

DEWEY & LeBOEUF

Dewey & LeBoeuf LLP
99 Washington Avenue
Suite 2020
Albany, NY 12210-2820

tel +1 518 626 9000
fax +1 518 626 9010
pgioia@dl.com

July 14, 2008

VIA E-MAIL

Honorable Gerald L. Lynch
Honorable David L. Prestemon
Administrative Law Judge
New York State
Department of Public Service
Three Empire State Plaza
Albany, NY 12223-1350

Re: Case 08-E-0077 – Entergy Corporation, et al. - 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:

On behalf of Entergy Nuclear FitzPatrick, LLC, Entergy Nuclear Indian Point 2, LLC, Entergy Nuclear Indian Point 3, LLC, Entergy Nuclear Operations, Inc., NewCo and Entergy Corporation (collectively, the "Petitioners"), the undersigned counsel hereby respectfully submit this letter in response to Your Honors' letter, dated July 3, 2008, requesting information from the active parties in the above-referenced matter. Specifically, Your Honors asked the active parties to respond to four questions. The Petitioners' responses to those questions follow.

Question 1 - Each active party that has conducted, or intends to conduct, any discovery with respect to the issues identified by the Commission in footnote 9 of its Order should describe the status of its efforts and indicate when it expects to complete them. Any party proposing a continuation of discovery beyond July 22, 2008, should give specific reasons why the current period should be extended. Those reasons should clearly indicate why discovery could not have been completed within the original time allotted.

The New York State Public Service Commission ("Commission") in its May 23, 2008 Order Establishing Further Procedures ("Order") prescribed a sixty (60) day discovery period for this matter. Following the issuance of the Order, discovery commenced immediately,

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with the New York State Attorney General's Office ("Attorney General") serving nineteen (19) information requests on the Petitioners late in the afternoon on May 23, 2008. Shortly thereafter, on May 27, 2008, the Department of Public Service Staff ("Staff") also served discovery requests on the Petitioners. Both the Attorney General and Staff have subsequently served additional requests, and, to date, they have served a combined seventy-eight (78), multi-part discovery requests on the Petitioners.¹

In responding to the information requests, the Petitioners have been forthcoming and have provided thousands of pages of relevant documents. Furthermore, although the Petitioners have objected to several of the questions (e.g., on relevancy grounds), notwithstanding these objections, the Petitioners have provided responses. The Petitioners have provided all relevant and material information consistent with both the Commission's discovery rules and the scope of discovery set forth in footnote 9 of the Order. The discovery process has proceeded relatively smoothly and the Petitioners have provided the parties to this proceeding all the information reasonably necessary for a full and fair evaluation of the proposed corporate reorganization and debt financings.

Given the voluminous nature of the discovery requests and information/documents produced in response thereto, the sixty (60) day discovery period set by the Commission has provided the parties an adequate opportunity to gather relevant information and should not be extended. The Petitioners respectfully submit that the Petitioners' pleadings and their responses to the information requests will provide the Commission with sufficient information to review and make a decision in this case. As provided in Your Honors' letter, any request for an extension should give specific reasons why the current period should be extended, including why discovery could not have been completed within the original time allotted. In addition, the Petitioners respectfully submit that any request for an extension must identify specific information that is needed but has not yet obtained, including how such information relates to the issues the Commission identified in the Order to be considered in this proceeding.

Moreover, the Petitioners submit that any further procedures in this proceeding should be limited to comments by the parties, based on relevant information provided by the Petitioners and responses and should be limited to the submission of paper pleadings. The Petitioners are unaware of any justification for an evidentiary hearing in this proceeding, in view of the limited issues subject to review and the voluminous information provided by the

¹ No other party to this proceeding has served information requests on the Petitioners. As of the date of this letter, Petitioners have responded to seventy-three (73) information requests. The Petitioners responses to the remaining requests are due by July 21, 2008.

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Petitioners. Indeed, the Commission has never required evidentiary hearings for a corporate reorganization or transfer of wholesale generating facilities subject to lightened regulation.²

Question 2 - Does Staff intend to conduct a technical conference as authorized by the Order? If so, when and where will it be held?

The Petitioners agree with Staff's position that a technical conference in this proceeding would be neither necessary nor useful.³

Question 3 - Do Petitioners have a date by which they believe this case needs to be decided? If so, please explain the legal, practical or economic basis for that deadline, and how the public interest would be affected if it were missed.

