THE ASSEMBLY
STATE OF NEW YORK
ALBANY

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RICHARD L. BRODSKY
Assemblyman 92nd District

Westchester County

CHAIRMAN
Committee on
Corporations, Authorities
and Commissions

September 29, 2008

Hon. Jaclyn A. Brilling, Secretary
N.Y.S. Department of Public Service
Three Empire Plaza
Albany, New York 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 Secretary Brilling:

Enclosed for filing please find an original of the Confidential and Redacted Responsive Comments of Assemblyman Richard L. Brodsky in the above referenced matter. Copies of these documents were forwarded to the active parties via electronically and by U.S. First Class mail.

Respectfully yours,

Sarah L. Wagner
Legal Counsel for Assemblyman
Richard L. Brodsky
L.O.B. Room 422
Albany, New York 12248
518-455-5753

cc: active parties

New York State
Public Service Commission

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Case No. 08-E-0077

Proposed Corporate Reorganization
of Entergy Corporation, et al.
and Related Debt Financing

ALJ Gerald Lynch

ALJ David Prestemon

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COMMENTS BY ASSEMBLYMAN RICHARD BRODSKY
NON-PUBLIC CONFIDENTIAL VERSION

The New York State Public Service Commission ("Commission") must reject the Entergy Corporation's ("Entergy") January 28, 2008 verified petition ("petition") requesting approval of Entergy's proposed transfer of ownership to a new corporation ("Enexus") and to authorize the new corporation to borrow up to $6.5 billion.

The overarching issue in this case is whether the spin off company, Enexus, will be financially sufficient to support the continued operation and maintenance of the facilities and to decommission the nuclear facilities. The secondary issues in this case are whether the proposed debt to be encumbered by Enexus is necessary and whether the documents claimed to be confidential by Petitioner, Entergy Corporation, are warranted.

There is no dispute that the burden of establishing that this transfer is in the public interest falls upon Petitioners. And the PSC has acknowledged this. "There is no question that the Petitioners have the burden of proof in this case under Section 70 of the Public Service Law." PSC Ruling on Discovery, Process. Schedule and Scope of Issues, dated August 14, 2008 at p. 27. This proceeding has been unusual in many aspects including assertions of confidentiality, a persistently argumentative tone, and lack of clarity about what the key phrase public interest really means. The best that can be said about this proceeding is that Petitioners have not

established any measurable public benefit that may result from the corporate reorganization. What benefits that are perceivable in terms of cash and financial value, operating structures, and reduction of long term exposure are all in the interest of Petitioners, especially the parent corporation Entergy Corporation. For the PSC to approve this reorganization it will have to specify the specific areas of public interest enhanced for the reasons that appear below and in the papers of other parties, the Commission cannot reach that level of specific interest and must decline the reorganization and debt issuance.

Neither the reorganization nor the debt is in the public interest. Enexus will not be financially capable of operating, maintaining, and decommissioning the nuclear facilities. Entergy has failed to establish that the reorganization and debt is in the public interest. In fact, the reorganization and debt will only benefit Entergy and its shareholders. Therefore, the petition must be denied in its entirety. Alternatively, a hearing must be ordered.

DISCUSSION

The Public Service Law ("PSL") gives the Commission jurisdiction over the actions and operations of "electric corporations" within New York. PSL § 5. PSL § 70 provides that the PSC must approve any transfer of more than 10% of the ownership in an electric corporation, and that to give its approval the PSC must find that the transfer is "in the public interest." Applications for PSC approval of transfer of electric corporation ownership must demonstrate the applicant's financial situation and provide detailed reasoning for the acquisition. 16 N.Y.C.R.R. § 39.1. Petitions for approval of property or lease transfers must demonstrate in detail the reasons for what is proposed, all of the facts warranting the approval or transfer, and that the transfer or lease is in the public interest. 16 NYCRR § 31.1.

The paramount purpose of the enactment of the Public Service Commissions Law was the protection and enforcement of the rights of the public. The primary purpose for which the Public Service Commission was established was to guarantee to the public safe and adequate service at just and reasonable rates.

> the term 'public interest' is directly related to and limited by the main purposes of the Public Service Law. These purposes, so the legislature has once said, are 'to guarantee to the public safe and adequate service at just and reasonable rates, to the stockholders of public service corporations, a fair return upon their investments, and to bondholders and other creditors, protection against impairment of the security of their loans. Chap. 673, § 3, Laws of 1929.
> *Int'l Ry. Co. v. PSC*, 264 A.D.2d 506, 510 (3d Dep't 1942).

Section 70 of the PSL mandates that such consent shall not be given unless it shall have been shown that such acquisition is in the public interest. This court's review of the action of the Public Service Commission, when it decides whether such a stock acquisition is in the public interest, is very limited. *Brooklyn Union Gas Co. v. PSC*, 34 A.D.2d 71 (3d Dep't 1970).

