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OFFICE OF THE ATTORNEY GENERAL

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SENT ELECTRONICALLY

July 30, 2008

Hon. Gerald L. Lynch
Hon. David L. Prestemon
Administrative Law Judges
New York State Department of Public Service
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 Judge Lynch:

This letter responds to Your Honors' July 23, 2008 *Ruling Concerning Discovery and Seeking Comments on a Proposed Process and Schedule* ("July 23 Ruling" or "Ruling"). In addition to commenting as requested, we are asking Your Honors to clarify the purpose of the scheduled comments, allow certain further discovery, and consider if there is a way for this Office to challenge the provisional designation of documents as containing confidential information.

Process, Schedule, and Scope

This Office finds the schedule proposed in Your Honors' July 23 ruling acceptable, but we believe that the scope of the issues commented on and considered should be expanded and that the process should be modified.

In the July 23 Ruling Your Honors asked the parties to comment on the process, schedule, and scope of the proposed next steps in this proceeding. Subject to certain concerns addressed below and clarification of the range of potential outcomes of the process, this Office has no objection to the schedule.

This Office is uncertain, however, as to the range of potential outcomes of the process set out on page 7 of the Ruling. Our understanding is that the comment process provided is intended to lead to a *procedural* order from Your Honors prescribing the process for addressing the merits of Entergy's proposals. That is, Your Honors will determine whether there will be a hearing on the merits, and, if so, what issues would be addressed and what procedure would be used, or whether the merits will be contested solely on papers. However, after closer reading of the description of the third step of the process we are uncertain whether Your Honors include among the potential outcomes an order indicating that the initial comments are sufficient for Your Honors to make a determination as to the merits of Entergy's proposals and that no further briefing on the merits will be entertained. Accordingly, this Office respectfully requests that Your Honors provide additional guidance as to this issue.

As to the proposed scope of the comments, we respectfully suggest that the comments should address several issues not listed in the July 23 Ruling, and that further research and examination of Entergy's responses may identify more that may be relevant. Our understanding is that the Ruling asks for comments on the *process* to resolve the following questions:

- (1) whether Entergy can obtain from the PSC a final ruling in September (pp. 7 - 8);
- (2) what effect the proposed reorganization would have on Enexus' ability to meet the financial obligations for Indian Point and FitzPatrick that Entergy currently bears for these plants (p. 9);
- (3) whether Enexus would be able to meet "other obligations" such as compliance with the State Pollutant Discharge Elimination System (SPDES) (pp. 9 - 10); and
- (4) whether the proposed reorganization would cause the New York Power Authority to lose revenues that Entergy would pay under the Value Sharing Agreements (pp. 10 - 12).

This Office believes that the above list constitutes the list of items identified in the July 23 Ruling; however, if we have missed an issue on which the Ruling seeks comment, we respectfully request that you advise us as to what we overlooked.

We agree that the comments should address the process to address the issues identified in the July 23 Ruling; however, in addition, we respectfully suggest that the parties also address the process by which the following issues be resolved:

- (a) whether the information Entergy has provided is reliable;
- (b) whether and to what extent the PSC can rely on Entergy's representations as to what Enexus would do;

- (c) whether the PSC has before it sufficient reliable information concerning what Enexus would look like and would do after the proposed reorganization for the PSC to make a determination on Entergy's proposals;
- (d) who would actually control EquaGen, the proposed operator of Indian Point;
- (e) how the State Environmental Quality Review Act (SEQRA) figures in this proceeding;
- (f) whether the proposed reorganization and financing could have adverse financial consequences for New York ratepayers;
- (g) whether the proposed reorganization and financing could have adverse financial consequences for New York taxpayers; and
- (h) the application of Public Service Law §§ 69 & 70 in this proceeding.

Moreover, additional research and further examination of Entergy responses, including some that came in this morning and others to information requests not yet sent, may further expand the scope for comment.