Petitioners request this case be decided as soon as possible in order for the proposed corporate reorganization to close by the end of Entergy Corporation's third fiscal quarter (i.e., by September 30, 2008).

The Petitioners filed the instant Petition in January 2008. In its Order, the Commission established a sixty (60) day period for discovery. While the Commission did provide for a possible extension of that period, the Petitioners submit that the period established by the Commission should not be extended. The Petitioners do not believe that there is a reasonable justification for extending the period. Furthermore, the corporate reorganization process is extremely expensive and time consuming. The Petitioners appreciate the need to develop all of the information relevant to the Commission's consideration of the corporate reorganization, but the Petitioners should not be burdened with additional expense and delay without clear justification. The Petitioners are concurrently seeking authorization from a number of state and federal agencies. A delay in one forum may adversely affect the Petitioners' ability to make progress in other forums.

The Form 10 General Form for Registration of Securities for Enexus Energy Corporation ("Enexus") that was filed with the Securities and Exchange Commission reflects the Petitioners' expectation that the proposed reorganization will close around the end of Entergy

² In fact, no evidentiary hearing was held when Entergy Corporation acquired Indian Point 1 and Indian Point 2 from Consolidated Edison Company of New York, Inc., which warranted equal, if not greater scrutiny from the Commission than is warranted by the proposed reorganization because it involved the divestiture of a nuclear plant by a fully regulated electric utility. See Case 01-E-0040 - Joint Petition of Consolidated Edison Company of New York, Inc. and Entergy Nuclear Indian Point 2, LLC, for Authority to Transfer Certain Generating and Related Assets and for Related Relief, Order Authorizing Asset Transfer (Aug. 31, 2001).

³ Letter from Leonard Van Ryn, Esq. and Peter Catalano, Esq. to the Honorable Gerald L. Lynch and the Honorable David L. Prestemon, dated July 11, 2008 ("Staff Letter") at 1.

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Corporations third fiscal quarter.⁴ A delay in obtaining the Commission's approval, which in turn would delay the closing of the proposed corporate reorganization, could adversely affect the trading price of Enexus' common stock and the cost and terms of the debt to be issued. Consequently, a delay in this proceeding could impose significant costs on the Petitioners.

New York State and the Commission have been national leaders in the development of effective competitive electricity markets. Entergy Corporation and other companies have invested billions of dollars in generation facilities in New York in reliance on the Commission's policies, including its policy of lightened regulation for wholesale generators. An unreasonable extension of the review process and subjecting the Petitioners to unnecessary regulatory costs and delays would be inconsistent with the Commission's established policy and procedures related to wholesale generators and would be detrimental to the public interest in a vibrant competitive electricity market in which market participants have the ability to organize and operate their businesses as efficiently as possible.

Question 4 - All parties please identify the specific location in any filings made to date of all arguments you want us to consider on the issue of the extent of the review under SEQRA required in this case. If you have any other arguments not previously set forth, please describe them to us as succinctly as possible.

⁴ Similar petitions by lightly regulated wholesale generators requesting approval under Section 70 of the Public Service Law ("PSL") have closed within two to four months of filing the petition. See e.g., Case 07-E-0462 – Joint Petition of Horizon Wind Energy LLC, f/k/a Zilkha Renewable Energy, and GS Wind Holdings LLC for a Declaratory Ruling, Declaratory Ruling on Review of Transfer Transactions (June 26, 2007) (filed Apr. 18, 2007); Case 07-E-0332 – Astoria Generating Company Holding LLC, Astoria Generating Company, L.P., and EBG Holdings LLC – Joint Petition for a Declaratory Ruling, Or, in the Alternative, For Authorization under Public Service Law § 70 to Transfer Ownership, Declaratory Ruling on Review of Merger Transaction (May 22, 2007) (filed Mar. 14, 2007); Case 07-E-0170 - Re Alliance Energy Renewables LLC – Order Approving Transfer and Making Other Findings (Apr. 23, 2007) (filed Feb. 8, 2007); Case 07-E-0009 - Joint Petition of Scottish Power plc, PPM Energy, Inc., and Iberdrola, S.A. For a Declaratory Ruling Regarding the Application of Public Service Law §70, Declaratory Ruling on Review of an Acquisition Transaction (Feb. 28, 2007) (filed Jan. 3, 2007); Case 05-E-1341 - Orion Power Holdings, Inc., Astoria Generating Company, L.P. and Astoria Generating Company Acquisitions, LLC – Petition for Authority to Transfer Ownership Interests and to Issue Corporate Debt, Order Approving Transfer and Financings and Making Other Findings (Feb. 15, 2006) (filed Oct. 26, 2005); Case 05-E-0368 – Zilkha Renewable Energy, LLC and GS Wind Holdings, LLC – Joint Petition for a Declaratory Ruling that the Commission Will Not Review or Regulate the Proposed Sale of Membership Interests in Zilkha Renewable Energy to GS Wind Holdings, Declaratory Ruling on the Review of the Transfer of Ownership Interests (May 19, 2005) (filed Mar. 24, 2005); Case 04-M-1592 – WPS Power Development, Inc. and WPS Energy Services, Inc. – Joint Petition for a Declaratory Ruling that the Commission Will Not Review the Proposed Restructuring of WPS Power Development and WPS Energy Services, Declaratory Ruling on Review of an Intra-Corporate Restructuring (Feb. 16, 2005) (filed Dec. 15, 2004); Case 04-E-0789 - Re Orion Power Holdings, Inc., Order Approving Transfers and Financing and Making Other Findings (Sept. 22, 2004) (filed June 25, 2004).

