

**STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

In the Matter of a Renewal and Modification of a State
Pollutant Discharge Elimination System (“SPDES”)
Permit Pursuant to Environmental Conservation Law
 (“ECL”) Article 17 and Title 6 of the Official Compilation
of Codes, Rules and Regulations of the State of New York
Parts 704 and 750, et seq.

-by-

Entergy Nuclear Indian Point 2, LLC and
Entergy Nuclear Indian Point 3, LLC,

Permittee.

DEC No.: 3-5522-00011/00004
SPDES No.: NY-0004472

DECISION

In the Matter of the Application of

Entergy Nuclear Indian Point 2, LLC, and
Entergy Nuclear Indian Point 3, LLC

for a Water Quality Certificate Pursuant to Section 401
of the Federal Clean Water Act and Section 608.9 of Title
6 of the Official Compilation of Codes, Rules and
Regulations of the State of New York (“6 NYCRR”).

DEC Application Nos.:
3-5522-00011/00030 and
3-5522-00105/00031

On January 13, 2017, counsel for staff of the New York State Department of Environmental Conservation (the “Department”) in the above-referenced proceedings (the “Proceedings”) delivered to the Administrative Law Judges (the “ALJs”) for the Proceedings: (1) a final State Pollutant Discharge Elimination System (“SPDES”) permit, with accompanying Fact Sheet and Coastal Assessment Form, and (2) a final § 401 Water Quality Certification (“WQC”) (collectively, the “Final Permits”) for Entergy Nuclear Indian Point 2, LLC, Entergy Nuclear Indian Point 3, LLC, and Entergy Nuclear Operations, Inc.’s (collectively, “Entergy”) Indian Point Nuclear Power Plant (“Indian Point”).

Department staff counsel’s correspondence to the ALJs also included a proposed Supplemental Final Environmental Impact Statement (“SFEIS”) under the State Environmental Quality Review Act, pursuant to Environmental Conservation Law (“ECL”) Article 8 and 6 NYCRR Part 617 (collectively, “SEQRA”). Department staff counsel’s correspondence to the ALJs further included a Stipulation between Department staff, Entergy, and Riverkeeper, Inc. (on behalf of Riverkeeper, Inc., Scenic Hudson, Inc., and the Natural Resources Defense

Council, Inc.) outlining the process for issuance of the Final Permits and completion of the SEQRA process.

In a ruling and order of disposition dated January 27, 2017, the presiding ALJ determined that the Stipulation, along with the accompanying documents included in Department staff's submission on January 13, 2017, resolved the issues advanced by all parties to the Proceedings. The ALJ ruled that the Proceedings were concluded, closed the hearing record, and remanded the matter to Department staff.

I concur with and affirm the ALJ's January 27, 2017 ruling and order of disposition. All pending appeals are dismissed as academic, and the Proceedings in this matter are concluded. Notwithstanding any prior decision of this Department, including without limitation the 2008 Interim Decision in this matter, I affirm the ALJ's remand to Department staff for processing and issuance of the Final Permits and completion of the SEQRA process, including the issuance of the SFEIS and SEQRA findings in accordance with the applicable legal requirements.

After appropriate public process, upon the Department's issuance of the Final Permits, along with the SFEIS and SEQRA findings, the matter shall be concluded and SEQRA satisfied in accordance with ECL Article 8 and 6 NYCRR Part 617.

New York State Department of Environmental
Conservation

By: _____/s/_____
Basil Seggos, Commissioner

Albany, New York
January 27, 2017

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**RULING AND
ORDER OF
DISPOSITION**

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of the Federal Clean Water Act and Section 608.9 of Title
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DEC Application Nos.:
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3-5522-00105/00031

Procedural History and Background

The predecessors in interest of Entergy Nuclear Indian Point 2, LLC and Entergy Indian Point 3, LLC (collectively, “Entergy” or “Applicant”) applied in 1992 for renewal of a State Pollutant Discharge Elimination System (“SPDES”) permit for the Indian Point nuclear powered steam electric generating stations 2 and 3 (the Indian Point Energy Center (“IPEC” or “the Stations”)). IPEC is located on the east side of the Hudson River in the Village of Buchanan, Westchester County, New York. The New York SPDES permit program is a federally-delegated, State-administered program governing the discharge of pollutants (including, as relevant to the electric sector, thermal discharges) into State surface and ground waters. Conditions contained in a SPDES permit govern the discharges of permit holders. New York also uses its SPDES program to enforce the cooling water intake structure requirements of § 316(b) of the federal Clean Water Act (33 U.S.C. § 1365 – “CWA”), and Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (“6 NYCRR”) § 704.5.

