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County Executive

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By Federal Express:  
April 4, 2008

Jaclyn A. Brilling, Secretary  
Public Service Commission  
Building 3  
Empire State Plaza  
Albany, New York 12223-1350

Dear Ms. Brilling

Entergy Nuclear Fitzpatrick LLC, Entergy Nuclear Indian Point 2 LLC, Entergy Nuclear Indian Point 3 LLC, Entergy Nuclear Operations, Inc., Entergy Corporation (collectively "Entergy") and NewCo filed a petition dated January 28, 2008 with the Public Service Commission requesting approval of the transfer of ownership of the Fitzpatrick, Indian Point 2 and Indian Point 3 nuclear generation and related facilities from Entergy to NewCo, and sought approval of a financing related to the transaction in the amount of \$6.5 billion.

A review of the filing indicates that the reorganization, as proposed by Entergy, involves a complicated set of subsidiaries that not only results in a question as to who is responsible for these facilities and the problems they may encounter but also whether there will be sufficient assets and resources available to address any problems that may arise. If these questions are unanswered or answered in the negative, the state and local municipalities, and ultimately the residents and businesses within its borders, will be saddled with those costs, the very result that the Commission and the previous owners sought to avoid by transferring these plants at terms favorable to Entergy.

It is the responsibility of the Public Service Commission to consider the transfer and financing of these facilities. Neither the reorganization nor the borrowing has been shown to be in the public interest. In fact, it appears that just the opposite is the case. The reorganization would put in doubt access to approximately 80% of the financial resources currently available to support the operation of Entergy's New York nuclear plants and make the plants rely primarily on funds from riskier sources, funds that may or may not exist.

Entergy's petition does not include the financial, corporate and other information required by the Public Service Law and the regulations promulgated thereunder. Further, Entergy asks the Commission for a Declaratory Ruling approving the corporate reorganization or, in the alternative, an order approving the transaction and an order approving debt financing. Entergy does not want this action reviewed in detail. It is apparent by the number of changes and modifications that Entergy has made to its filing in various forums that, at best, Entergy itself is not clear as to what it intends to do or it is attempting to hide from the Commission and the public its intent. Entergy's real reasons for this reorganization may be better gleaned from what it states in documents that it has not provided to the Commission.

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Entergy is asking the Commission to declare that approval of the proposed corporate reorganization is not an action requiring review under the State Environmental Quality Review Act ("SEQRA"). Entergy argues that the reorganization will not cause any new environmental impacts or affect any permits. However, the standard to be considered is whether the State action, the approval of this corporate reorganization and refinancing "**may** have a significant effect on the environment" (*emphasis added*) and it requires consideration of "alternatives" to the proposed action(s). Therefore, the Commission must consider the potential effect of this action, including, but not limited to, the structure of the reorganization, its impact on the reliability of the operation of the plants, the economic resources available to address issues at the plants both in the near term and in the future. This is important whether Entergy's request before the NRC for a license extension is denied and it must take action to plan for the near-term decommissioning of the plant or whether its request for license extension is granted and that obligation is postponed for 20 years or more.

The Public Service Law ("PSL") grants the PSC jurisdiction over the actions and operations of "electric corporations", which includes "every corporation, company, association, joint-stock association, partnership or person ... owning, operating or managing any electrical plant" within New York. 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". The application for approval of such a transfer must demonstrate: 1) the financial condition of the applicant if a public utility and of the corporation whose stock or bonds are sought to be acquired or held; 2) the reasons in detail why the applicant desires to make the purchase and the amount of such stock or bonds already owned by the applicant; 3) the market value of the stock or bonds to be purchased, sale prices for a period of years and the price proposed to be paid and the terms of payment; 4) a certified copy of authorizations already received and a statement of authorizations which must be obtained from other State or Federal authorities before acquisition of the securities may be legally consummated and most importantly 5) and for property or leases to be transferred "in detail the reasons for what is proposed, all of the facts warranting the same and that the transfer or lease is in the public interest". The regulations (16 NYCRR §39.1, NYCRR §31.1, 16 NYCRR §18.1 list the information that must be supplied as part of a petition. However, for whatever reason, Entergy has failed to provide that information to the Commission and proposes that the Commission rubber stamp the transfer and debt financing without review. The County believes the Commission is better than that. Certainly the residents of the state, especially those living in close proximity to these plants, deserve better.

As to the approval of debt financing, PSL §69 requires that applications for PSC approval of debt issues contain evidence showing, among other factors, the financial condition of the applicant and the purpose for which the funds to be derived from the issuance of such securities (debt) are to be used. This information is clearly lacking.

The County acknowledges that major changes have occurred since the Public Service Law was first adopted, especially with the advent of deregulation. However, the Commission has employed "lightened regulation" to address this gap between the regulations and the realities of the market.<sup>1</sup> Entergy itself requested "lighted regulation" of its operation of Indian Point 3 and Fitzpatrick in 2000 and for Indian Point 2 in 2001. Recognizing that the operation of nuclear plants is of more public concern than that of generating plants using other energy sources, the PSC determined that Entergy was an electric corporation within the meaning of the PSL and required Entergy and other owners of merchant nuclear plants to conform more strictly to the PSL and regulations.<sup>2</sup> Nothing has occurred that should require the Commission from departing from that approach.

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<sup>1</sup> Case 91-E-0350 – In Re Wallkill Generating Company, L.P., Declaratory Ruling on Regulatory Policies Affecting Wallkill Generating Company and Notice Soliciting Comments (issued and effective August 21, 1991).


<sup>2</sup> Case 00-E-1225 and Case 01-E-0113.

The corporate reorganization, as requested by Entergy, is not in the public interest. Entergy certainly has not provided sufficient information to the Commission to enable it to determine if the resources supporting these new entities are sufficient and of a quality that would adequately guarantee its safe and continued operation. In fact, one of Entergy's arguments in support of its request for lightened regulation was that the plants had the full resources of Entergy supporting them, something that certainly is not intended by this complex reorganization and spin-off. It also appears, though the Commission may not be able to determine from the information provided to date by Entergy that the resources relied on to support the new corporation, and therefore the plants, are riskier than provided by Entergy as a whole. The new corporation would only have two basic sources of income: the power generated by the plants in each of the subsidiaries and a share of the management fees for the operation of nuclear plants. An extended outage at any of the plants could easily disrupt this cash-flow and could result in the abandonment of one or more of the limited liability companies. Then the question to be asked is who will pick up the pieces, local government?

Unfortunately, the filing leaves out far more information than it provides. In Entergy's 2007 Annual Report to Shareholders it states that the major reason for this reorganization is to provide value to the shareholders and make cash immediately available to the parent company, Entergy Corporation. In fact, it appears in other Entergy documents that it intends to transfer a significant portion of the funds that will be borrowed on behalf of the new entity to Entergy Corporation. There is no indication that this is in the public interest.

Accordingly, the County urges that the Commission reject Entergy's Petition or in the alternative, conduct a full hearing with discovery.

Respectfully submitted,



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