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River issues may plague Indian Point

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By Abby Luby



A contention of the Department of Environmental Conservation calling for expensive new water cooling technology could threaten Entergy's license renewals which would ultimately force the closure of Indian Point.

The DEC is insisting that the plant install a new water cooling system as a stipulation for renewing Entergy's operating licenses for the twin reactors, set to expire in 2013 and 2015. Entergy officials claim the technology, with a price tag of perhaps more than \$1 billion, is cost prohibitive.

The DEC and environmental groups statewide have long held that Indian Point's current cooling system, known as "once-through cooling," is responsible for killing billions of fish and plant life in the Hudson River because it dumps out billions of gallons of heated water into the Hudson River daily.

The issue is part of the DEC's contentions against Entergy and was filed with the Nuclear Regulatory Commission, the federal agency reviewing Entergy's license renewal application.

Two weeks ago the NRC gave a perfunctory nod to the DEC's contentions on the water cooling issue, saying it didn't oppose the DEC's argument.

"It's a very big deal that the NRC did not oppose the issue of...thermal shock [to the fish]," said John Parker, an attorney for the DEC.

The NRC said that pollution issues are not under its jurisdiction and that such decisions are ultimately up to the DEC.

Parker argued that because the NRC did not oppose the water cooling contention, it could sway the Atomic License Board – the body responsible for reviewing Entergy's relicensing application.

"If the Atomic Licensing Board sees that the NRC didn't oppose this contention, it can recognize it as a serious issue and it can't just be thrown away," he said. "It needs to be studied as part of the environmental report of the relicensing application."

Neil Sheehan, a spokesperson for the NRC, stressed that it was only one factor among many in the contentions.

"The judges will certainly factor this in and take it under consideration but it doesn't mean they would rule in concert," he said.

Indian Point, located on the banks of the Hudson River in Buchanan, pulls in and flushes out more than 2.5 billion gallons of river water daily. The water is needed to cool down the giant heated steam turbines that produce electricity.

According to studies done as recently as 2003, the plant's current cooling system causes the death of more than 1.2 billion aquatic species every year by trapping and suffocating large fish on screens where the water comes into the plant. Smaller fish are pulled through and killed, but most fatalities are eggs and larvae, the bottom of the estuary food chain. Studies have also shown that the heated water returning to the river sends thermal shock to estimated tens of millions of fish, resulting in growth problems and fatalities.

Critics want to see a switch to an environmentally friendly, closed-cycle cooling system that re-circulates and cools the same water in a closed system, substantially reducing the need to take large amounts of water from the river. The system would also use different types of screens and cool the returning water to a temperature that would minimize effects on aquatic life.

The Clean Water Act, a federal law, stipulates that power plants and factories taking in more than two million gallons of water a day must use what they call the "Best Technology Available" or BTA, which is closed-cycle cooling. The law was upheld in 2004 by the U.S. Court of Appeals. According to Entergy spokesperson Robyn Bentley, the power company is appealing that decision.

Entergy maintains that new hybrid cooling towers will cost \$1.4 billion. "We believe that retrofitting an older plant is cost prohibitive," Bentley said.

The DEC disagrees, saying the costs are closer to \$740 million, with an additional \$145 million a year to operate and maintain the system. If Entergy's license is renewed it would have 20 years to pay for the system, which the DEC estimates will cost five to six percent of Entergy's annual gross revenue.

Bentley said that the company has spent some \$40.3 million on upgrades to the existing water cooling system and is also timing its fuel outages – when the plant temporarily shuts down to replace fuel – to minimize the impact on the fish.

Decades of court battles

Since the plant was first built in the early 1970s, the DEC has automatically extended Indian Point's SPDES (state pollutant discharge elimination system) permit, which allowed the plant to take

in and dump heated water into the river. New York State Assemblyman Richard Brodsky (D-Greenburgh), an outspoken Indian Point critic, led a court battle in 2004 against the DEC for extending Entergy's SPDES permit and won.

"The DEC gave Indian Point a temporary license which let them continue to operate," recalled Brodsky. "We litigated saying, 'Look, DEC, you can grant them a license or you can deny them a license, but you just can't just sit on it.' That's what we won on."

Brodsky said Entergy didn't appeal the court decision in 2004, but agreed to a DEC process. When the DEC began hearings, Entergy sued to stop the process. The issue has crept through the court system and the legal labyrinth at the DEC that is only now, after years of lax administrations, trying to push a ruling through, said Parker.

"The Entergy appeal has not been resolved internally, it's exceedingly complex," said Parker. "The previous administration did not want to make a decision, but now we have a new team." Entergy formally applied for its new license in April 2007, and although the renewal process is on a parallel track with the water cooling issue at the DEC, it shouldn't be affected, according to Sheehan.

"If we got to the end of our license renewal review and decided to issue an extension to the plant while they were still in this limbo negotiating the discharge permit, we could go ahead and issue the license extension," he said. "As long as those negotiations continue, the plant's discharge permit stays in effect."

Where the appeal is now

The last ruling on the discharge permit by an administrative judge in Albany was in 2006. Since then multiple issues were appealed by the DEC, Riverkeeper and Entergy. Among the numerous complex issues being appealed are the construction of closed-cycle cooling, the delay in building a new water cooling system until the NRC extends Entergy's license, and moving the Algonquin gas pipeline in order to make room for the cooling system.

The legal arm of the DEC is now choosing which specific issues will be considered in an adjudicatory hearing, which is like a trial. To complicate matters, DEC Commissioner Pete Grannis, who would normally make the final decision on the appeals, had to recuse himself because of his 32 years as a state legislator. A designee still needs to be selected at some point.

Battling a multi-billion dollar corporation like Entergy is no easy task. "Entergy has a seemingly endless bankroll of attorneys to raise issues," Parker said. "They've challenged and appealed everything down to claiming the hearing process rules were unconstitutional. That alone took about two years."

Bentley said Entergy is trying to come to what she called a "different agreement" with the DEC, but didn't elaborate on what the agreement was. "They are still in the process of working out some of the details," she said.

Victor Tafur, a senior attorney for the environmental group Riverkeeper, a group that also has faced off with Entergy in court on the water cooling issue, expects a determination by the DEC will be made before Entergy's license is renewed. However, he predicts further legal action.

"It won't stop there," he said. "All parties will fight this until the end.

Entergy could appeal a DEC decision on a new cooling system in the appellate court, the second highest court in the state."

Brodsky said fighting Entergy in court over the years has increased his frustration with the utility company.

"The social irresponsibility that is exemplified by Entergy's conduct can only be fully understood if you're watching them in litigation," he said.

"They are ignoring safety issues, they are secretly getting operating procedures changed, they are refusing to move forward with protecting the Hudson River and they have the NRC agreeing with them on everything."