



May 16, 2011

**VIA HAND DELIVERY
AND ELECTRONIC MAIL**

Hon. Maria E. Villa
Hon. Daniel P. O'Connell
Administrative Law Judges
New York State Department of
Environmental Conservation
Office of Hearings and Mediation Services
625 Broadway, 1st Floor
Albany, New York 12233-1550

Re: Entergy Indian Point Nuclear Units 2 and 3
SPDES Permit Renewal / §401 WQC Application Proceedings
DEC Staff's Review of Thermal Information

Dear Judges Villa and O'Connell:

In accordance with ¶ "4" of Your Honors' May 6, 2011 "Scheduling Order" in the above-referenced proceedings, this letter is submitted on behalf of DEC staff in order to advise this Tribunal and the parties of the results of staff's review of thermal discharge/impact information submitted to DEC in recent months by Entergy for the Indian Point nuclear facilities.

Specifically, DEC staff reviewed data and information contained in Entergy's *2010 Field Program and Modeling Analysis of the Cooling Water Discharge from the Indian Point Energy Center* (January 31, 2011), as well as in *Part 1 of Response to NYSDEC Staff Review of the 2010 Field Program and Modeling Analysis of Cooling Water Discharge from IPEC* (March 29, 2011) and *Part 2 of Response to NYSDEC Staff Review of the 2010 Field Program and Modeling Analysis of Cooling Water Discharge from IPEC* (March 31, 2011), and Entergy's *Alternative Mixing Zone Explanation and Request* (May 3, 2011), and, based upon this information and the applicable regulations (6 NYCRR Part 704 – Criteria Governing Thermal Discharges), has determined that allowance for a thermal mixing zone in the Hudson River near Indian Point not to exceed a maximum of seventy-five (75) acres in total size during any time of a given year (6 NYCRR §704.3) will provide reasonable assurance of compliance with water quality standards and criteria for thermal discharges set forth in 6 NYCRR §§704.1 and 704.2, respectively.¹

¹ Previously, by letter dated April 11, 2011, and in conjunction with the *Joint Submission Regarding §401 WQC Issue No. 5 and SPDES Entergy Issue No. 9* dated April 8, 2011, DEC staff informed the Tribunal and parties that Entergy had provided DEC with sufficient thermal analyses and information that were lacking at the time of DEC's April 2, 2010 Notice of Denial of Entergy's §401 WQC application.

Consequently, DEC staff proposes to amend or otherwise modify the Draft SPDES permit for the Indian Point nuclear facilities, originally noticed for public comment in November 2003 and subsequently revised on March 1, 2004 (*see* SPDES permit Issues Conference Exhibit “11C”), to include the following draft condition to replace the current Special Condition 7(b) [on Page 10 of 24 of March 1, 2004 revised Draft SPDES permit] as follows:

“b. The thermal discharge from the Indian Point nuclear facilities shall assure the protection and propagation of a balanced, indigenous population of shellfish, fish and wildlife in and on the Hudson River. In this regard, the Department has approved the permittee’s request for a thermal discharge mixing zone pursuant to 6 NYCRR section 704.3 for the 5-year term of this SPDES permit. The water temperature at the surface of the Hudson River shall not be raised more than 1.5 degrees Fahrenheit (from July through September, when surface water temperature is greater than 83 degrees Fahrenheit) above the surface temperature that existed before the addition of heat of artificial origin (6 NYCRR section 704.2[b][5][iii]) except in a mixing zone of seventy-five (75) acres (total) from the point of discharge. The thermal discharge from the Indian Point nuclear facilities to the Hudson River may exceed 90 degrees Fahrenheit (6 NYCRR section 704.2[b][5][i] of the State’s Criteria Governing Thermal Discharges) within the designated mixing zone area, the total area of which shall not exceed seventy-five (75) acres (3,267,000 square feet) on a daily basis.”

As indicated in other submissions to this Tribunal, Entergy recently provided DEC staff with sufficient thermal analyses and information, including a tri-axial (3-Dimensional) thermal study, as well as technical material and a proposal for a thermal discharge mixing zone (6 NYCRR §704.3), that had previously been required by Special Condition 7(b) of the March 1, 2004 revised Draft SPDES permit for the Indian Point nuclear facilities (*see* fn 1). With this and other thermal discharge information for the facilities, Entergy has now effectively satisfied the applicable substantive requirements that were designated in Special Condition 7(b) of the March 1, 2004 revised Draft SPDES permit, thereby rendering the provisional terms of that permit condition superfluous at this point in time. Accordingly, DEC staff intends to replace the prior provisions of Special Condition 7(b) in the March 1, 2004 revised Draft SPDES permit with the proposed condition cited above which, DEC staff maintains, appropriately represents the current state of thermal discharge information for the Indian Point nuclear facilities.

We trust if there are any questions regarding DEC staff’s intention or proposal in this regard, that they can be addressed in the upcoming call with Your Honors and parties in these matters scheduled for Thursday, May 19, 2011, at 10:00 AM.

Thank you for your courtesies and attention to these matters.

Very truly yours,

Mark D. Sanza
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