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07/18/2008 01:51 PM

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Subject  
RE: Case 08-E-0077 - Questions for All  
Parties [OAG Response]

Judges Lynch and Prestemon:

We are writing to request permission to respond to certain statements contained in the Attorney General's letter to Your Honors dated July 14, 2008 ("AG Letter"), which was submitted in response to Your Honors' request for information from the active parties. The AG Letter contains statements concerning the State Environmental Quality Review Act ("SEQRA") review in this proceeding that are factually incorrect and/or misleading and the Petitioners request permission to correct those statements. The factually incorrect and/or misleading statements contained in the AG Letter and Petitioners' responses thereto follow.

**1. "In its *Order* of May 23, 2008, the Commission found that '[t] public interest . . . requires a more thorough review of this transaction than would be conducted under the Wallkill Presumption' and over rode the Presumption. . . . In the absence of lightened regulation, there is no question but that the Commission is compelled to comply fully with SEQRA." AG Letter at 2.**

The Petitioners were granted lightened regulation by the New York State Public Service Commission ("Commission"). The fact that the Commission determined that the Wallkill presumption was overridden in this matter does not affect the Petitioners' lightened regulation status and has no bearing on the Commission's SEQRA analysis. Under the Wallkill presumption, which deals specifically with the

Commission's review of transactions under Section 70 of the Public Service Law ("PSL"), the Commission will not review transactions involving parent entities upstream from the entities owning wholesale electric generation facilities (i.e., lightly regulated entities), unless there is potential for harm to captive New York utility ratepayers. While the Commission determined the Wallkill presumption does not apply here, the Commission did not alter the Petitioners' lightened regulation status. Indeed, as recognized by the Commission, the Petitioners, as lightly regulated entities, may be afforded the Wallkill presumption in other transactions. The Attorney General's statement, therefore, that the Petitioners are not lightly regulated, is factually incorrect.

**2. "On top of the formulaic, non-site specific financial assurances Entergy is required to make under the Nuclear Regulatory Commission's regulations, the amount of which is currently approximately \$1 billion, a well-documented subsurface plume of radioactive contamination - which is leaching into the Hudson River - will likely raise Indian Point's decommissioning costs to an unprecedented amount." AG Letter at 3.**

This statement is misleading because it implies that the Petitioners do not currently address any radioactive subsurface contamination in their decommissioning cost evaluations. However, as the Petitioners' explained in their response to AG-13 (EN-13), the decommissioning cost evaluations for the Indian Point facilities includes costs to remediate any potential radioactive material from the subsurface below the land on which the facility is located. The Petitioners decommissioning funds are also subject to constant review and Nuclear Regulatory Commission ("NRC") oversight.

**3. "If a plant owner goes bankrupt, the Nuclear Regulatory Commission is without authority to order decommissioning payments to be made." AG Letter at 3.**

This statement is misleading because it implies that the NRC's regulations do not ensure the owners of nuclear plants have adequate funds to decommission their nuclear plants. This fails to recognize that, pursuant to NRC regulations at 10 CFR § 50.75 relating to decommissioning, the licensed owners of the New York Facilities maintain nuclear decommissioning trust funds ("NDTs") to ensure that sufficient funds exist to safely decommission the plant and that decommissioning costs are not shifted to the state, the local community or other stakeholders.

The NRC's rules also require that the amounts of decommissioning funding assurance for each unit be assessed each year and adjusted in order to assure that adequate levels of funding in the NDTs are maintained. 10 CFR § 50.75(b)(2). Status reports are submitted to the NRC either annually or biennially. 10 CFR § 50.75(f). The NDTs must be maintained as segregated accounts outside the administrative control of owners of the plants. Accordingly, an independent Trustee administers the NDTs. NRC oversees these trusts, and in a Staff Requirements Memorandum, dated January 9, 2008, for SECY-07-0197, the NRC approved a plan to begin conducting periodic inspections or "spot checking" of original trustee documents maintained by licensees as compared with the licensee status reports submitted to the NRC.

Given that the NDTs are segregated accounts and independently administered, even in the event the owner of a nuclear plant goes bankrupt, the NRC's regulations ensure that adequate decommissioning funds are available for the plants. Furthermore, the corporate reorganization that is the subject of this proceeding will have no effect on the responsibility of the New York facilities to maintain adequate decommissioning funds.

**4. "In contrast, as presently figured, Entergy can draw revenue from merchant nuclear plants, regulated utility nuclear plants, non-nuclear plants, power transmission and retail electric service. . . . as part of Entergy, Indian Point would have access to the dividend revenue Entergy receives from its regulated utility subsidiaries, as well as its revenue from merchant plants and plant operation services." AG Letter at 3-4.**

This statement is incorrect because the Indian Point facilities neither have "access" to nor can they rely on the resources of Entergy Corporation's regulated utilities, as the Petitioners have stated on numerous other occasions. The New York facilities have access to the revenue they produce and to the limited guarantee provided by Entergy Corporation affiliates, which will be replaced by a more robust Support Agreement under Enexus. The only other source of funds for Entergy Corporation's subsidiaries is debt raised in the financial markets.

Financing requirements for the non-utility nuclear business, including the New York Facilities currently are provided solely by Entergy Corporation and its non-utility holding companies. However, none of the assets of the regulated utility business are pledged or used in any manner to secure borrowings or other financings of the holding companies for the purpose of financing the non-utility nuclear business, including the New York Facilities. Thus, and contrary to contentions in the AG Letter, Entergy Corporation's non-utility nuclear plants, including the New York Facilities, do not currently rely on the income, cash flow or financial resources of the regulated utilities to support their operation or to secure debt on their behalf.

We would also like to note that the Attorney General's arguments regarding the Value Sharing Agreements with the New York Power Authority are totally speculative, irrelevant and not based on information in this proceeding.

Thank you very much,  
Greg Nickson

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-----Original Message-----

From: Janice Dean [<mailto:Janice.Dean@oag.state.ny.us>]

Sent: Monday, July 14, 2008 4:04 PM

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Subject: Re: Case 08-E-0077 - Questions for All Parties [OAG Response]

Dear Judges Prestemon and Lynch,

Attached please find the Office of the Attorney General's response to your letter requesting input from the parties as to further procedures that will be required to complete the record in this case.

Thank you very much.  
Janice A. Dean

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>>> <david\_prestemon@dps.state.ny.us> 7/3/2008 4:18 PM >>>  
All Active Parties:

Please see the attached letter which requests input from the parties to assist us in defining the "further procedures" that will be required to complete the record in this case. Responses are due Monday, July 14.

Enjoy the long weekend.

Gerald Lynch  
David Prestemon  
Administrative Law Judges

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