Discovery Concerning New Issues

This Office's ability to conduct discovery was suspended on July 21 and 22, 2008 – two days before the end of the initial discovery period. At that time, this Office had additional information requests ready to send out and was working on yet more. In accordance with the July 21, 2008 informal order, we suspended our discovery efforts. While all of our unsent information requests are relevant to this proceeding, three are of potentially of major significance. We have attached copies of these three unsent information requests. Proposed Information Requests AG - 62 and AG - 63 are intended to test whether Entergy or Entergy subsidiaries have been scheduling and reporting Indian Point and FitzPatrick power sales in ways that are inconsistent with New York tax law. Proposed Information Request AG - 64 is intended to test whether Entergy or Entergy subsidiaries have been scheduling Indian Point, FitzPatrick, or other power sales in ways that the New York Independent System Operator ("NYISO") gas identified as unnecessarily inflating by over \$100 million the prices New Yorkers pay for power, transmission, and related services. *See* attached copy of a July 21, 2008 NYISO filing asking the Federal Energy Regulatory Commission to approve new NYISO rules prohibiting the schedule manipulation that the NYISO has identified as the cause if these price distortions.

Since the NYISO filing was not public until July 21, 2008, this Office could not have sent AG - 64 any earlier. The issues addressed in AG - 62 and AG - 63 could have been identified before July 21, but our work on the many other issues in this proceeding and the large amount of

Public Service Commission Case No. 08-E-0077 -
Verified Petition Filed by Entergy

New York State Attorney General's Office
Information Request

Request No.: AG - 62
Requested by: Donaldson
Date of Request:

Subject: Power sales

Five of Entergy's merchant nuclear power plants (Indian Point 2 & 3, FitzPatrick, Pilgrim and Vermont Yankee) are in adjacent power transmission pools (New York Independent System Operator ("NYISO") and Independent System Operator - New England ("ISO -NE")) and able to export power into the adjacent power pool. Transmission of such power exports must be coordinated with the administrator of the pool in which the generator is located, the administrator of the pool in which the recipient of the power is located, and between the pool administrators. Power exports between pools are not automatic but must be affirmatively scheduled by a party, usually a party with an ownership interest in the power or such a party's agent.

Power sales are usually quantified in terms of megawatts delivered by a generator to a "point of injection" ("POI") during a specified hour of a specific day for transmission to a "point of withdrawal" ("POW"). In the NYISO and ISO-NE most power sales are scheduled a day or more ahead, either under the terms of a bilateral contract between the owner of the power and the purchaser of the power or as the result of a "day-ahead market" auction by a pool administrator. (NYISO and ISO -NE also operate "hour-ahead" markets and "uplift" to balance power production with demand. "Hour-ahead" markets and "uplift" handle a relatively small amount of power.)

Power exports to an adjacent pool involve two transactions, from the POI at the generator to a virtual POW at the interface between the generator's pool and the recipient's pool. On the recipient's side the pool interface becomes a virtual POI from which the power is transmitted to the user's POW.

Third parties who are neither generators nor power users may purchase or sell power. For example, Entergy Nuclear Power Marketing LLC ("ENPM"), which we understand owns no generation, may buy 100 megawatts of Indian Point 3's output during the hour beginning at 1 p.m. on August 1, 2008 and sell that power to a utility, a retail service provider, a large user or Power Marketer X. Power Marketer X can then sell the power to a utility, a retail service provider, a large user or Power Marketer Y. Power sales may be for less than the amount purchased, e.g., ENPM could sell 80 megawatts to a utility and 20 megawatts to Power Marketer X. Any of the parties in the chain of title or their agents can schedule the transmission needed to move the power.

However the legal right to a given amount of power changes hands, the power produced by a generator initially enters a power transmission pool at a POI and is taken out by the ultimate user at a POW.

For the outputs of Indian Point 2 & 3, FitzPatrick, Pilgrim and Vermont Yankee from January 1, 2007 to the most recent date for which data is available, please provide the following:

(a) for the New York plants by plant by hour by day by quantity, the amount of power sold under either bilateral contracts or in the NYISO day ahead market for delivery to another power pool, the purchaser of the power from the plant, the price the plant owner received for the power, the power pool or pools where the ultimate POW or POWs for the power were located, and the amount of such power taken out at each relevant POW, e.g, Indian Point 3; 1 p.m., July ENPM or any other Energy 1, 2007; 200 MW; ENPM; \$80/MW; ISO-NE & PJM; 150 MW withdrawn at ISO-NE POW bus 1234 & 50 MW withdrawn at PJM POW bus 6789;

