



STATE OF NEW YORK
DEPARTMENT OF STATE
ONE COMMERCE PLAZA
99 WASHINGTON AVENUE
ALBANY, NY 12231-0001

ANDREW M. CUOMO
GOVERNOR

CESAR A. PERALES
SECRETARY OF STATE

U.S. Nuclear Regulatory Commission
ATTN: Eric Leeds
Director, Nuclear Reactor Regulation
Washington, DC 20555-0001

August 8, 2012

Re: DOS File #: O-2009-0006
NRC Docket #: 50-247 & 50-286
Application to Renew Operating Licenses for Indian Point
Nuclear Power Reactors Unit 2 and Unit 3
Hudson River, Village of Buchanan, Westchester County
General Correspondence – NL-12-107

To Director Leeds:

The New York State Department of State (DOS) received correspondence dated July 24, 2012 and accompanying documentation sent by Entergy Nuclear Northeast Indian Point Energy Center (Entergy) to the U.S. Nuclear Regulatory Commission (NRC), purportedly amending its 2007 environmental report pursuant to 10 C.F.R. § 51.45(d) and supplementing the applications to renew the two operating licenses for Indian Point Unit 2 and Unit 3 currently pending before the NRC. In that correspondence, Entergy asserts that the relicensing of Unit 2 and Unit 3 are not subject to federal consistency review by DOS pursuant to the Coastal Zone Management Act (CZMA), 16 U.S.C. § 1456(c)(3)(A). Entergy's claims are without merit.

Under the New York State Coastal Management Program (CMP), DOS has been designated as the sole state agency able to make federal consistency determinations pursuant to the CZMA and its regulations. (L.1975, c. 464, § 47; 16 U.S.C. § 1456 (c) and 15 C.F.R. §§ 923.6, 930.11 and 930.53). Indian Point Units 2 and 3 were initially licensed before New York had a federally approved CMP. Indian Point Unit 2 was licensed to operate by the Atomic Energy Commission (AEC) in September 1973 and Unit 3 was licensed by the NRC in December 1975. New York's CMP was approved by the U.S. Secretary of Commerce Malcolm Baldrige Jr. in September 1982. DOS has never conducted a federal consistency review nor issued a determination for the licensing and operation of Indian Point Units 2 and 3, which is listed federal activity in the CMP mandating a submission of a federal consistency certification to DOS. (CMP, Table 2).

Entergy posits that the various New York State agency actions involving Indian Point were equivalent to federal consistency under the CZMA. DOS is still in the process of researching the factual underpinnings of Entergy's allegations. In any event, as noted, only DOS is authorized to conduct the consistency review of federal agency actions pursuant to the CZMA. No other New York state agency – neither the NYS Public Service Commission (PSC), nor the NYS Department of Environmental Conservation (DEC), nor the non-state agency Power Authority of the State of New York - is authorized to make or issue consistency determinations under the CZMA that are binding on federal agencies. This distinction is well recognized by state agencies themselves. (See PSC Order in Case 70363, Iroquois Gas

A128
NRR

Transmission System; and ALJ Ruling on DEC Project No. 3-5510-161-1-0 Xanadu Properties Associates). Cobbling together disparate state agency reviews does not approximate the federal review required by the CZMA.

Any decision by NRC on the license renewal must await consultation with DOS as it is the single state agency authorized to conduct federal consistency review under the CZMA. If, following consultation, there remains a serious disagreement as to whether the licensing of Indian Point Unit 2 and Unit 3, a listed activity in the CMP, is subject to federal consistency, DOS will either request [National Oceanic and Atmospheric Administration, Office of Ocean Resource Management] NOAA mediation or seek judicial review to resolve the factual dispute." (71 Fed. Reg. at 795; *see also* 15 C.F.R. § 923.53; 15 C.F.R. § 930.55; and 15 C.F.R. Part 930 Subpart G). In the event mediation is pursued, the applicant will be notified. (15 C.F.R. § 930.55). The NRC should decline Entergy's request to take unilateral action and itself seek consultation with DOS and NOAA about the applicable law.

If you have any questions regarding this matter, please contact Mr. George Stafford, Deputy Secretary of State at 518-474-6000.

Sincerely,



Susan L. Watson
General Counsel
New York Department of State

cc: NRC Document Control Desk
NRC Docket Nos.: 50-247 & 50-286