



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

September 21, 2010

Mr. Peter D. Colosi
Assistant Regional Administrator
for Habitat Conservation
National Marine Fisheries Service
Northeast Regional Office
One Blackburn Drive
Gloucester, MA 01930-2237

SUBJECT: ESSENTIAL FISH HABITAT CONSULTATION FOR LICENSE RENEWAL OF
INDIAN POINT NUCLEAR GENERATING UNIT NOS. 2 AND 3 (TAC NOS.
MD5411 AND MD5412)

Dear Mr. Colosi:

By letter dated April 30, 2009, the staff of the U.S. Nuclear Regulatory Commission (NRC) requested initiation of an Essential Fish Habitat (EFH) consultation regarding the proposed action of license renewal for the Indian Point Nuclear Generating Unit Nos. 2 and No. 3 (IP2 and IP3), in accordance with Sections 305(b)(2) and (b)(4) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. Section 1855(b). With its letter of April 30, the NRC staff forwarded a copy of the NRC staff's EFH assessment and the NRC staff's draft site-specific Supplement 38 to NUREG-1437, "Generic Environmental Impact Statement for License Renewal of Nuclear Plants" (Draft SEIS) concerning IP2/IP3 license renewal. The NRC staff also sent copies of the letter, the EFH assessment, and the Draft SEIS to the Milford Laboratory on May 13, 2009, as requested by Ms. Diane Rusanowsky, Fishery Biologist in the NOAA/NMFS Habitat Conservation Division, Milford Field Office, in her e-mail message of March 18, 2009. NRC staff subsequently attempted to contact her on several occasions to obtain her comment, without success.

As described in the EFH assessment, the NRC staff identified eight species for which NMFS has designated EFH in the vicinity of IP2 and IP3. The NRC staff has determined that there may be adverse individual or cumulative effects on EFH in the project area for one or more life stages of five of these species resulting from the proposed license renewal. The NRC staff further determined that continued operation of the IP2 and IP3 cooling system, with its existing mitigation measures, is expected to have an overall minimal adverse effect on EFH within the Hudson River ecosystem. In reaching these conclusions, the NRC staff relied on information provided by the applicant, research and statistical analysis performed by NRC staff, and information from the U.S. Fish and Wildlife Service and NMFS. The NRC staff also considered additional mitigation measures in its EFH assessment and in the body of the Draft SEIS.

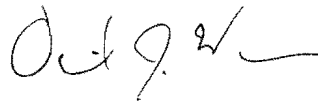
More than 20 months have passed since the NRC staff issued the Draft SEIS for IP2/IP3 license renewal, and more than one year has elapsed since NRC staff issued the EFH assessment. Comments on the Draft SEIS were due within 75 days, while NMFS comments on the NRC staff's EFH assessment were due within 30 days after notification of the EFH assessment, in accordance with 50 *Code of Federal Regulations* Section 600.920(h)(4); further, this period exceeds the 60-day time period which would have been allotted for expanded consultation on the EFH assessment, under 50 C.F.R. § 600.920(h)(4)(i)(4). The NRC staff requested

comments on its EFH assessment from NMFS and the Milford Laboratory staff, but has received no comments to date from either NMFS or the Milford Laboratory staff on either the NRC staff's EFH assessment or the Draft SEIS for IP2/IP3 license renewal.

In view of the time that has passed since the NRC staff initiated consultation with NMFS under Section 305(b) of the Magnuson-Stevens Act, and in the absence of any comments by NMFS on the EFH assessment, the NRC staff considers that it has fulfilled its responsibilities for consultation under the Magnuson-Stevens Act. Nonetheless, the NRC staff requests that any comments from NMFS on the EFH assessment be submitted within 15 days of the date of this letter so that the NRC staff may consider those comments.

If you have any questions, please contact Mr. Andrew Stuyvenberg, Environmental Project Manager, at 301-415-4006 or by e-mail at Andrew.Stuyvenberg@nrc.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "D. J. Wrona", with a stylized flourish at the end.

David J. Wrona, Chief
Projects Branch 2
Division of License Renewal
Office of Nuclear Reactor Regulation

Docket Nos. 50-247 and 50-286

cc: Distribution via Listserv

