

**Andrew J. Spano**  
County Executive

Office of the County Attorney  
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By E-Mail:  
July 14, 2008

Honorable Gerald L. Lynch  
Honorable David L. Prestemon  
Administrative Law Judges  
New York State Department of Law  
3 Empire State Plaza  
Albany, NY 12223

Re: PSC Case No. 08-E-0077 - Entergy Nuclear Fitzpatrick LLC, Entergy Nuclear Indian Point 2 LLC, Entergy Nuclear Indian Point 3 LLC, Entergy Nuclear Operations, Inc., NewCo, and Entergy Corporation - Joint Petition for a Declaratory Ruling Regarding a Corporate Reorganization, or, in the Alternative, an Order Approving the Transaction and an Order Approving Debt Financing

Dear Judges Lynch and Prestemon:

The County of Westchester submits the following in response to the applicable questions addressed to the Active Parties in your Honors' letter of July 3, 2008.

- 1) The County and counsel for Entergy agreed on a procedure and location for the County to review the documents identified by Entergy as confidential. The County was originally provided access to those materials on July 8<sup>th</sup> at Entergy's White Plains' offices. The material provided consisted of three binders. The County was able to review most of the first binder. Based on that review, the County has prepared a set of interrogatories that are expected to be served on Entergy by July 15<sup>th</sup>. The County needs to review the rest of those documents. During its review, the County took notes, which were retained by the representative of Entergy's counsel in a sealed envelope. Westchester has conducted a detailed review of how to respond to a potential FOIL request in light of your Honor's Protective Order. Based on this review, Westchester expects to execute the required documents (Exhibit 1 to said Order) and provide a signed copy to Entergy's counsel by July 15<sup>th</sup>. Entergy's counsel has represented that it will mail an electronic set of those documents to Westchester for delivery on July 16<sup>th</sup>. Counsel for Entergy has also agreed to return to Westchester by separate mail the sealed envelope containing Westchester's notes.

Additional time is necessary to complete discovery for the following reasons: the volume of material to be reviewed; the time spent on the issue of how to handle the confidential

information; the fact that the County has only recently been provided access to the confidential material, was only able to review a portion of that material and will not receive the rest of that material for review until later this week; the technical and extremely detailed nature of the material, which requires extensive and time consuming analysis; the various versions of documents and the fact that it still is not clear whether the information contained in the “latest projected” version of the material provided is the actual final version upon which Entergy and Enexus intends to structure the transaction(s) especially as it relates to the debt to be attributed to the various nuclear subsidiary corporations, including the Indian Point facilities and Entergy Nuclear Indian Point 2, LLC and Entergy Nuclear Indian Point 3, LLC, which issue requires additional clarification, which can only be had through additional discovery. In fact, the changes/revisions of the various assumptions, allocations and attributions of assets and debts affect the very heart of the economic viability of the Indian Point plants and the other facilities as well as the impact on New York State and the local municipalities surrounding those plants if there is any resultant default of Enexus and its subsidiary corporations. In addition, during this process Entergy’s proposal and structure of NewCo now Enexus has changed and it is not known whether the latest version, as provided, is the final version. Accordingly, additional time is necessary so that the County can attempt to acquire from Entergy and Enexus a definitive allocation of assets and debts among the various nuclear plants that are affected by this proposed “corporate reorganization”.

As your Honor is aware, the County is involved in other proceedings before the PSC, including, but not limited to the Con Edison Steam case, which requires our appearance before the ALJ on Thursday, July 17<sup>th</sup> as well as our involvement in the Con Edison Electric case.

The Commission’s Order establishing this case did not require that discovery be completed within 60 days, rather it stated “parties will be permitted to conduct discovery on the petitioners’ filing, for a period of at least 60 days”. Case 08-E-0077, Order Establishing Further Procedures (Issued and Effective May 23, 2008), p. 6. The impact of this “reorganization” has far ranging ramifications that are of paramount importance to Westchester County, the municipalities within its borders and those adjacent to it, their residents and businesses, and the rest of the State of New York. The issues are complex and the proposals by Entergy are ever changing. Accordingly, the County respectfully requests that discovery be continued at least through September 5<sup>th</sup>, an additional forty-five (45) days.

- 4) In New York State, most projects or activities proposed by a state agency or unit of local government, and all discretionary approvals (permits) from a NYS agency or unit of local government, require an environmental impact assessment as prescribed by 6 NYCRR Part 617 State Environmental Quality Review (SEQR). The County set forth some preliminary comments as they relate to SEQRA in County Executive Spano’s letter of April 4, 2008.

Accordingly, the County believes that its request that discovery continue until at least September 5<sup>th</sup> will not prejudice Entergy or Enexus since it will probably take that long for the SEQRA process to be completed.

Respectfully submitted,

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cc: Active Parties by e-mail