When a company desires to refund its debts or obligations, the Public Service Commission has the power to inquire into the purpose for which the obligation was created and to determine whether or not it was for the acquisition of property or the improvement of the plant or distributing system, as above enumerated. Issuing bonds to raise money to buy other bonds is not necessarily an obligation within the meaning of this section. The Public Service Commission has the power to find out the purposes for which money raised must be used, whether in the first instance, or, on refunding, are those specified as above given in section 69. The purposes which the Commission must specify in its order are these purposes, and the money which is to be repaid must have been reasonably required for such purposes. *See Staten Island Edison Corp. v. PSC*, 263 N.Y. 209, 216 (1933). If the Commission deems that indebtedness is not reasonably

required for the enumerated purposes of the corporation, then the Commission may not grant the petition. *People ex. rel. Binghamton Light, Heat & Power Co. v. PSC*, 203 N.Y. 7 (1911); *People ex. rel. Long Acre Elec. Light & Power Co. v. PSC*, 137 A.D. 810 (1st Dep't 1910). The method of creating the indebtedness is immaterial. *Staten Island Edison Corp*, 263 N.Y. at 217.

By creating a separate LLC for each nuclear power plant, the profits from each plant's operations can flow back to the parent corporation. The parent corporation's liability for each plant is limited. Entergy has proposed adding more layers of LLCs between itself and the entity operating a high risk business. Each of those intervening LLCs can act as a barrier to extending liability to the parent corporation that contains most of the assets. If the nuclear plant is unable to cover its liabilities, it might require several separate court cases or a complex case to pierce all the corporate veils back to the parent corporation with the bulk of the assets. This in fact has been stated by Entergy: "Entergy ... will no longer have any direct liability associated with the operation of [its] New York Facilities." Petition at 16.

There is no protection against the risk that an LLC subsidiary will transfer all of its operating profits to its parent company. The use of holding company structures can lead to a diminution of the assets necessary for the safe operation and decommissioning of a licensee's nuclear plant. A nuclear plant with the reactor as its only asset could renege on its decommissioning obligations if forced to shut down.

The total cost of decommissioning a reactor facility depends on many factors, including the timing and sequence of the various stages of the program, type of reactor or facility, location of the facility, radioactive waste burial costs, and plans for spent fuel storage. The NRC estimates costs for decommissioning a nuclear power plant range from $280-$612 million. NRC requires nuclear power plant licensees to report to the agency the status of their decommissioning

funds at least once every 2 years, annually within 5 years of the planned shutdown, and annually once the plant ceases operation.

However, NRC oversight of decommissioning does not ensure that adequate funds will be available. Traditionally, plant owners amass decommissioning funds through charges to their ratepayers, which are predetermined by state utility commissions. Due to deregulation of the electric industry, a competitive market, instead of regulated rates, determines the price plant owners charge. Subsequently, these plants no longer collect decommissioning funds through the traditionally method.

To estimate future decommissioning costs, plant owners may use a mathematical formula provided in the NRC's regulations or a site specific estimate if the costs from it are higher. Although the formula assumes that nuclear plant site will be cleaned up in compliance with NRC standards, by the time a plant is decommissioned new cleanup standards could apply. For example, the EPA has indicated that if the NRC does not tighten its standards, the EPA could reconsider exempting decommissioned nuclear plant sites from the stricter standards under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (also known as CERCLA or Superfund). Additionally, New York State has enacted stricter cleanup standards than the NRC. Stricter cleanup standards require plant owners to incur significant additional decommissioning costs.

Varying cleanup standards and proposed new decommissioning methods introduce additional certainty about the costs of decommissioning nuclear facilities. Adding to cost uncertainty, the NRC allows plant owners to wait until two years before their operating license expires – relatively late the process- to perform overall radiological assessments to determine

whether any residual radiation at the site that will need further cleanup in order to meet NRC standards.

It is well known that Indian Point has a leak. See, http://www.nrc.gov/reactors/plant-specific-items/indian-point/faq.html, last visited September 26, 2008. See also, http://jic.semo.state.ny.us/Resources/ExecutiveSummary%20GW%20final.pdf, last visited September 26, 2008. Entergy received analytical results from a sample of monitoring well MW-37 (located in the Unit 2 Turbine Building, on the west side of the discharge canal) that was split with Entergy on February 28, 2006. The result indicated strontium-90 concentrations as high as 28 pCi/l. (Note: Sr-90 analysis typically takes several weeks to perform.) For perspective, EPA's drinking water standard in 8 pCi/l. Therefore, the decommissioning costs for Indian Point will be higher than the NRC mathematical formula calculates.

When the NRC reviews a request for approval of license transfers, the NRC determines the level of assurance that the plants' decommissioning funds will be adequately maintained. However, in December of 2001, the United States General Accounting Office (GAO) found that the NRC's review and documentation of license transfer requests created different standards for different owners and different types of transfers. The GAO report was also concerned about the lack of procedure for reviewing the accumulation of decommissioning funds for retired plants, such as Indian Point Unit 1.

