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K O D A C O N S U L T I N G , I N C . 2008 SEP 16 AM 9: 54

409 Main Street • Ridgefield, CT 06877

September 15, 2008

Via FedEx Airbill No. 8530 9186 4356

Hon. Jaclyn A. Brilling, Secretary  
State of New York Public Service Commission  
Three Empire State Plaza  
Albany, New York 12223-1350

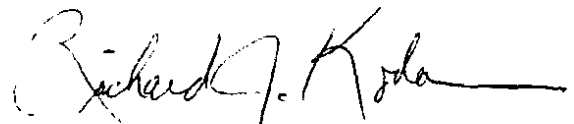
Re: CASE 08-E-0077 – Petition of the Entergy Nuclear Fitzpatrick, LLC, Entergy Nuclear Indian Point 3, LLC, Entergy Nuclear Operations Inc., NewCo and Entergy Corporation for a Declaratory Ruling Regarding a Corporate Reorganization or, in the Alternative, an Order Approving the Transaction and an Order Approving Debt Financings.

Dear Secretary Brilling:

Pursuant to the Ruling of Administrative Law Judges Lynch and Prestemon Setting Schedule for Further Comments, Issued August 26, 2008, International Brotherhood of Electrical Workers, Local 97 ("Local 97") through its undersigned consultant, respectfully provides Further Comments pertaining to the issues set forth in the Rulings of July 23 and August 14 in the above proceeding. Enclosed please find an original and five copies of the aforementioned comments.

Both an electronic copy and a hard copy of these comments are being sent via e-mail and 1<sup>st</sup> Class Mail to Administrative Law Judges Lynch and Prestemon. An electronic copy of these comments is being sent to all active parties in this proceeding listed as of September 10, 2008.

Respectfully submitted,



Richard J. Koda, Principal  
Consultant to  
International Brotherhood of  
Electrical Workers, Local 97

cc: Active Parties List as of September 10, 2008

David Falletta, President/Business Manager/Financial Secretary  
International Brotherhood of Electrical Workers, Local 97

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

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Petition of the Entergy Nuclear Fitzpatrick, 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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CASE 08-E-0077

**FURTHER COMMENTS OF INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, LOCAL 97 ON ISSUES SET FORTH IN THE  
RULING CONCERNING DISCOVERY AND SEEKING  
COMMENTS ON A PROPOSED PROCESS AND SCHEDULE ISSUED JULY 23,  
2008 AND MODIFIED IN THE RULING ON DISCOVERY, PROCESS,  
SCHEDULE AND SCOPE OF ISSUES ISSUED AUGUST 14, 2008**

**Introduction**

Pursuant to the Ruling Setting Schedule for Further Comments, Issued August 26, 2008, International Brotherhood of Electrical Workers, Local 97 ("Local 97") through its undersigned consultant, respectfully provides Further Comments pertaining to the issues set forth in the Rulings of July 23 and August 14:

- i. If the proposed transaction is approved, will the ability of Enexus to meet all financial obligations related to the ownership and operation of the Fitzpatrick and Indian Point plants differ from that of Entergy, currently, and if so, to what extent?
  - ii. If the proposed transaction is approved, will the ability of Enexus to fulfill other obligations associated with the ownership and operation of the plants be affected?
  - iii. What consequences will approval of the transaction have for the rights of Entergy and the Power Authority under the VSAs?
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- iv. May the Commission consider the VSAs in making its public interest determination under PSL § 70? Should it do so? Must it do so?
- v. For a transaction of the type proposed in this case, what is the appropriate standard of review for the public interest determination required under PSL § 70?
- vi. For a transaction of the type proposed in this case, what is the appropriate standard of review for the "reasonably necessary" determination required under PSL § 69?

Local 97 appreciates the opportunity to provide the following comments to the Administrative Law Judges for their consideration.

### **Summary**

Local 97 believes that if the proposed transaction is approved, Enexus' ability to meet all financial obligations related to the ownership and operation of the Fitzpatrick plant would be enhanced. Also, if the proposed transaction is approved, Enexus will have the ability to fulfill other obligations associated with the ownership and operation of the plant. Regarding the VSA issues, Local 97 has no comment since it appears that these issues are moot given the Resolution of Dispute Over the Application of VSAs to Certain Facts.<sup>1</sup> For a transaction of the type proposed in this case, at this time Local 97 takes no position on the appropriate standard of review for the public interest determination required under PSL § 70. Additionally, Local 97 has no comment to make regarding the appropriate standard of review for the "reasonably necessary" determination required under PSL § 69 for a transaction of the type proposed in this case.

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<sup>1</sup> Letter to Administrative Law Judges Lynch and Prestemon from Paul Gioia and Gregory Nickson for Petitioners dated August 25, 2008.

This case involves a very complex transaction which has not been finalized. After considering the implications of the proposed restructuring, Local 97 is of the opinion that the Petitioners' proposed restructuring request should be accepted by the examining judges and the Commission.

