 2012 4:11 PM
To: Janice Dean; Turk, Sherwin; 'Bessette, Paul M.'; Phillip Musegaas; Deborah Brancato; Manna Jo Greene; Kathryn Liberatore; John J. Sipos; Karla Raimundi
Cc: Sutton, Kathryn M.; Glew Jr, William; Leland, Matthew; Mizuno, Beth; Ghosh, Anita; Wentzel, Michael; Smith, Maxwell; Threatt, Angela
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Again, we want to thank everyone for being available this afternoon to confer about the motion for declaratory order Entergy is considering. Ms. Dean stated that the State of New York needs until 10 am EDT on Monday to consider whether it will consent to or oppose Entergy's motion for a declaratory order holding that renewal of the operating licenses for Indian Point Units 2 and 3 will not cause coastal zone effects substantially different than those previously reviewed by New York State.

After discussing the matter with colleagues and the client, Entergy is amenable to this request. Accordingly, my assistant will send a conference call notice for a further consultation on Monday at 10 am EDT so that New York can state whether it agrees or disagrees with Entergy's position.

Bobby R. Burchfield
 McDermott Will & Emery LLP
 600 Thirteenth Street, N.W.
 Washington, D.C. 20005-3096
 202-756-8003 (Direct)
 202-591-2751 (Fax)
 703-624-4914 (Cell)
bburchfield@mwe.com

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