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May 21, 2008

VIA HAND DELIVERY

Honorable Jaclyn A. Brillling
Secretary
New York State Public Service Commission
Three Empire State Plaza
Albany, New York 12223

Re: Case 08-E-0077 – Response 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 to Westchester County's Motion to File Reply, or in the Alternative Strike Entergy's Response to the Comments of The New York State Attorney General's Office, Westchester County and Riverkeeper, Inc.

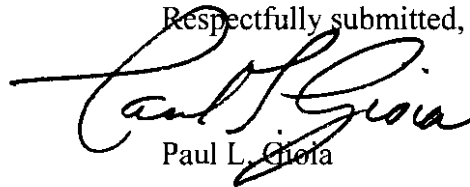
Dear Secretary Brillling:

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"), pursuant to 16 NYCRR 3.6(d), enclosed for filing please find an original and twenty-five (25) copies of the Petitioners' Verified Response to Westchester County's Motion to File Reply, or in the Alternative To Strike Entergy's Response to the Comments of The New York State Attorney General's Office, Westchester County and Riverkeeper, Inc., in the above-referenced matter.

Honorable Jaclyn A. Brillling
May 21, 2008
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If you have any questions regarding this filing, please contact me.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Paul L. Gioia". The signature is fluid and cursive, with the first name "Paul" and last name "Gioia" clearly distinguishable. Below the signature, the name "Paul L. Gioia" is printed in a small, black, sans-serif font.

Paul L. Gioia

PLG:gn (99591)

Enclosures

cc: Leonard Van Ryn, Esq. (Via Hand Delivery)
Mr. Charles Dickson (Via Hand Delivery)
Mr. Thomas Dvorsky (Via Hand Delivery)
Mr. John Stewart (Via Hand Delivery)
Charlie Donaldson, Esq. (Via 1st Class U.S. Mail)
Phillip Musegaas, Esq. (Via 1st Class U.S. Mail)
Mr. Andrew J. Spano (Via 1st Class U.S. Mail)
Active Party Service Lists for Cases 01-E-0040, 01-E-0113 and
00-E-1225 (Via 1st Class U.S. Mail)

BEFORE THE
STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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In the Matter of the Petition Filed By Entergy
Nuclear FitzPatrick, LLC, Entergy Nuclear Indian Case 08-E-0077
Point 2, LLC, Entergy Nuclear Indian Point 3, LLC,
Entergy Nuclear Operations, Inc., NewCo and
Entergy Corporation for a Declaratory Ruling
Regarding a Corporate Reorganization or, in the
Alternative, an Order Approving the Transaction
and an Order Approving Debt Financings
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VERIFIED RESPONSE TO WESTCHESTER COUNTY'S MOTION TO FILE REPLY,
OR IN THE ALTERNATIVE TO STRIKE ENTERGY'S RESPONSE TO THE
COMMENTS OF THE NEW YORK STATE ATTORNEY GENERAL'S OFFICE,
WESTCHESTER COUNTY AND RIVERKEEPER, INC.

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Gregory G. Nickson
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Tel: (518) 626-9000
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Dated: May 21, 2008

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In the Matter of the Petition Filed By Entergy
Nuclear FitzPatrick, LLC, Entergy Nuclear Indian
Point 2, LLC, Entergy Nuclear Indian Point 3, LLC,
Entergy Nuclear Operations, Inc., NewCo and
Entergy Corporation for a Declaratory Ruling
Regarding a Corporate Reorganization or, in the
Alternative, an Order Approving the Transaction
and an Order Approving Debt Financings

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On behalf of Entergy Nuclear FitzPatrick, LLC ("ENFP"), Entergy Nuclear Indian Point 2, LLC ("ENIP2"), Entergy Nuclear Indian Point 3, LLC ("ENIP3"), Entergy Nuclear Operations, Inc. ("ENO"), NewCo¹ and Entergy Corporation ("Entergy") (collectively, the "Petitioners"), the undersigned attorneys, pursuant to 16 NYCRR 3.6(d), respectfully submit the following in response to Westchester County's Motion to File Reply, Or In The Alternative To Strike Entergy's Response To The Comments Of The New York State Attorney General's Office, Westchester County And Riverkeeper, Inc., served on May 12, 2008 in the above-referenced matter (the "Motion").