In 1999, for purposes of the State Environmental Quality Review Act (“SEQRA”), Entergy’s predecessor (together with the then-owners of other Hudson River power plants, known as the “Hudson River Facilities”) produced a joint draft environmental impact statement

("DEIS") in support of their respective applications for SPDES permit renewals for the Hudson River Facilities.

On June 23, 2003, staff of the New York State Department of Environmental Conservation ("Department" or "DEC") accepted and noticed for public comment a proposed Final Environmental Impact Statement ("FEIS") for the Hudson River Facilities, including Indian Point.

On November 12, 2003, Department staff proposed various modifications to the existing SPDES permit for IPEC, including new conditions to implement closed cycle cooling as the best technology available ("BTA") to minimize adverse environmental impacts from the Stations' cooling water intake systems. Department staff's BTA determination involved certain conditions related to Nuclear Regulatory Commission ("NRC") issuance of license renewal determinations for the Stations, feasibility and SEQRA assessments for the proposed BTA technology, as well as Entergy's right to propose an alternative BTA. Various entities, including Entergy, challenged Department staff's proposed SPDES permit, and various third parties moved to intervene as parties or amici.

A public hearing and issues conference were held with respect to the draft SPDES permit. An issues ruling, granting party status and identifying certain issues for adjudication, was issued on February 3, 2006. In an interim decision dated August 13, 2008 (the "Interim Decision"), the Assistant Commissioner ruled on interlocutory appeals and advanced various issues to adjudication in the SPDES permit proceeding. *See Matter of Entergy Indian Point 2, LLC*, Interim Decision of the Assistant Commissioner, 2008 N.Y. Env. LEXIS 52 (August 13, 2008). Among other things, the Interim Decision directed the parties to proceed to hearings on the issue of the site-specific BTA for the Stations.

On April 30, 2007, Entergy filed with NRC the federal license 20-year renewal applications for IPEC. On April 6, 2009, Department staff received a joint application for a federal CWA § 401 Water Quality Certificate ("WQC") on behalf of Entergy Nuclear Operations, Inc., Entergy Indian Point Unit 2, LLC, and Entergy Indian Point Unit 3, LLC. Entergy submitted the joint application for a § 401 WQC to the Department as part of Entergy's license renewal application. Section 401 conditions federal licensing of an activity which causes a "discharge" into navigable waters on certification from the State in which the discharge might originate that the proposed activity would not violate federal or State water-protection laws. 33 U.S.C. § 1341(a). In order to grant a WQC, the Department must determine whether IPEC's continued operation meets State water quality standards and criteria pursuant to CWA § 401 and § 608.9 of 6 NYCRR.

By letter dated April 2, 2010, Department staff issued a Notice of Denial of the WQC application, precipitating a hearing on the grounds identified by various entities, including Entergy. A public hearing was held on July 20, 2010, and the issues conference took place the following day, on July 21, 2010. In an Issues Ruling dated December 13, 2010 ("WQC Issues Ruling"), the administrative law judges ("ALJs") advanced additional issues to adjudication relating to the joint §401 WQC application. *See Matter of Entergy Nuclear Indian Point, LLC*, Ruling on Proposed Issues for Adjudication and Party Status, 2010 N.Y. Env. LEXIS 86

(December 13, 2010). The ALJs determined that the hearings on the SPDES and WQC issues would proceed simultaneously, in order to develop a joint record.

The background and procedural history with respect to the renewal and modification of the SPDES permit are set forth in greater detail in the February 3, 2006 ruling on proposed issues for adjudication and petitions for party status, 2006 N.Y. Env. LEXIS 3; the Interim Decision, 2008 N.Y. Env. LEXIS 52 (August 13, 2008); the November 28, 2012 ruling of the Regional Director, 2012 N.Y. Env. LEXIS 80; and the February 3, 2015 issues ruling on permanent forced outages, 2015 N.Y. Env. LEXIS 4. The background and procedural history with respect to the §401 WQC proceeding are set forth in greater detail in the WQC Issues Ruling.