### **Detailed Comments**

#### **Background**

Local 97 has a vested interest in the safe and reliable operation of the FitzPatrick nuclear facility ("FitzPatrick"). A primary reason why Local 97 is participating in this restructuring proceeding is its concern for the safe and reliable operation of FitzPatrick at which Local 97 represents three-hundred fifty six (356) workers. Without these represented employees currently involved in the operations at FitzPatrick, this facility could not be operated safely nor reliably. As such Local 97 believes that its comments should receive appropriate consideration in the Commission's decision to approve or reject the Petitioners' restructuring request.

Local 97 originally had certain concerns with Entergy's proposed restructuring regarding how the present labor contract and the funding of wages, pensions and benefits would be secured, and how the proposed restructuring would affect the safe operation of the FitzPatrick facility. A Memorandum of Agreement ("MOA") which addresses these issues, by and among Enexus Energy Corporation, Entergy Nuclear FitzPatrick, LLC, Entergy Nuclear Operations, Inc. ("ENOI"), Equagen Nuclear LLC and Local 97, has been tentatively accepted by the parties to the MOA.<sup>2</sup>

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<sup>2</sup> A copy of the MOA will be provided when the MOA is finalized.

### **Ability of Enexus to Meet Financial Obligations Compared to Entergy Currently**

The ability of Enexus to meet its financial obligations to allow for the safe and reliable operation of the FitzPatrick facility is important to Local 97. Based on the projected cash flows, Local 97 believes that Enexus will be financially strong and that the FitzPatrick plant will benefit from Enexus devoting its entire resources to ensuring that this nuclear plant is operating safely and reliably. If the restructuring proposal is approved, the proposed Support Agreement would provide up to \$700 million of support to the nuclear plants, including the FitzPatrick plant. The amount of funds referenced in the proposed Support Agreement is significantly larger than available under the current support agreement. The restructuring proposal will also simplify the corporate structure of the nuclear companies being transferred to Enexus, which, when compared to Entergy, will allow Enexus to have improved access to the capital markets.

Furthermore, the MOA secures collective bargaining, wages, pension funds and other than pension benefits (“OPEBs”); therefore, Local 97’s concerns and those of its members regarding collective bargaining as well as the ability of the restructured entity to fund and maintain these employee related obligations and provide sufficient funds to safely operate the plant have been alleviated.

Since the owner of the FitzPatrick plant currently does not have access to the financial resources of Entergy's regulated utilities, the restructuring proposal, with Enexus' strong financial projections, the increased financial support and the management focus entirely on the merchant nuclear plants, represents an improvement over the current ownership structure.

## **Ability of Enexus to Fulfill Other Obligations Regarding Ownership and**

### **Operation**

Local 97 believes it is important that the current operator of the FitzPatrick plant will continue to operate the plant following the restructuring proposal. As a result, the employees that operate the plants now will remain employed by the same company and the plant will continue to benefit from their knowledge and experience in operating the plant safely and reliably. Following the restructuring proposal, Local 97 finds no reason why the owner and operator of the FitzPatrick plant won't continue to fulfill their obligations associated with owning and operating this nuclear plant.

Also, Local 97's concern and anxiety related to addressing operational issues at the FitzPatrick facility have been alleviated by the MOA. The MOA provides an example of the product of appropriate communication between the workforce and the restructured employer/operator. Local 97 believes that, through the support of the MOA and continued communication between management and workers at the FitzPatrick facility, the risk that Local 97 represented workers would be involved in future operating accidents (radiological or other) that may result in injury to workers or to the surrounding communities is significantly reduced.

Industrial psychology research has linked leader-member exchange (interaction/communication) and perceived organizational support to safety communication, safety commitment and accidents. The results of the research indicated that perceived organizational support was significantly related to safety communication and that leader-member exchange was significantly related to safety communication,

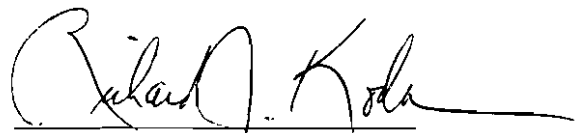
safety commitment and accidents.<sup>3</sup> With the workers perceiving management support and adequate communications at the workplace, the workers and general public would be at reduced risk of any accidents.

As a result of the MOA, Local 97 believes that the approval of the proposed restructuring would be beneficial to its members' interests and the interests of the general public.

### **CONCLUSION**

Local 97 respectfully requests that the Petitioners' proposed restructuring be accepted for the reasons stated above.

Dated: September 15, 2008  
Ridgefield, Connecticut

By:   
Richard J. Koda, Principal

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To: Honorable Gerald L. Lynch, Administrative Law Judge and  
Honorable David L. Prestemon, Administrative Law Judge  
Cc: Active Parties List as of 9-10-08

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<sup>3</sup> David A. Hofmann and Fredrick P. Morgeson, Texas A&M University, *Safety-Related Behavior as a Social Exchange: The Role of Perceived Organizational Support and Leader-Member Exchange*, Journal of Applied Psychology 1999, Vol. 84, No. 2, 286-296.