¹ Entergy has determined that NewCo will be named Enexus Energy Corporation. Entergy has also determined that the joint venture will be named EquaGen LLC. However, to avoid confusion, this response will continue to refer to the entities as NewCo and ENOI Holdings, LLC ("ENOI Holdings"), respectively.

Approving the Transaction and an Order Approving Debt Financings filed by the Petitioners in Case 08-E-0077 (the "Petition").² On February 20, 2008, in conformance with the New York State Administrative Procedure Act Section 202(1), notice was published in the New York State Register inviting public comment with regard to the Petition ("SAPA Notice").³ On April 17, 2008, the New York State Attorney General's Office ("Attorney General") and Westchester County filed comments with Commission pursuant to the SAPA Notice.⁴ On April 29, 2008, the Petitioners sought permission to file a Verified Response to the Comments of the New York State Attorney General's Office, Westchester County and Riverkeeper, Inc. ("Petitioners' Response"). Westchester County now requests permission to file a reply to Petitioners' Response or, in the alternative, requests the Commission strike Petitioners' Response.

While the Petitioners do not object to Westchester County being permitted to file a response to the Petitioners' Response, the Petitioners submit this response to oppose the Motion to the extent that it requests the Commission strike the Petitioners' Response and deny the Petition, and to respond to the several substantive errors contained in the Motion and to further demonstrate why the Commission does not need to hold evidentiary hearings before granting the relief requested in the Petition.

² The Petition describes a series of corporate transactions that will result in the creation of a new holding company, NewCo, as the owner of Entergy's non-utility nuclear plants located in New York State (the "Corporate Reorganization"). Entergy's non-utility nuclear plants located in New York State include: James A. FitzPatrick Nuclear Power Plant ("FitzPatrick"), Indian Point Nuclear Generating Unit No. 2 ("IP2"), Indian Point Nuclear Generating Unit No. 3 ("IP3") and the retired Indian Point 1 Generating Plant ("IP1") (collectively, the "New York Facilities"). The Petition requests a declaratory ruling that the Corporate Reorganization does not need to be reviewed by the New York State Public Service Commission ("Commission") under Public Service Law ("PSL") Section 70. In the alternative, the Petition requests Commission approval, without modification or condition, pursuant to PSL Section 70 and any other statutory or regulatory provision deemed applicable, to consummate the Corporate Reorganization. The Petition also requests that the Commission issue an Order authorizing NewCo to enter into the debt financings that are described in detail in the Petition.

³ See Proposed Rule Making, No Hearing(s) Scheduled, Transfer of Ownership by Entergy Nuclear Fitzpatrick LLC et al., I.D. No. PSC-08-08-00016-P, New York State Register, p. 24 (Feb. 20, 2008).

⁴ Riverkeeper, Inc. also filed (untimely) comments on April 17, 2008.

INTRODUCTION

Westchester County's Motion largely repeats the claims made by the Attorney General, which the Petitioners addressed in Petitioners' Response. Like the Attorney General, Westchester County argues that the Corporate Reorganization will allow Entergy to siphon off cash and profits from the New York Facilities for the benefit of its stockholder, while also avoiding the responsibilities associated with the New York Facilities.⁵ Also like the Attorney General, Westchester County argues that NewCo, the new corporate parent of the New York Facilities, will be unable (or unwilling) to assume responsibility for the obligations associated with the New York Facilities in the same manner as Entergy and, thus, these obligations will be shifted to New York ratepayers.⁶ Petitioners' Response explained why these claims are baseless. In particular, Petitioners' Response explained that the Attorney General's concerns were based on a series of erroneous assumptions regarding the level of financial support available to the New York Facilities both today as well as after the Corporate Reorganization.⁷ Petitioners' Response also explained that NewCo itself will at all times be adequately capitalized and that the non-utility nuclear facilities that it will own have a demonstrated capability to generate cash-flow sufficient for their operations.⁸ Furthermore, Petitioners' Response explained that the Nuclear Regulatory Commission's ("NRC") regulations and oversight provide assurance that the entities operating nuclear facilities have adequate financial resources to safely operate and decommission the facilities.⁹

⁵ Compare Motion at 4 with Attorney General's Comments at 16.