Licensees may demonstrate financial assurance for decommissioning by one or more of the following: (1) Prepayment: a deposit by the licensee at the start of operation in a separate account such as a trust fund; (2) Surety, insurance, or parent company guarantee method: assurance that the cost of decommissioning will be paid by another party should the licensee default; or (3) External sinking fund: a separate account outside the licensee's control to

accumulate decommissioning funds over time, if the reactor licensee recovers the cost of decommissioning through ratemaking regulation or non-bypassable charges. Section 50.75(c) of the C.F.R. specifies the minimum funding level that the licensee must meet.

Petitioners' initial comments state that the NRC will ensure that each "licensee provides adequate assurance if decommissioning funding in an amount to ensure the protection of the public health and safety. Petitioners' Initial Comments at p. 21. This is not the case. The NRC has not established criteria for taking action if it determines that an owner is not accumulating sufficient funds. October 2003 GAO report: "Nuclear Regulation NRC Needs More Effective Analysis to Ensure Accumulation of Funds to Decommission Nuclear Power Plants." (October 2003 GAO Report). "NRC officials said that owners are not required by regulation to report recent actual contributions to the trust funds, and the NRC does not directly monitor whether the owners' actual contributions match the planned contributions." October 2003 GAO Report at p. 12. The NRC has not explained to the owners and the public what it intends to do if and when it determines an owner is not accumulating sufficient funds.

On May 5, 2008, Entergy Nuclear Operations, Inc. submitted a letter to the NRC stating the Decommissioning Fund Status Report. For Indian Point Unit 1 Entergy stated that the required amount of decommissioning funds under 10 C.F.R. § 50.75 was estimated at $317.09 million. For the year ending December 31, 2007, only $271.19 million had been accumulated, thereby falling short approximately $45.9 million. For Indian Point Unit 2 the required amount of decommissioning funds under 10 C.F.R. § 50.75 was estimated at $ 382.83 million. For the year ending December 31, 2007, only $347.20 million had been accumulated, missing the NRC target funding by approximately $35.63 million. **BEGIN EXEMPT MATERIAL** [redacted]

[redacted] **END**

EXEMPT MATERIAL Indian Point Unit 3 had an additional $ 85.40 million over the NRC required amount of decommissioning funds.

If the decommissioning funds are insufficient, New York state ratepayers and the public will be responsible for paying for the remaining costs of cleanup. "Entergy has noted that the NRC has on several occasions said that the burden of paying any such shortfalls would fall on taxpayers: NRC regulations do not specifically address the potential liability of other parties in the event that the licensed owner is unable to provide the funds required for decommissioning. In the past, the NRC indicated that any failure of the licensed owner to meet its decommissioning funding obligations would result in a burden on taxpayers -- presumably in the form of a publicly funded cleanup. See, e.g., SECY-94-280 (Nov. 18, 1984), at 4. ("Such action would either increase the potential risk to public health and safety of the decommissioning process or would shift the burden of decommissioning funding from ratepayers to taxpayers.") (emphasis added); 61 Fed. Reg. 15427, 15428 (Apr. 8, 1996)("The liability of the licensee to provide funding for decommissioning may adversely affect protection of the public health and safety. Also, a lack of decommissioning funds is a financial risk to taxpayers (i.e., if the licensee cannot pay for decommissioning, taxpayers would ultimately pay the bill. (emphasis added)." Synapse Energy Economics, Inc. Financial Insecurity: The Increasing Use of Limited Liability Companies and Multi-Tiered Holding Companies to Own Nuclear Power Plants, August 7, 2002 at p. 26 citing Legal Memorandum on the "Decommissioning Liability Associated with a Power Reactor License," Goodwin Procter LLP, February 24, 2002, submitted by Entergy Corporation to the Vermont Public Service Board as Exhibit ENVY-Wells-3 to the Prefiled testimony of Connie Wells in Docket No. 6545.

Ensuring that nuclear plant owners will have sufficient funds to clean up the radioactive waste hazard left behind when these plants are decommissioned is essential for the public health and safety. Therefore any approval by the Commission should be conditioned upon a guarantee by the Petitioners that they are liable for any deficiency of the decommissioning funds.

Decommissioning costs contain substantial uncertainty. The subject is inextricably commingled with plant relicense approval, or denial, and material condition each of the three units and surrounding site. Additionally, decommissioning costs are affected by the Interim spent fuel storage facility status and a vast number of unknowns. For example, security for the IPSFI, and removal of contaminated underground lakes, contaminated equipment removed have being operation failures such as steam generators, (currently referred to as the nuclear bone yard), or other design basis events. Decommissioning cost vary depending the approach utilized for decommissioning. The total costs for decommissioning are typically more when using SAFSTOR in part due to the cost escalation of low level waste disposal, additional costs for surveillance and maintenance during SAFSTOR. Decommissioning Planning: Experiences from U.S. Utilities. 1013510. EPRI, Palo Alto, CA 2006, Under NRC regulations a power reactor may remain in SAFSTOR followed by DECON (the removal and decontamination of the nuclear site) for up to 60 years.