The Petitioners previously addressed the State Environmental Quality Review Act ("SEQRA") requirements in Section VII of their Verified Petition for a Declaratory Ruling Regarding a Corporate Reorganization or In the Alternative an Order Approving the Transaction and an Order Approving Debt Financings, filed with the Commission on January 28, 2008 (Petition at 21-23) and in Section V of their Verified Response to the Comments of the New York State Attorney General's Office, Westchester County and Riverkeeper, Inc., filed with the Commission on April 28, 2008 (Verified Response at 27-29).

As set forth in those pleadings, under SEQRA, the Commission must determine whether certain actions it is authorized to approve may have a significant, adverse impact on the environment. PSL Section 70 transactions, such as the proposed corporate reorganization, require SEQRA review because those transactions do not meet the definition of Type I or Type II actions listed in 6 NYCRR §§617.4, 617.5 and 16 NYCRR §7.2 and, therefore, are appropriately classified as "unlisted."⁵ Accordingly, it is proper for the Commission, as lead agency, to conduct an environmental assessment and to determine the significance of the corporate reorganization.⁶ To facilitate such assessment, a complete Short Environmental Assessment Form was attached to the Petition as Exhibit 8. In doing so, the Petitioners submitted the same information similarly situated applicants have provided to the Commission.⁷

Petitioners support Staff's position that the SEQRA process followed in other recent proceedings involving transfers of ownership of wholesale generators would be adequate here (Staff Letter at 2). That process includes i) the submission of a Short Environmental Assessment Form ("EAF") Part 1 (as mentioned above, Petitioners attached a Short EAF Part 1 to the Petition); and ii) the Commission completing the Short EAF Parts 2 and 3, which includes

⁵ Case 05-E-1341 – Orion Power Holdings, Inc., Astoria Generating Company, L.P. and Astoria Generating Company Acquisitions, LLC – Petition for Authority to Transfer Ownership Interests and to Issue Corporate Debt, Order Approving Transfers and Financings and Making Other Findings (Feb., 15, 2006); Case 04-E-0789 - Orion Power Holdings, Inc. and Great Lakes Power, Inc. – Joint Petition for Application of Lightened Regulation, Approval of a Financing, and a Declaratory Ruling that the Commission Will Not Assert Jurisdiction Over a Transfer, or, in the Alternative, Approval of the Transfer, Order Approving Transfers and a Financing and Making Other Findings (Sept. 22, 2004).

⁶ SEQRA review is not required for PSL Section 69 approval because issuance of debt is a Type II action, "which [has] been determined not to have a significant adverse impact on the environment." Case 03-E-1181 – Dynegy Danskammer, LLC and Dynegy Roseton, LLC – Petition For Expedited Approval Under Section 69 to Restructure Corporate Debt and Under Section 70 for the Collateral Pledge of Securities and Certain Assets Pursuant to Lightened Regulation, Order Authorizing Entry Into Credit Facility and Issuance of Secured Notes at fn 5 (Nov. 26, 2003) (quoting 16 NYCRR §§7.2(a) and 7.2(b)(2)(v)).