⁶ Compare Motion at 2-3 with Attorney General's Comments at 12-15.

⁷ Petitioners' Response at 7-10.

⁸ *Id.* at 11-15.

⁹ *Id.* at 25-27.

Westchester County raises two new issues in its Motion, one concerning funding for decommissioning and the other relating to commitments regarding how decommissioning would be accomplished.¹⁰ As discussed below, these claims also are without merit.

DISCUSSION

I. WESTCHESTER COUNTY'S CONCERNS REGARDING SHIFTING OF RESPONSIBILITY/LIABILITY FOR DECOMMISSIONING ARE UNFOUNDED.

Westchester County claims that NewCo will have assets that have value only as long as they are operating and that the cessation of operation at any of the plants will result in liability for decommissioning and other costs without an income stream or other assets to sustain them.¹¹ To support this claim, Westchester County points to the Support Agreement whereby NewCo will provide an aggregate of \$700 million in operational funding for the non-utility nuclear plants owned by NewCo, including the New York Facilities. Westchester County interprets certain sections of the Support Agreement to mean that, "in effect, if a plant is shut down, for whatever reason, the [Support] Agreement authorizes [NewCo] to walk away from all obligations after it removes the fuel from the reactor vessel. This does not answer the question of who will be responsible for the maintenance of the facility thereafter, including, but not limited, to the protection of the spent fuel which most likely will remain on site in dry casks."¹²

Westchester County misunderstands which entities currently are responsible for decommissioning the New York Facilities and which entities will be responsible for the same after the Corporate Reorganization. When Entergy acquired the New York Facilities, they were

¹⁰ See Motion at 4-5. Westchester County also claims that the value sharing agreements between Entergy and the New York Power Authority are another example of an obligation that Entergy seeks to avoid through the Corporate Reorganization. *Id.* at 3. Entergy addressed this argument in its response to the Attorney General's Comments. Petitioners' Response at 22-23.

¹¹ Motion at 2-3.

¹² *Id.* at 4.

acquired by its subsidiaries ENIP2, ENIP3 and ENFP, and it is these Entergy subsidiaries that became the licensed owners of the units. As the licensees for these facilities, it is these entities (ENIP2, ENIP3, and ENFP) rather than the parent corporation (i.e., Entergy Corporation) that are responsible for the decommissioning of each of the New York Facilities, including the management of any spent nuclear fuel, until the Department of Energy accepts title to and takes possession of the spent nuclear fuel. These obligations are also affirmed in the Operating Agreements between the licensed owners, and ENO, which is the licensed operator of the facilities. The Corporate Reorganization will not change this basic relationship. After the Corporate Reorganization, ENIP2, ENIP3 and ENFP will remain the licensed owners of the units, and it is these entities rather than the new parent corporation (i.e., NewCo) that will be responsible for the decommissioning of each the New York Facilities.

Moreover, Westchester County also fails to recognize that, pursuant to NRC regulations at 10 CFR § 50.75 relating to decommissioning, the licensed owners of the New York Facilities maintain nuclear decommissioning trust funds ("NDTs") to ensure that sufficient funds exist to safely decommission the plant and that decommissioning costs are not shifted to the state, the local community or other stakeholders. Specifically, ENIP2 maintains NDTs for IP1 and IP2, and ENIP3 and ENFP rely upon NDTs maintained by the Power Authority of the State of New York for IP3 and FitzPatrick.