The numbers proposed by Entergy, cannot be treated without acknowledging the significant uncertainty. For example, the final decommissioning cost for Maine Yankee nuclear facility was $580 million for a single unit site, starting in 1996, which was decommissioned prior to end of its 40 year license. This dollar amount is provided in EPRI and FERC. A second example is Connecticut Yankee was more recently decommissioned costing $ 825 Million--again for a single unit site. Indian Point contains three units. The applicant proposes numbers

substantially less for a site that contains three units, and a legacy of design failures, and acknowledged spent fuel pool leakage.

The $700 million Support Agreement (Agreement) required by the NRC will not ensure that Enexus is accumulating sufficient decommissioning funds and funds to pay to restore the nuclear site to Greenfield condition. **BEGIN EXEMPT MATERIAL** [redacted] **END EXEMPT MATERIAL**

Petitioners falsely state that "[t]he only current financial commitments to the New York Facilities are form their affiliates, Entergy Global, LLC and Entergy International LTD, LLC..." Petitioners' Initial Comments at p. 18. In fact, ENIP2 LLC, which owns the operating license for Indian Point Unit 1 & 2 is only connected to Entergy Global, LLC and Entergy International LTD, LLC through the parent corporation Entergy Corporation. See Petition, Figure 1: Simplified Chart- Current.

The use of subsidiaries to shield a nuclear parent company from liability is becoming more common, that could put taxpayer money at risk in the worst-case scenario. If there is an accident and cleanup costs and the decommissioning fund isn't full, the taxpayers as well as the ratepayers will pay the difference. On July 16, 2008, David Schlissel testified before the Public Service Commission of Maryland concluding that: "Over the last ten years, the ownership of an

increasing number of nuclear power plants has been transferred to a relatively small number of very large corporations. These large corporations have adopted business structures that create separate limited liability subsidiaries for each nuclear plant, and in a number of instances, separate operating and ownership entities that provide additional liability buffers between the nuclear plant and its ultimate owners. The limited liability structures being utilized are effective mechanisms for transferring profits to the parent/owner while avoiding tax payments. They also provide a financial shield for the parent/owner if an accident, equipment failure, safety upgrade, or unusual maintenance need at one particular plant creates a large, unanticipated cost. The parent/owner can walk away, by declaring bankruptcy for that separate entity, without jeopardizing its other nuclear and non-nuclear investments. This report examines the recent trend towards the use of limited liability corporations in the nuclear industry, often as part of multi-tiered holding companies, and identifies numerous concerns related to the use of such business structures."

Petitioners fail to demonstrate that the reorganization is in the public interest. Petitioners claim that the reorganization will "enhance Petitioners' ability to finance their operations efficiently and enhance their ability to participate in the competitive wholesale energy markets in New York State..." Petitioners' Initial Comments at p. 32. Petitioners fail to explain exactly how reorganization will enhance the efficiency of financing and enhance its ability to participate in the competitive market.

Petitioners' further claim that Enexus will have unfettered access to its own free cash flow and freedom of event risk of the affiliated regulated utility companies. There is no basis to assume that Enexus will have more access to its own cash flow than under the current organizational chart. Entergy misleads the Commission by referring the Chapter 11 bankruptcy

filed by New Orleans Entergy. In order to emerge from bankruptcy, Entergy received $17.1 million in Community block funds to ENO, $69.5 million settlement from AIG insurance, federal aid, rate increases, and a loan up to $200 million from Entergy Corporation. See, http://www.entergy.com/investor_relations/enoi.aspx, last visited September 26, 2008. Petitioners do not demonstrate that cash flow from Northeast nuclear facilities were used or were impacted.

The only known benefit of the reorganization and debt is the reduction of liability for Entergy Corporation and its affiliates and subsidiaries, as well as money for Entergy's shareholders.

The Commissions duty upon an application under section 69 of the Public Service Commissions Law is to determine whether a proposed issue of bonds is necessary for the proper purposes of the company, is authorized by law and is to be used in a proper manner. If such are the facts it cannot withhold its certificate; otherwise it cannot grant it. *People ex rel. Delaware & Hudson Company v. Stevens*, 197 N. Y. 1, 10, approved and followed. The Commission is entitled to inquire into the question of whether adequate service to the public will be continued after the transfer, or whether sufficient reason exists for an abandonment of service, if service is to be abandoned. *Spring Brook Water Co. v. Village of Hudson Falls*, 269 A.D. 515 (3d Dep't 1945).

The corporate reorganization and approval of debt sought by Entergy is not in the public interest because the risk associated with the operations, maintenance, and decommissioning is significantly increased. The financial guarantees that the Nuclear Regulatory Commission requires may not be adequate to assure that plants are operated and decommissioned safely and that plant owners will be able to pay in the event of a nuclear accident. Taxpayers may be at risk

if the nuclear plant owning subsidiary is unable to continue decommissioning expenditures. There is no guarantee that the parent corporations will provide funds to safely operate and decommission the nuclear plants owned by their subsidiaries. Shielding parent corporations from nuclear plant operations, accidents, and decommissioning risks is economically inefficient and not in the public interest. Parent corporations should be required to guarantee that plant owning subsidiaries and affiliates will provide any necessary funds to safely operate and decommission their nuclear plants.

