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cc Jaclyn Brillig/Exec/NYS DPS@NYS DPS

Subject Case 08-E-0077 - Entergy - Ruling concerning disclosure of decommissioning studies

To All Active Parties:

By e-mail on September 5, 2008, we received a joint filing by the Attorney General and Assemblyman Brodsky asking that we "remove the confidential designation" applied to certain decommissioning cost studies submitted by Petitioners in response to information request AG-13. (Joint Filing) A similar request was received from Westchester County by e-mail dated September 9, 2008.

Petitioners responded to the Attorney General and Assemblyman Brodsky by letter dated September 9, 2008. In it, they stated that one of the disputed studies, for Vermont Yankee, was a public document and could be released, but they declined to withdraw their claims of exemption from disclosure for the remaining studies.

Under the Freedom of Information Law, and the regulations implementing it for this Department, the Commission is obligated to maintain the confidentiality of information claimed exempt until the provider has exhausted all of its administrative and legal appeals. (See Rule 6-1.4(a)(3)) Even if the Commission disagrees with the claim, it cannot permit the public disclosure of the information. Consequently, if immediate public release of the studies was the objective of the Joint Filing, the request would have to be denied.

If, on the other hand, the filing was intended to be an objection to Petitioners' claim of exemption from disclosure, it is premature. In our July 23, 2008, ruling, we reminded all parties that those who disagreed with the exempt designation of any document, and were unable to resolve the disagreement informally, could raise their objections in their initial further comments. (See p. 12) In our August 14, 2008, ruling, we added that objections could be raised in the second round of further comments as well. (See p. 19-20)

Consistent with this process, we will consider the objections included in the Joint Filing and the e-mail from Westchester County following the scheduled submission of further comments. We will consider them together with any others that may be raised in those comments, and we will issue a single ruling resolving all such objections at that time. Our ruling will be based on an evaluation of each objection in relation to the justifications for exemption submitted by Petitioners at the time they requested confidential status. To the extent that the September 9, 2008, letter from Petitioners reflects their view that those submissions can be supplemented, we remind them that our August 14, 2008, ruling expressly provided otherwise, absent extraordinary circumstances. (See p. 20)

Finally, in light of Petitioners' withdrawal of their claim of exemption for the Vermont Yankee decommissioning study, we direct them to make the document available to all parties if they have not already done so.

David L. Prestemon  
Gerald L. Lynch  
Administrative Law Judges