



## RIVERKEEPER

July 30, 2008

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

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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:

Riverkeeper is hereby responding to the July 23, 2008 Ruling Concerning Discovery and Seeking Comments on a Proposed Process and Schedule ("July 23 Ruling") in the above-referenced proceeding. In the July 23 Ruling, Judges Lynch and Prestemon invited "all active parties to comment on the schedule, process and scoping proposed..." July 23 Ruling at 12.

Regarding the proposed schedule and process, Riverkeeper respectfully disagrees with the extremely aggressive timetable proposed, namely the requirement that all active parties file initial comments three weeks after service of responses to all information requests permitted under the ruling. July 23 Ruling at 7. Three weeks is not nearly enough time to comprehensively review the large volume of materials disclosed thus far and to submit detailed comments summarizing the parties' respective positions on Entergy's petition.

Indeed, Your Honors seemed to raise this very concern in the July 23 Ruling. In responding to the Petitioners' request to have the Commission decide this matter by September, Your Honors state "accommodating Petitioners' request would impose a very compressed schedule on parties who, at this point, have not even had an opportunity to articulate their positions based on the discovery responses provided." July 23 Ruling at 7. Riverkeeper acknowledges that the Petitioners' request appears to contemplate an even more aggressive timeframe than that proposed by the July 23 Ruling. However, the proposed timetable would potentially require parties' comments to be submitted before the end of August 2008. With all due respect, it is unclear to Riverkeeper why such haste is required, considering the complexity of the requested transaction, the numerous, valid concerns raised by the active parties and the

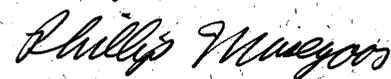
potential impact the Commission's decision will have on the citizens of New York and Entergy. These concerns are reflected in the Commission's May 23 Order, which states "Given the broad scope and extent of this transaction, there is the potential for substantial impacts on the New York nuclear facilities that are unique in characteristics and of crucial importance to preserving the adequacy of generation service to New York ratepayers." State of New York Public Service Commission Order Establishing Further Procedures, May 23, 2008, at 5-6 ("May 23 Order"). The May 23 Order also mandates that procedures be implemented to ensure that an adequate record is assembled. May 23 Order at 7. Based upon these considerations, Riverkeeper hereby requests that Your Honors extend the time for filing initial comments to six weeks after service of responses to all information requests permitted under the July 23 Ruling. There is no evidence in the record that such an extension of time would cause undue harm or burden on the Petitioner. On the other hand, extending the time for active parties to fully review all discovery responses and formulate well-informed positions regarding Entergy's petition can only help to build an adequate record, and ensure that all parties' rights are preserved.

Regarding the proposed scoping of issues to be addressed by active parties in their comments, Riverkeeper agrees that the three issues subject to comments are of critical importance in this proceeding. However, there are additional issues that may warrant a more searching review, subsequent to the August 1 meeting between active parties and Petitioners' Counsel and the conclusion of discovery. For that reason, Riverkeeper respectfully urges Your Honors to refrain from formally limiting the scope of the parties' initial comments until discovery is actually completed. All active parties should have the opportunity to raise timely concerns about additional issues that may come to light after reviewing the discovery responses in their entirety.

Finally, Riverkeeper reiterates our strong belief that a proper review of Entergy's Petition can not be completed by the Public Service Commission without undertaking a comprehensive environmental review under SEQRA. The potential long-term environmental impacts of a corporate transfer of ownership of this magnitude must be fully assessed, and should be fully disclosed to the public through notice and comment and public meetings. The overarching goal of SEQRA is to ensure a searching, thorough review of any action that *may* result in environmental impacts. If Entergy's proposed transfer is approved without ensuring that the new company, Enexus, is financially solvent enough to safely and reliably operate and subsequently decommission Indian Point, then such impacts will occur, and the burden will be on the citizens of New York, not Entergy or Enexus, to address them.

In conclusion, Riverkeeper hereby requests that the proposed three week deadline for initial comments from parties be extended to six weeks, that parties be allowed the opportunity to raise new issues currently not within the scope of the July 23 Ruling in a timely manner following the conclusion of discovery, and that a full SEQRA review is warranted in this case.

Thank you,



Phillip Musegaas

Policy Director  
Staff Attorney

Cc: Electronic Service List