Moreover, Commission approval of the reorganization should be conditioned upon Entergy's guarantee that payments will be made under the Entergy- NYPA Value Sharing Agreement (VSA). Additionally, any money currently owed to NYPA must be prior to or at the time of Commission approval of reorganization. Since the VSA is subject to Commission authority, the Commission must ensure that the VSA is honored.

Even if the Commission finds that the proposed corporate reorganization is in the public interest, approval of any debt is not warranted and not in the public interest. PSC authorization for an electric corporation to issue debt is governed by PSL § 69, which in pertinent part provides that an electric corporation may raise funds by issuing notes and other forms of debt if the funds are to be used for any of the several purposes set out in the statute and the corporation secures the PSC's prior approval. The regulations implementing PSL §69 require that applications for PSC approval of electric corporation debt issues contain evidence demonstrating the financial status of the corporation, the basis of the book cost of the applicant's property, and the details of the debt the applicant wishes to issue. 16 N.Y.C.R.R. § 37.1. The duty of the Commission is to determine whether the proposed debt is necessary for the proper purposes as

authorized by law. *People ex rel. Binghamton Light, Heat & Power v. Stevens*, 203 N.Y. 7 (1911).

The Commission may authorize the issuance of debt reasonably required for the enumerated purposes of the corporation and refuse consent to the remaining debt desired to be made. *People ex rel Long Island Acre Elec. Light & Power Co. v. PSC for First Dist. Of State of New York*, 137 A.D. 810 (1st Dep't 1910); Op. Public Service Commission, 1923, 30 St.Dept.Rep.522.

Entergy has asked the Commission to authorize the proposed new corporation to issue up to $4.5 billion in new debt in Senior Notes which may be floating rate, fixed rate or floating resetting to a fixed rate. Entergy Petition at p. 2. Entergy also requests authorization to enter in Senior Revolving Credit Facility and to enter into a Term LC facility for up to $2 billion. Entergy Petition at p. 2. Entergy then seeks permission to enter into commodity collateral revolver facilities used to support collateral needs arising from hedging contracts. Entergy Petition at p. 2. The debt will be secured partially by a pledge of the stock and or assets of Entergy Nuclear Indian Point 2 and Entergy Nuclear Indian Point 3, including the plant facilities, accounts receivable, and cash. Entergy Petition at pp. 2-3 & 11. The Senior Notes and Hedging Arrangements may also contain covenants that would limit Enexus and its subsidiaries to incur additional debt, issue preferred stock, declare or pay dividends, redeem stock, make other distributions to shareholders, create liens, restrict certain investments and other payments, enter into transactions with affiliates, sell or transfer assets, consolidate or merge, and create dividend or other payment restrictions affecting subsidiaries. Entergy Petition at pp. 10-12; Entergy Initial Comments at pp. 36-37. These the funds will be used by Enexus for various generically described business purposes, including engaging in hedging. *See, e.g.*, Petition at 2 & 9 - 11.

Entergy has not demonstrated that the creation of Enexus is in the interest of New York ratepayers and the public. Burdening the new company with up to $4.5 billion of debt is certainly not in the public interest. Entergy asserts that "$2.5 billion is targeted for a share repurchase program" and "$1.5 billion ... is targeted to reduce debt." Office of Attorney General Objections to Entergy's Petition dated April 4, 2008 citing Entergy 2007 Annual Report to Shareholders, at 3, 2d col.

Encumbering Enexus with up to $6.5 billion in debt to buy what Entergy already owns is not in the public interest and inconsistent with Public Service Law § 69. The debt is not necessary or reasonable. The debt is not required to provide safe and reliable power to the ratepayers. In fact, ratepayers will gain nothing from the issuance of this debt.

BEGIN EXEMPT MATERIAL [redacted]

[redacted] **END EXEMPT MATERIAL**

The Public Service Commission has power to couple consent to transfer of utility's franchise with any direction which it would have independent power to make. *Lockport Light, Heat & Power Co v. Maltbie,* 257 A.D. 11 (1939). It is within the power of the Commission to inquire into nature and necessity of indebtedness to meet which short term bonds were issued *Staten Island Edison Corp. v. PSC,* 263 N.Y. 209 (1933).

The Commission may make its consent conditional upon change in the terms of the contract to purchase, so long as the conditions imposed are such as will insure efficient operation in the public interest in those matters which fall within the general field of the commission's powers. It cannot make its consent dependent upon conditions which are unreasonable or which do not change the terms of the transfer of the franchise, works, or systems, or which encroach upon the right of the purchaser of the franchise to administer its corporate affairs according to its own judgment in matters over which the commission has no regulatory or supervisory powers. *Iroquois Gas Corporation, People ex rel., v. Public Service Commission of State of New York,* 264 N.Y. 17, 189 N.E. 764 (1934) (commission had no power to impose condition that purchaser write off part of purchase price on books of purchaser so that book value would be less than price paid).