Parties to the adjudicatory proceedings have included the mandatory parties Department staff and Entergy; intervenors (Riverkeeper, Inc.; Scenic Hudson, Inc.; and the Natural Resources Defense Council, Inc. (collectively, “Riverkeeper”); County of Westchester; Town of Cortlandt; the African American Environmentalist Association (“AAEA”); and the Honorable Richard Brodsky); and amici (City of New York; Independent Power Producers of New York; and Central Hudson Gas & Electric (“CHG&E”). By letter dated June 26, 2014, CHG&E withdrew from the proceedings.

Hearings have been held to consider Entergy’s proposed BTA (cylindrical wedge wire screens), Department staff’s proposed BTA (closed-cycle cooling, and summertime outages of 42 and 62 days at each unit), and Riverkeeper’s proposed BTA (summertime outages of 118 days at each unit), as well as radiological issues and the issue of best usages, as advanced to adjudication in the WQC Issues Ruling. SEQRA issues relating to each of the BTA alternatives were also the subject of hearings. The hearings began on October 17, 2011, and fifty-eight (58) days of hearings followed. The transcript in the proceedings is 16,423 pages long, and approximately 1,500 exhibits have been proposed to be admitted into the evidentiary record.

On January 13, 2017, counsel for Department staff in the above-referenced proceedings delivered to the ALJs: (1) a Stipulation; (2) a final WQC permit; (3) a final SPDES permit with accompanying Fact Sheet; and (4) a Supplemental Final Environmental Impact Statement (“SFEIS”), which included a completed Coastal Assessment Form and proposed SEQRA Findings.

In accordance with the terms of the Settlement Agreement, the parties were provided an opportunity to concur or otherwise respond to the Stipulation and other documents. The following were received:

- Notice of Withdrawal of Riverkeeper’s Intervention, signed by counsel for Riverkeeper on behalf of Riverkeeper, Scenic Hudson, Inc., and the Natural Resources Defense Council, Inc., and dated January 17, 2017;
- Email from the Town of Cortlandt dated January 18, 2017, stating that the Town neither concurs with nor objects to the Stipulation;
- Email from the County of Westchester dated January 18, 2017, stating that the County does not concur with the Stipulation;
- Email from the AAEA dated January 18, 2017, stating that the AAEA concurs with the settlement and termination of the proceedings;

- Email from the City of New York dated January 18, 2017, stating that the City takes no position on the Stipulation; and
- Email from Richard Brodsky dated January 20, 2017, attaching a letter of the same date, stating that Mr. Brodsky does not concur with, and objects to the Stipulation.

Mr. Brodsky and counsel for Entergy thereafter exchanged additional emails relating to Mr. Brodsky's objection, as follows:

- Email from Entergy dated January 23, 2017, at 9:38 a.m.;
- Email from Mr. Brodsky dated January 23, 2017, at 11:32 a.m.;
- Email from Entergy dated January 23, 2017, at 11:55 a.m.; and
- Email from Mr. Brodsky dated January 23, 2017, at 12:29 p.m.

The Stipulation, the final SPDES permit and WQC, as well as the related documents, resolve the issues advanced by the parties to the proceedings. This includes all issues that formed the basis of Mr. Brodsky's party status. Moreover, the three issues Mr. Brodsky raises in his January 20, 2017 letter do not warrant further adjudication or are otherwise outside the purview of these proceedings. Similarly, although in its January 18, 2017 e-mail the County of Westchester does not concur with the Stipulation, the County does not raise any adjudicable issues. Accordingly, the Stipulation is accepted and these adjudicatory proceedings are concluded.

Pursuant to the papers submitted to the ALJs, this matter is remanded to Department staff for processing and issuance of a final SPDES permit and WQC for IPEC. Issuance of the final SPDES permit and WQC shall include Department staff's appropriate action pursuant to SEQRA.

The above-referenced Part 624 permit hearing proceedings are concluded and the joint hearing record for these matters is closed.

/s/

Maria E. Villa
Administrative Law Judge

Albany, New York
January 27, 2017

c: Administrative Law Judge Daniel P. O'Connell
Service List