⁷ See e.g., Case 07-E-0170 - Re Alliance Energy Renewables LLC - Order Approving Transfer and Making Other Findings (Apr. 23, 2007); Case 05-E-1341, Order Approving Transfers and Financings and Making Other Findings (Feb., 15, 2006); Case 04-E-0789, Order Approving Transfers and a Financing and Making Other Findings (Sept. 22, 2004).

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reviewing the factors set forth 6 NYCRR §617.7(c) to determine if the proposed action will have a significant adverse impact on the environment.

Under Commission precedent, when there is no change to the operation of the generating facility, no significant adverse environmental impact will result.⁸ The corporate reorganization will not change the operation of the New York nuclear plants and thus could not cause a potentially significant adverse environmental impact. The Petitioners will continue to operate the New York plants in accordance with their environmental permits and all applicable environmental laws. Accordingly, a negative declaration issued by the Commission is appropriate, and because there are no potentially significant adverse environmental impacts associated with the proposed transaction, the Commission is not required pursuant to SEQRA to issue a public notice requesting comments before issuing such negative declaration.⁹

Contrary to the Attorney General's and Westchester County's arguments, SEQRA review in this instance does not require consideration of alternatives.¹⁰ 6 NYCRR §617.7(c), which contains the factors the Commission must consider in determining significance, does not require the Commission to consider alternatives. Furthermore, as mentioned above, under Commission precedent, a negative declaration is appropriate given that there will be no change to the operation of the New York nuclear plants, which will continue to operate in accordance with their environmental permits and all applicable environmental laws. Although an environmental impact statement ("EIS") prepared under SEQRA must include a detailed statement setting forth alternatives to the proposed action, an EIS is not required where, as here, a negative declaration is appropriate.¹¹

Moreover, the fact that a supplemental EIS was prepared when the Indian Point 1 Generating Plant ("IP1") and the Indian Point 2 Generating Plant ("IP2") were transferred to Entergy Corporation from Consolidated Edison Company of New York, Inc. ("Con Edison"), is not controlling.¹² In rejecting a request for additional SEQRA proceedings relating to the

⁸ Id.

⁹ Id.

¹⁰ See Letter from Stewart Glass, Esq. to Honorable Jaclyn Brillling, dated April 4, 2008, at 2; The Attorney General's Objections to Entergy's Petition for Approval of Corporate Reorganization and Financing, and Motion Urging Rejection of Entergy's Petition or, in the Alternative a Full Hearing with Discovery, dated April 7, 2008, at 26-28.

¹¹ Fuss v. Hannibal Town Planning Board, 295 A.D.2d 921, 922 (4th Dep't 2002) citing Matter of Village of Westbury v. Department of Transp. of State of N.Y., 75 N.Y.2d 62, 68 (1989).

¹² See Case 01-E-0040 - Joint Petition of Consolidated Edison Company of New York, Inc. and Entergy Nuclear Indian Point 2, LLC, for Authority to Transfer Certain Generating and Related Assets and for Related Relief, Order Authorizing Asset Transfer (Aug. 31, 2001) (explaining that a generic EIS was prepared in Case 94-E-0952 and thus the petitioners filed a draft supplemental EIS).

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transfer of ownership of a wholesale generator, the Commission recently recognized that "the divestiture of generation facilities by electric utilities raise[s] issues arising out of distinctions between fully-regulated utility ownership of generation and ownership by lightly-regulated entities. The transfer of facilities from one lightly-regulated entity to another lightly-regulated entity does not present those questions."¹³ Consequently, while a supplemental EIS may have been appropriate when IP1 and IP2 were transferred to Entergy Corporation from Con Edison, an EIS is not necessary here given the nature of the proposed reorganization.

Based on the foregoing, the Commission should follow precedent by issuing a negative declaration and undertake no further environmental review.

Should you have any questions regarding this filing, please contact us.

Respectfully submitted,



Paul L. Gioia
Gregory G. Nickson

PLG:gn (99832)

cc: Honorable Jaclyn A. Brillling (via hand delivery)
Active Party List (via e-mail)

¹³ See Case 04-E-0789 - Orion Power Holdings, Inc. and Great Lakes Power, Inc. – Joint Petition for Application of Lightened Regulation, Approval of a Financing, and a Declaratory Ruling That the Commission Will Not Assert Jurisdiction Over a Transfer, or, in the Alternative, Approval of the Transfer, Order Approving Transfers and a Financing and Making Other Finding (Sept. 22, 2004).