Therefore, any Commission approval of Entergy's petition should condition consent based on a guarantee from the parent corporation that the nuclear plants will fully pay for the costs of decommissioning.

Entergy claims that the costs of internal exchanges of services will not be marked up for profit at the ratepayers expense. Entergy claims parity in sharing of specialized services between the separate and distinct reorganized and newly established corporations, does so without internal markup or margins for supplying those services. In the FORM OF SHARED SERVICES AGREEMENT between EQUAGEN, LLC and ENTERGY OPERATIONS, INC. for 2008, specifically in the Article 7.1, precisely the opposite is articulated. Article 7.1 provides:

7.1 Fees and Charges:

As required by some or all of the State and Municipal Settlements and the FERC Requirements:

(a) EOI shall pay charges to EquaGen for Support Services and Field and Maintenance Services provided

pursuant to this Agreement in an amount equal to the lower of the fully allocated cost or the market price of

providing such services and as otherwise provided in Exhibit D.

(b) EquaGen shall pay charges to EOI for Field and Maintenance Services provided pursuant to this

Agreement in an amount equal to (i) the fully-allocated cost of providing such services, **plus (ii) 5% of such fully allocated cost, and as otherwise provided in Exhibit D.** [emphasis added].

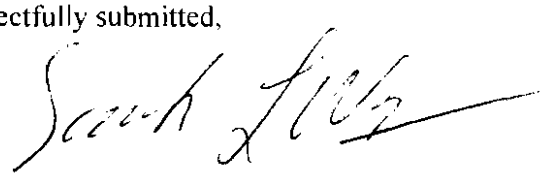
Reference is Exhibit 10.7, page 46, identified as EXV10w7 on the publicly accessible website of the proceedings:
http://www.sec.gov/Archives/edgar/data/1434037/000095012908004178/h55755a1exv10w7.htm

One can only conclude that the applicant is not intending to perform these exchanges of services in parity, and fair trade as promised, and necessary for continued operation of Indian Point 2, and Indian Point 3, but instead intends internal mark-up and resultant consequential impact to the rate payer in absorbing these new profits.

CONCLUSION

For the reasons set out above, the Public Service Commission should deny Entergy's proposed corporate reorganization and request for approval of debt issue by the proposed new company because Entergy has not carried its burden of proof to establish that the proposed reorganization is in the public interest.

Respectfully submitted,



Richard L. Brodsky
Sarah L. Wagner
Counsel for Assemblyman Brodsky

Dated: September 29, 2008

Entergy Nuclear Operations, Inc.
440 Hamilton Avenue
White Plains, NY 10601
Tel 914 272 3370

John F. McCann
Director
Nuclear Safety and Licensing

May 8, 2008
ENOC-08-00028

U.S. Nuclear Regulatory Commission
ATTN: Document Control Desk
Washington, DC 20555

SUBJECT: Entergy Nuclear Operations, Inc.

Indian Point Nuclear Generating Units 1, 2, &3
Dockets 50-003, 50-247, & 50-286

James A. FitzPatrick Nuclear Power Plant
Docket 50-333

Palisades Nuclear Plant
Docket 50-255

Big Rock Point
Docket 50-155

Decommissioning Fund Status Report

Reference: 1. Entergy letter ENOC-08-00018 dated March 26, 2008; regarding Decommissioning Fund Status Report for Vermont Yankee and Pilgrim.

Dear Sir or Madam:

Entergy Nuclear Operations, Inc (Entergy) is providing the reports required by 10 CFR 50.75(f)(1) regarding the status of decommissioning funding for the above subject plants. The reports, provided in Attachments I through VI for the six listed plants, were prepared in accordance with NUREG-1307, Revision 12 and RIS 2001-07. These reports are being provided as a result of a recent determination that Entergy's proposed indirect license transfer satisfies the "merger or acquisition" clause in 10 CFR 50.75(f)(1). Reports for Vermont Yankee and Pilgrim Nuclear Power Stations were previously transmitted in Reference 1.

A001
NRR

There are no new regulatory commitments identified in this letter. If you have any questions or require additional information, please contact Ms. Charlene Faison at 914-272-3378.

Sincerely,

John F. McCann
Director
Nuclear Safety and Licensing
Entergy Nuclear Operations

cc:

M. Chawla NRC NRR Project Manager, Palisades
J. Boska NRC NRR Project Manager, Indian Point
A. Muniz NRC NRR Project Manager, J.A. FitzPatrick
R. Hall NRC NMSS Project Manager, Big Rock Point
S. Collins NRC Region I Regional Administrator
J. Caldwell NRC Region III Regional Administrator
NRC Senior Resident Inspector, Indian Point 2
NRC Senior Resident Inspector, Indian Point 3
NRC Senior Resident Inspector, FitzPatrick
NRC Senior Resident Inspector, Palisades
P. Eddy NY Department of Public Service
Michigan Department of Environmental Quality