NRC's rules also require that the amounts of decommissioning funding assurance for each unit be assessed each year and adjusted in order to assure that adequate levels of funding in the NDTs are maintained. 10 CFR § 50.75(b)(2). Status reports are submitted to the NRC either annually or biennially. 10 CFR § 50.75(f). The NDTs must be maintained as segregated accounts outside the administrative control of ENIP2, ENIP3, and ENFP. Accordingly, an

independent Trustee administers the NDTs. NRC oversees these trusts, and in a Staff Requirements Memorandum, dated January 9, 2008, for SECY-07-0197, the NRC approved a plan to begin conducting periodic inspections or "spot checking" of original trustee documents maintained by licensees as compared with the licensee status reports submitted to the NRC.

In the pending request for NRC approval of the proposed license transfers (i.e., the Corporate Reorganization), the Applicants, including ENIP2, ENIP3, and ENFP have provided assurances to the NRC that the existing NDT arrangements would remain in place unchanged. On pages 10-11 of the Application submitted to the NRC on July 29, 2007, this was summarized as follows:

Other than the changes to the Parent Guaranty for Big Rock Point described above, the Applicants do not anticipate any changes in the existing decommissioning funding assurance provided in connection with the proposed indirect transfers of control. Applicants also do not anticipate any changes or amendments to any nuclear decommissioning trust fund agreements, and if any amendments are to be made in the future, the existing trust agreements require prior written notice be provided to the NRC. Moreover, any existing NRC license conditions governing these trust agreements will remain in effect and unchanged.

The Petitioners have not made any plans for any changes to the existing trust fund arrangements, and, therefore, there has not been any subsequent notice.¹³ Accordingly, Westchester County's concerns regarding the Support Agreement and decommissioning of the New York Facilities are unjustified.

¹³ Effective July 1, 2008, The Bank of New York Mellon will become the successor Trustee to the current Trustees, Mellon Bank, N.A. and The Bank of New York. This will not involve any change to the trust agreements, but Notice will be provided to NRC regarding this change, which will occur by operation of law in connection with a reorganization planned by The Bank of New York Mellon Corporation.

II. THE CORPORATE REORGANIZATION IS NOT INTENDED TO, AND IN FACT WILL NOT, AFFECT COMMITMENTS MADE BY MICHAEL KANSLER.

Westchester County notes that on March 16, 2001, Michael R. Kansler, Senior Vice President and Chief Operating Officer for ENO, made a number of commitments to Westchester County, including commitments regarding decommissioning on behalf of those entities.¹⁴ Westchester County is concerned that Entergy is attempting to avoid these commitments. Westchester County also claims that Entergy has an incentive to avoid these commitments because some of the existing agreements between Entergy and the entities from which it purchased these nuclear facilities provide that if there are any savings in decommissioning that at least a substantial portion of those savings would inure to the benefit of Entergy.¹⁵ Westchester County's claims are unfounded.

As indicated in the March 16 Letter, the aforementioned commitments were made by Mr. Kansler on behalf of ENO, ENIP2 and ENIP3, not Entergy Corporation. Importantly, other than ENO being converted into a limited liability company, these entities will not be affected by the Corporate Reorganization. If Westchester County had inquired of these entities as to their intent regarding the Kansler commitments, it would have been informed that ENO, ENIP2 and ENIP3 fully intend to stand by those commitments after the Corporate Reorganization and their obligations will remain unchanged. Further, since Entergy Corporation did not make these commitments in the first instance, it is not "avoiding" them as a result of the

¹⁴ Id. For example, there were commitments that MOX fuel would not be used at the Indian Point facilities, that Entergy will not import spent fuel into Westchester County or store spent or used fuel in Westchester County that comes from facilities other than the Indian Point plants, that high-level waste will be removed in a reasonable amount of time after operation of the Indian Point facilities ceases, that the Indian Point facilities will remain in SAFESTOR for a limited period and that the facilities will be restored to Greenfield condition. See Letter from Michael R. Kansler, ENO, to Alan D. Scheinkman, Esq., Westchester County (dated March 16, 2001) ("March 16 Letter") (attached hereto as Exhibit A).