(b) for the New England plants by plant by hour by day by quantity, the amount of power sold under either bilateral contracts or in the ISO-NE day ahead market for delivery to another power pool, the purchaser of the power from the plant, the price the plant owner received for the power, the power pool or pools where the ultimate POW or POWs for the power were located, and the amount of such power taken out at each relevant POW, e.g, Pilgrim; 11 p.m., October 22, 2007; 100 MW; ENPM; \$40/MW; HydroQuebec; 100 MW withdrawn at HQ POW bus NOPQ; and

(c) the identity of any Energy subsidiary other than ENPM that in the period from January 1, 2007 to the most recent date for which data is available, purchased power produced by Indian Point 2, Indian Point 3, FitzPatrick, Pilgrim or Vermont Yankee, and by subsidiary by plant by month the amount of such power ENPM or any other relevant Energy subsidiary purchased, the total amount ENPM or any other relevant Energy subsidiary paid for the power and the total amount that ENPM or any other relevant Energy received for the sale of the power.

Please identify by name and title each individual responsible for the substance of the response to the information request.

Public Service Commission Case No. 08-E-0077 -
Verified Petition Filed by Energy

New York State Attorney General's Office
Information Request

Request No.: AG - 63
Requested by: Donaldson
Date of Request:

Subject: Transfer pricing methodology

Please identify the valuation method or methods that Energy and Energy subsidiaries intended to be transferred to Enexus use for "transfer pricing" when preparing New York tax filings. Also, indicate the transfer pricing valuation method or methods that Enexus and Enexus subsidiaries would use for preparing New York tax filings after the proposed reorganization. Here "transfer pricing" means the pricing of power, goods, services, intellectual property and any other thing of value transferred between Energy or Enexus and any of its own subsidiaries or between affiliated subsidiaries.

Further, indicate whether at any time since December 31, 1999, "transfer pricing" has been the subject, in whole or in part, of any administrative inquiry, examination or investigation of Energy or any Energy subsidiary by a State or federal government agency. If so, please identify the agency conducting each such inquiry, examination or investigation, indicate the approximate beginning and ending date, and provide a brief explanation of the issues involved and the resolution of the matter.

Also, indicate whether at any time since December 31, 1999, "transfer pricing" has been the subject, in whole or in part, of any litigation involving Energy or any Energy subsidiary. If so, provide the title of each such matter, the court in which it was brought, the court identification number, and the approximate beginning and ending date of the matter.

Please identify by name and title each individual responsible for the substance of the response to the information request.

Public Service Commission Case No. 08-E-0077 -
Verified Petition Filed by Energy

New York State Attorney General's Office
Information Request

Request No.: AG - 64
Requested by: Donaldson
Date of Request:

Subject: Use of transmission scheduling paths

On July 21, 2008, the New York Independent System Operator filed at the Federal Energy Regulatory Commission a request for approval of new NYISO operating rules prohibiting eight circuitous power transmission "scheduling paths" that in the NYISO's opinion a "small number of Market Participants" have used improperly to inflate power or transmission service charges in New York by over \$100 million since the beginning of 2008. The NYISO did not identify the "small number of Market Participants." As to the NYISO request (copy attached), please provide the following information:

(a) in 2008 has Energy, Enexus, Energy Nuclear Marketing or any other Energy or EnExus subsidiary, directly or through any agent, arranged for, contracted, ordered or otherwise caused power transmission over any of the eight scheduling paths that are the subject of the NYISO's July 21, 2008 filing with FERC?;

(b) does Entergy, Enexus, Entergy Nuclear Marketing or any other Entergy or Enexus subsidiary know whether the NYISO's July 21, 2008 reference to a "small number of Market Participants" is a reference that applies to Entergy, Enexus, Entergy Nuclear Marketing or any other Entergy or Enexus subsidiary? If so, identify each entity;

(c) in 2008 has Entergy, Enexus, Entergy Nuclear Marketing or any other Entergy or Enexus subsidiary received from the NYISO or sent to the NYISO any writing, email, telephone message or other communication concerning the eight scheduling paths that are the subject of the NYISO's July 21, 2008 filing with FERC? If so, please provide copies of each such communication; and

(d) if the proposed reorganization goes forward, would Enexus or any Enexus subsidiary use any of the eight scheduling paths that are the subject of the NYISO's July 21, 2008 filing with FERC if at the time of the reorganization FERC has not acted on the NYISO's July 21, 2008 filing?

Please identify by name and title each individual responsible for the substance of the response to the information request.

[COPY OF NYISO 7/21 FERC FILING]