ATTACHMENT I TO ENOC-08-00028

DECOMMISSIONING FUND STATUS REPORT

FOR

INDIAN POINT NUCLEAR GENERATING UNIT NO. 1

ENTERGY NUCLEAR OPERATIONS, INC.
INDIAN POINT NUCLEAR GENERATING UNIT NO. 1
DOCKET NO. 50-003

ENOC-08-00028; Attachment I
Entergy Nuclear Operations, Inc.
Status of Decommissioning Funding – Indian Point 1
For Year Ending December 31, 2007 – 10 CFR 50.75(f)(1)

Plant Name: **Indian Point Nuclear Generating Unit No. 1**

1.	Amount of decommissioning funds estimated to be required pursuant to 10 CFR 50.75 (b) and (c).	$ 317.09 million [Note]
	Decommissioning cost estimate escalated at 3.0% per year to the midpoint of decommissioning (December 2016).	$ 413.72 million
2.	Amount accumulated to the end of the calendar year preceding the date of the report (December 31, 2007).	$ 271.19 million
	Fund balance with 5.0% annual growth to the midpoint of decommissioning (December 2016).	$ 420.70 million
3.	A schedule of the annual amounts remaining to be collected.	None
4.	Assumptions used in determining rates of escalation in decommissioning costs, rates of earnings on decommissioning funds, and rates of other factors used in funding projections.	Escalation rate: 3.0% Rate of earnings: 5.0%
5.	Any contracts upon which the licensee is relying pursuant to 10 CFR 50.75(e)(1)(v).	None
6.	Modifications occurring to a licensee's current method of providing financial assurance since the last submitted report.	None
7.	Any material changes to trust agreements.	None

Note:

In accordance with 10 CFR 50.75(c)(1)(i) PWR reactors below 1200 MWt are to use this minimum value. Indian Point 1 had a thermal power level of 615 MWt. (Refer to Attachment 3, pg. 15, of June 8, 2001 letter, M. R. Kansler to USNRC regarding "Response to June 5, 2001 Letter, Indian Point Nuclear Generating Unit Nos. 1 and 2, Transfer of Facility Operating License (TAC Nos. MB0743 and MB0744).")

ATTACHMENT II TO ENOC-08-00028

DECOMMISSIONING FUND STATUS REPORT

FOR

INDIAN POINT NUCLEAR GENERATING UNIT NO. 2

ENTERGY NUCLEAR OPERATIONS, INC.
INDIAN POINT NUCLEAR GENERATING UNIT NO. 2
DOCKET NO. 50-247

ENOC-08-00028; Attachment II
Entergy Nuclear Operations, Inc.
Status of Decommissioning Funding – Indian Point 2
For Year Ending December 31, 2007 – 10 CFR 50.75(f)(1)

Plant Name: **Indian Point Nuclear Generating Unit No. 2**

1.	Amount of decommissioning funds estimated to be required pursuant to 10 CFR 50.75 (b) and (c).	$ 382.83 million
	Decommissioning cost estimate escalated at 3.0% per year to the midpoint of decommissioning (December 2016).	$ 499.51 million
2.	Amount accumulated to the end of the calendar year preceding the date of the report (December 31, 2007).	$ 347.20 million [Note]
	Fund balance with 5.0% annual growth to the midpoint of decommissioning (December 2016).	$ 538.62 million
3.	A schedule of the annual amounts remaining to be collected.	None
4.	Assumptions used in determining rates of escalation in decommissioning costs, rates of earnings on decommissioning funds, and rates of other factors used in funding projections.	Escalation rate: 3.0% Rate of earnings: 5.0%
5.	Any contracts upon which the licensee is relying pursuant to 10 CFR 50.75(e)(1)(v).	None
6.	Modifications occurring to a licensee's current method of providing financial assurance since the last submitted report.	None
7.	Any material changes to trust agreements.	None

Note:

Includes provisional fund balance of $29.2 million.

ATTACHMENT III TO ENOC-08-00028

DECOMMISSIONING FUND STATUS REPORT

FOR

INDIAN POINT NUCLEAR GENERATING UNIT NO. 3

ENTERGY NUCLEAR OPERATIONS, INC.
INDIAN POINT NUCLEAR GENERATING UNIT NO. 3
DOCKET NO. 50-286

ENOC-08-00028; Attachment III
Entergy Nuclear Operations, Inc.
Status of Decommissioning Funding – Indian Point 3
For Year Ending December 31, 2007 – 10 CFR 50.75(f)(1)

Plant Name: **Indian Point Nuclear Generating Unit No. 3**

1.	Amount of decommissioning funds estimated to be required pursuant to 10 CFR 50.75 (b) and (c).	$ 382.83 million
	Decommissioning cost estimate escalated at 3.0% per year to the midpoint of decommissioning (December 2018).	$ 529.93 million
2.	Amount accumulated to the end of the calendar year preceding the date of the report (December 31, 2007).	$ 468.32 million
	Fund balance with 5.0% annual growth to the midpoint of decommissioning (December 2018).	$ 800.98 million
3.	A schedule of the annual amounts remaining to be collected.	None
4.	Assumptions used in determining rates of escalation in decommissioning costs, rates of earnings on decommissioning funds, and rates of other factors used in funding projections.	Escalation rate: 3.0% Rate of earnings: 5.0%
5.	Any contracts upon which the licensee is relying pursuant to 10 CFR 50.75(e)(1)(v).	None
6.	Modifications occurring to a licensee's current method of providing financial assurance since the last submitted report.	None
7.	Any material changes to trust agreements.	None