¹⁵ Motion at 5.

Corporate Reorganization. Accordingly, the Corporate Reorganization in no way will alter the commitments made by ENO, ENIP2 and ENIP3. To the extent that any ambiguity remains, Petitioners hereby state that ENO, ENIP2 and ENIP3 will stand by all of the commitments contained in the March 16 Letter.

III. PETITIONERS' RESPONSE SHOULD NOT BE STRICKEN.

Commission regulation neither authorizes nor prohibits the Petitioners from responding to SAPA comments. However, it is proper for the Commission to accept and consider Petitioners' Response because it is not prejudicial and it advances the record in this proceeding.¹⁶ The Commission should exercise its discretion and accept the Petitioners' Response, and as discussed above, should consider Westchester County's response but deny the relief requested therein (viz. striking Petitioners' Response and denying the Petition).

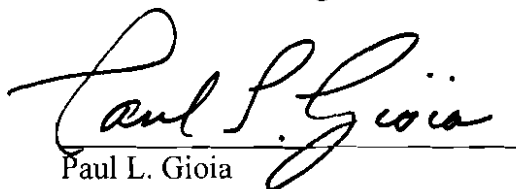
CONCLUSION

Based on the foregoing, the Petitioners respectfully request the Commission deny the Motion to the extent that it requests the Commission strike the Petitioners' Response. The Petitioners also respectfully request that the Commission grant Petitioners the relief requested in the Petition in its entirety, including that the Commission issue a declaratory ruling that the Wallkill Presumption applies and the Commission need not review the Corporation Reorganization under PSL Section 70. Alternatively, the Petitioners respectfully request the Commission decline to hold an evidentiary hearing regarding the Corporate Reorganization and issue an Order, as expeditiously as possible, authorizing Petitioners to consummate the Corporate

¹⁶ See Case 96-E-0891 - Re New York State Electric & Gas Corporation, Order Denying Rehearing on Market RAC Implementation at 2, n.4 (Apr. 4, 2002); Case 01-E-0211 - Re KeySpan-Ravenswood, Inc., Order Denying Rehearing and Motions at 8, n.10 (Feb. 12, 2002); Case 01-E-1680 - Re Reliant Resources, Inc., Declaratory Ruling on Review of Stock Transfer at 2, n.1 (Dec. 20, 2001).

Reorganization, without modification or condition. The Petitioners also request the Commission issue an Order authorizing NewCo to enter into the debt financings as described in the Petition.

Dated: May 21, 2008

A handwritten signature in black ink, reading "Paul L. Gioia". The signature is fluid and cursive, with a horizontal line drawn underneath the name.

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Attorneys for
Entergy Nuclear FitzPatrick, LLC,
Entergy Nuclear Indian Point 2, LLC,
Entergy Nuclear Indian Point 3, LLC,
Entergy Nuclear Operations, Inc.,
NewCo and
Entergy Corporation

ALB-99550

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In the Matter of the Petition Filed By Entergy
Nuclear FitzPatrick, LLC, Entergy Nuclear Indian
Point 2, LLC, Entergy Nuclear Indian Point 3, LLC,
Entergy Nuclear Operations, Inc., NewCo and
Entergy Corporation for a Declaratory Ruling
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Case 08-E-0077

VERIFICATION

STATE OF LOUISIANA)

)ss:.

PARISH OF ORLEANS)

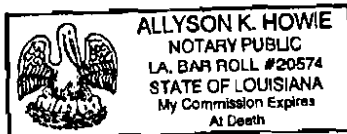
Robert D. Sloan being duly sworn, deposes and states as follows:

1. I am Executive Vice President, General Counsel and Secretary of Entergy Corporation and Entergy Services, Inc.
2. I am authorized to sign this verification 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.
3. I have reviewed the foregoing Verified Response and the statements of fact contained therein are true and correct to the best of my knowledge, information and belief.


Robert D. Sloan

Sworn to and subscribed before me
this 21 day of May, 2008.


