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Indian Point suit goes to US Supreme Court

By Abby Luby

A lawsuit claiming that the Indian Point nuclear power plant in Buchanan is killing billions of fish every year is now before the U.S. Supreme Court.

Arguing the long-embattled case in Washington D.C. in front of the country's highest court was the environmental group Riverkeeper and Entergy, the owner of Indian Point. At the core of the argument is how the Environmental Protection Agency (EPA) regulates the Clean Water Act, a 1972 federal law that says power plants must use the "best technology available" or BTA, to protect fish and other aquatic life.

Up until now, the EPA, by enforcing the Clean Water Act, has never considered the possible costs borne by utility companies that are required to install new cooling systems. After hearing arguments on Tuesday, the Supreme Court will rule on whether the EPA can use "cost-benefit" factors to enforce the Clean Water Act. If the court agrees that cost benefit analysis should be considered, it will be a victory for Entergy and some 550 utility companies nationwide. If the court rules that only environmental benefits are important, then it is a win for Riverkeeper. After the Supreme Court hearing on Tuesday, Robert Goldstein, general counsel for Riverkeeper, said the justices reacted positively to his arguments. He said they questioned how any kind of cost benefits analysis could be read into the Clean Water Act.

Entergy spokesman Jim Steets said judges were well-briefed on the issue and were very inquisitive about the arguments the company made as to whether the costs should be weighed against the benefits.

For 15 years Riverkeeper has claimed that every year 2.5

billion gallons of Hudson River water used to cool Indian Point's giant heated steam turbines causes more than 1.2 billion deaths of aquatic species by trapping and suffocating large fish on screens where the water comes into the plant.

Indian Point, along with three other Hudson River plants, Roseton, Danskammer and Bowline, use about 1.69 trillion gallons of river water a year in a 1950s system called "once through" cooling, where water is pulled directly from the river, pumped through heat exchangers to cool the heated steam used to turn giant electric generating turbines. The water is then pumped back into the river at temperatures up to 35 degrees higher than the river's temperature. Accumulatively, all four plants pump out about 220 trillion BTUs of heated water to the river, which is about three times the amount of water used annually by 9 million residents in New York City, Westchester and Putnam counties.

Riverkeeper studies and studies by New York State have shown that the warmer water sends a thermal shock to estimated tens of millions of fish, resulting in death or growth problems. The environmental group has urged the EPA to require power plants to use a new system known as "closed-cycle cooling," which the EPA requires for new plants. The system re-circulates most of the water after dispersing the heat, reducing fish fatalities by 95 percent. The industry has argued that the new system is too costly.

Goldstein said he was impressed with the Supreme Court justices' approach.

"Almost every body on the Supreme Court that questioned the statute noted that the cost benefit analysis was an unwieldy process, an inefficient process," he said. The court's decision is expected in spring, 2009.