ATTACHMENT IV TO ENOC-08-00028

DECOMMISSIONING FUND STATUS REPORT

FOR

JAMES A. FITZPATRICK

ENTERGY NUCLEAR OPERATIONS, INC.
JAMES A. FITZPATRICK NUCLEAR POWER PLANT
DOCKET NO. 50-333

ENOC-08-00028; Attachment IV
Entergy Nuclear Operations, Inc.
Status of Decommissioning Funding – James A. FitzPatrick
For Year Ending December 31, 2007 – 10 CFR 50.75(f)(1)

Plant Name: **James A. FitzPatrick**

1.	Amount of decommissioning funds estimated to be required pursuant to 10 CFR 50.75 (b) and (c).	$ 513.64 million
	Decommissioning cost estimate escalated at 3.0% per year to the midpoint of decommissioning (December 2017).	$ 690.29 million
2.	Amount accumulated to the end of the calendar year preceding the date of the report (December 31, 2007).	$ 511.02 million
	Fund balance with 5.0% annual growth to the midpoint of decommissioning (December 2017).	$ 832.40 million
3.	A schedule of the annual amounts remaining to be collected.	None.
4.	Assumptions used in determining rates of escalation in decommissioning costs, rates of earnings on decommissioning funds, and rates of other factors used in funding projections.	Escalation rate: 3.0% Rate of earnings: 5.0%
5.	Any contracts upon which the licensee is relying pursuant to 10 CFR 50.75(e)(1)(v).	None
6.	Modifications occurring to a licensee's current method of providing financial assurance since the last submitted report.	None
7.	Any material changes to trust agreements.	None

ATTACHMENT V TO ENOC-08-00028

DECOMMISSIONING FUND STATUS REPORT

FOR

PALISADES NUCLEAR PLANT

ENTERGY NUCLEAR OPERATIONS, INC.
PALISADES NUCLEAR PLANT
DOCKET NO. 50-255

ENOC-08-00028; Attachment V
Entergy Nuclear Operations, Inc.
Status of Decommissioning Funding – Palisades Nuclear Plant
For Year Ending December 31, 2007 – 10 CFR 50.75(f)(1)

Plant Name: **Palisades Nuclear Plant**

1.	Amount of decommissioning funds estimated to be required pursuant to 10 CFR 50.75 (b) and (c).	$ 354.19 million
	Decommissioning cost estimate escalated at 3.0% per year to the midpoint of decommissioning (December 2034).	$ 786.75 million
2.	Amount accumulated to the end of the calendar year preceding the date of the report (December 31, 2007).	$ 257.91 million
	Fund balance with 5.0% annual growth to the midpoint of decommissioning (December 2034).	$ 962.90 million
3.	A schedule of the annual amounts remaining to be collected.	None.
4.	Assumptions used in determining rates of escalation in decommissioning costs, rates of earnings on decommissioning funds, and rates of other factors used in funding projections.	Escalation rate: 3.0% Rate of earnings: 5.0%
5.	Any contracts upon which the licensee is relying pursuant to 10 CFR 50.75(e)(1)(v).	None
6.	Modifications occurring to a licensee's current method of providing financial assurance since the last submitted report.	None
7.	Any material changes to trust agreements.	None

ATTACHMENT VI TO ENOC-08-00028

DECOMMISSIONING FUND STATUS REPORT

FOR

BIG ROCK POINT

ENTERGY NUCLEAR OPERATIONS, INC.
BIG ROCK POINT
DOCKET NO. 50-155

ENOC-08-00028; Attachment VI
Entergy Nuclear Operations, Inc.
Status of Decommissioning Funding – Big Rock Point
For Year Ending December 31, 2007 – 10 CFR 50.75(f)(1)

Plant Name: **Big Rock Point**

1.	Amount of decommissioning funds required from most recent estimate (2003 dollars)	$ 2.74 million
	Decommissioning cost estimate escalated at 3% to 2007 dollars	$ 3.08 million
2.	Decommissioning Funding Assurance Method	Parent Guarantee ($5 million)
3.	A schedule of the annual amounts remaining to be collected.	None.
4.	Assumptions used in determining rates of escalation in decommissioning costs, rates of earnings on decommissioning funds, and rates of other factors used in funding projections.	Escalation rate: 3.0% Rate of earnings: n/a
5.	Any contracts upon which the licensee is relying pursuant to 10 CFR 50.75(e)(1)(v).	None
6.	Modifications occurring to a licensee's current method of providing financial assurance since the last submitted report.	None
7.	Any material changes to trust agreements.	None