Notary Public





Entergy Nuclear Northeast
Entergy Nuclear Operations, Inc.
P.O. Box 5029
White Plains, NY 10601-5029
Tel 914 272 3200 Fax 914 272 3205

Michael R. Kansler
Senior Vice President &
Chief Operating Officer

March 16, 2001

Alan D. Scheinkman, Esq.
c/o Westchester County Attorney
148 Martine Ave.
White Plains, New York 10601

Dear Mr. Scheinkman:

It was a pleasure to meet with you again yesterday to discuss the concerns of Westchester County as they relate to the purchase and operation by Entergy Nuclear Operations, Inc., Entergy Nuclear Indian Point 3, LLC and Entergy Nuclear Indian Point 2, LLC ("Entergy") of the Indian Point nuclear power plants. As we had previously discussed, we agree that MOX fuel will not be used at the Indian Point facilities. Entergy has also pledged not to import spent or used fuel into Westchester County, nor to store spent or used fuel in Westchester County that comes from facilities other than the Indian Point plants. Entergy agrees that it will be beneficial to both Entergy and the residents of Westchester County to cooperate with one another to encourage the U.S. Department of Energy to develop and implement the DOE central spent fuel storage facility.

Entergy understands and appreciates the County's right and need to be informed about decisions that will affect the operation of the plants and the host communities. Accordingly, Entergy is committed to promptly informing the County prior to any planned changes in the operation of the plant, including any plans to increase output, extend the term of the operating license or close the plant, or otherwise to develop or utilize the site on which the facilities are located.

Entergy recognizes that Indian Point is an important resource to the County and the local communities. You have made it abundantly clear that the manner in which this site is managed is of prime importance. As we explained, we expect to decommission all three units at the same time after the last facility stops operating. Entergy is committed to returning the Indian Point Unit 1, 2 and 3 facilities and the surrounding site to a "Greenfield" condition. Entergy commits, after the last unit stops operating, to limit to a reasonable period the duration the facilities will remain in a "SAFESTOR" condition. If for some reason, a decision is made at the end of the license to either delay returning the site to "Greenfield" or otherwise reuse the site or facilities, we will promptly advise the County of our plans and reasoning, so that the County will have an adequate opportunity to fully comment. If Entergy determines, after the plants cease operation, that it is more prudent to use the site for other purposes, such as energy generation or comparable industrial uses, rather than to immediately return the site to "Greenfield" conditions at that time, we will promptly advise the County of our plans. However, this does not in any way alter our commitment to eventually restore the site to Greenfield when the site is no longer used for such energy generation or comparable industrial uses.

We commit to removing the high-level waste (spent fuel) in a reasonable amount of time after operation of the three units ends, depending on the ability of the U.S. Department of Energy to accept it. We also will inform you of any plans to use on-site dry cask storage, which would be necessary as a result of DOE's delays in accepting spent fuel.

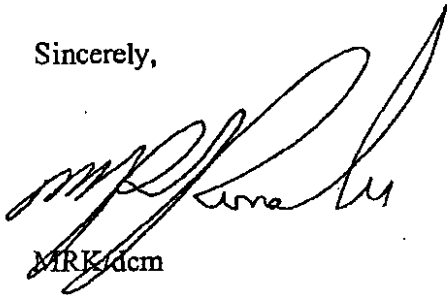
March 16, 2001

Page two

As you know, we have begun working with your Emergency Management Office to make improvements in the emergency plan, which has lately received a great deal of public attention. I hope that these efforts assure you of our commitment to work with you and the other three counties to ensure a viable emergency planning program, including providing the appropriate financial support for off-site preparedness.

I am grateful for the opportunity to have met with you on Wednesday and look forward to discussing these and other issues concerning the County in the near future. So that Westchester County may rely upon our commitments, we agree that Entergy will be bound by the terms set forth herein.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Dcm", is written over the typed name "MARK dcm". The signature is stylized with a large, sweeping initial "M".

MARK dcm