

February 1, 2004 Sunday

SECTION: NEWS; Pg. 1B

LENGTH: 786 words

HEADLINE: Entergy cleanup cost in dispute

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BODY:

DEC decision on heat pollution challenged in court

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The Journal News

Should the state consider the financial health of Entergy Nuclear Northeast while seeking the best way to end thermal pollution of the Hudson River by the company's Indian Point nuclear power plants?

That decision by the state Department of Environmental Conservation - to order the best environmental remedy that Entergy can afford - lies at the heart of parallel proceedings this week in state Supreme Court and the DEC.

The state has concluded that the Indian Point plants kill billions of fish annually by using Hudson River water to cool their power generators. But the state would require Entergy to install a different cooling system - with a potential cost of \$1.4 billion - only if the company seeks to extend its operating licenses by another 20 years. The state contends that paying the cost of the improvements over the additional 20 years would not be an unfair economic burden to Entergy. The operating license for Indian Point 2 expires in 2013, and the license for Indian Point 3 expires two years later.

"This was a policy decision," said Betty Ann Hughes, head of the permit division for the state environmental agency. "And it is an issue that is likely to be settled in court."

But critics contend that it was the wrong policy.

"The state's mission is to protect the public," said Rockland attorney Susan Shapiro. "It is not the job of the DEC to protect Entergy's profits. There is no justification for allowing Entergy time to amortize the cost of fixing the Indian Point plants."

Assemblyman Richard Brodsky, D-Greenburgh, said, "The state should not have taken Entergy's finances into account. They do not have that right. The Clean Water Act does not permit the state to permit pollution just because it is expensive to clean up."

But Entergy attorney Elise Zoli said the Clean Water Act requires the state to

consider the cost of implementing any remediation program, particularly on older power plants.

"The act's requirements for the use of new technologies to remedy an environmental problem applies to new facilities under construction," Zoli said during a break in DEC hearings in White Plains last week. "There is a different federal standard for existing facilities. You have to decide if they can eliminate adverse environmental impacts in the most cost-effective manner. And the DEC has concluded that the adverse impacts of imposing cooling-tower technology at Indian Point are enormous."

Entergy will reiterate its position in motions to be filed Tuesday before state Supreme Court Judge Thomas Keegan in Albany in seeking to block the state's order. The dispute involved the permit allowing Indian Point to use the river water in its "once-through" cooling cycle and discharge the heated water back into the river. The state found that billions of fish and fish eggs were killed when they were sucked into the plant, and more were killed when they swam into the thermal barrier of hot water which crosses the river. The preferred alternative, the state found, was a "closed cycle" cooling system, essentially using a giant radiator to recycle water used at the plants.

Though their discharge permit expired in 1992, the plants were allowed to continue operating anyway. Brodsky, Shapiro, folk singer Pete Seeger and the environmental groups Clearwater and Riverkeeper sued the DEC last year, and Keegan ordered the state to complete an environmental impact statement and issue a permit meeting environmental standards. The proposed permit, issued in November, accepted Entergy's claim that the only replacement would require construction of two massive cooling towers more than three times the size of the plants' containment domes, and would require a 10-month shutdown for installation. The company has said the costs are so high that Entergy would have to consider closing the plants.

Riverkeeper attorney David Gordon said the state may take financial impact into account, but added, "There was no reason for the state to accept Entergy's inflated figures on the cost of a closed-cycle cooling system."

He said engineering consultants hired by Riverkeeper found that a less obtrusive system could be installed costing about \$300 million.

"Entergy has filed statements that the plants gross \$2.3 million a day in revenue, with annual revenues of \$800 million a year," Gordon said. "With revenues that high, the idea that a system costing \$200 (million) or \$300 million is going to cause the plant to shut down is fantasy. They are not going to close Indian Point."

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