

Andrew J. Spano
County Executive

Office of the County Attorney
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County Attorney

May 12, 2008

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

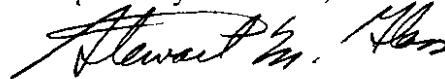
Re: Case 08-E-0077 – Verified Petition Filed by Entergy Nuclear Fitzpatrick, LLC, Entergy Nuclear Indian Point 2, LLC, Entergy Nuclear Indian Point 3, LLC, Entergy Nuclear Operations, Inc., NewCo and Entergy Corporation for a Declaratory Ruling Regarding a Corporate Reorganization, or, in the Alternative, an Order Approving the Transaction and an Order Approving Debt Financing.

Dear Secretary Brilling:

On behalf of the County of Westchester, enclosed please find an original and twenty-five copies of the County of Westchester'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. Pursuant to my discussion today with the Office of the Secretary, permission was granted to file with the Commission by electronic mail today with copies to be sent out by overnight delivery.

If you have any questions regarding this filing, please contact me at (914) 995-3143.

Respectfully submitted,



Stewart M. Glass
Senior Assistant County Attorney

SMG:me
Enclosures:

cc: Leonard VanRyn, Esq. by FedEx
Charlie Donaldson, Esq. by FedEx
Phillip Musegaas, Esq. by FedEx
Paul L. Gioia, Esq. by FedEx

**NEW YORK STATE
PUBLIC SERVICE COMMISSION**

Case 08-E-0077 Verified 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 Financing.

**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.**

By letter dated April 29, 2008, 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 "Petitioners" or "Entergy") requested permission to submit a response¹ to the comments filed by the New York State Attorney General's Office ("Attorney General"), Westchester County ("Westchester" or "County") and Riverkeeper, Inc. The Commission's regulations do not specifically authorize or prohibit such a response, nor does Entergy cite any authority for such a response. However, the County does not object, as long as the County is also provided an opportunity to be heard, because it believes that the response only further demonstrates the need for a full hearing on the issues. In fact, since Entergy's Response contains new information and raises additional issues and because significant events have occurred since the County submitted its Comments on April 4th the Commission should exercise its discretion and accept the County's Reply. If the Commission determines not to accept the County's Reply it should strike Entergy's Response.²

¹ In fact, Entergy did not send out its Response to the County by FedEx until May 1st.

DISCUSSION

Entergy apparently intends to spin-off certain assets (the non-utility nuclear power plants) in a new company to be owned by the same stockholders that presently own Entergy. Entergy has made certain claims to the Commission about the purported benefits that such a spinoff will accomplish. However, it more clearly states in other documents, such as its Financial Reports/Annual Reports the true intent of this transfer, which is to provide value to the shareholders and to make cash immediately available to Entergy Corporation.

It is apparent that the present proposal, as structured, produces revenue to Entergy and its stockholders while allowing the same stockholders, in a separate corporate shell, to retain the assets of the non-utility nuclear plants and their income stream, while avoiding responsibility/liability for those plants.

Entergy argues that concerns regarding financial resources of the new company do not justify rejection of its Petition. Nothing could be further from the truth. Entergy tries to confuse the issue by misdirection by claiming that the Attorney General was improperly relying on the assets of Entergy's regulated utilities and therefore there is no financial issue to be considered by the Commission. Without commenting on the original arguments of the Attorney General, it is sufficient to point out that the questions that require further analysis, include, but are not limited to, whether Entergy's transfer of assets and obligations to a new entity is in the best interests of the citizens and ratepayers of New York State; whether the public is harmed, including captive customers, and whether the new company will exercise market power.

Entergy is transferring the assets of certain nuclear plants to NewCo, a company that will be owned by the same stockholders that presently own Entergy. NewCo will incur debt, the proceeds of which will be given to Entergy. NewCo will have assets that have value only as long as they are operating. The cessation of operation at any of the plants

² There is no provision for such a Response, and even if there was, the Response was untimely.

will result in a tremendous liability, for decommissioning and other costs but without an income stream or other assets to sustain it.

The nuclear facilities in New York State were sold to Entergy in substantial part to relieve ratepayers, both those of the Con Edison service territory and of NYPA, from these potential liabilities. Upon information and belief, the consideration accepted from Entergy was in part lower than the plants' actual worth due to the value to ratepayers of being relieved from potential future liabilities. However, by the above denoted transfer Entergy is avoiding these liabilities and in fact appears to be shifting and reimposing these liabilities back on the very ratepayers that were supposed to be relieved from such liabilities.

If NewCo, or by whatever name Entergy wishes to call its "escape goat", is allowed to proceed in this manner, it will be the citizens of New York State and specifically the residents residing around these plants that will be left to clean up the mess with no financial assistance from the Parent company as discussed further below. The public will be harmed, including residential and business customers served by Consolidated Edison and the municipal entities served by NYPA, many of which are located in Westchester.

A cursory reading of various documents, both in this recent Response by Entergy and in its 2007 Annual Report, raises serious questions about whether the new entity will be able or even required to fulfill its obligations. For example, Entergy and NYPA have value sharing agreements that was originally part of the purchase agreements for Indian Point 3 and Fitzpatrick. Those Agreements were recently amended. The beneficiar(ies) of that Agreement is NYPA and the State of New York and should include those municipalities, including the County of Westchester and other municipal entities located in Westchester that are Southeast New York electric customers of NYPA. However, as stated on page 85 of the above mentioned Annual Report (copy attached) "(i)f Entergy or an Entergy affiliate ceases to own the plants, then, after January 2009, the annual payment obligation terminates for generation after the date that Entergy ownership ceases. Since the Sharing Agreement was part of the original consideration for the purchase of Indian Point 3 and Fitzpatrick, this

corporate reorganization may result in depriving NYPA, its customers and New York State from receiving the full consideration from the sale of these two facilities.

Even more telling is the “Form of SUPPORT AGREEMENT” between NewCo (“Parent”) and the various Entergy entities denoted as Attachment 5 (Revised) in Appendix 2 of the Petitioners’ April 29th filing, which clearly states that:

“(t)his Support Agreement is not, and nothing herein contained, and no action taken pursuant hereto by Parent shall be construed as, or deemed to constitute, a direct or indirect guarantee by Parent to any person of the payment of the **Operating Expenses or of any liability or obligation of any kind** or character whatsoever of the Subsidiary Licensees. This Agreement may, however, be relied upon by the NRC in determining the financial qualifications of each Subsidiary Licensee to hold the operating license for a Facility.” (*emphasis added*)

It goes on further to state:

“This Agreement shall also terminate with respect to the Operating Expenses and NRC Requirements applicable to a Facility whenever such Facility permanently ceases commercial operations and certification is made as to the permanent removal of fuel from the reactor vessel.”

The only asset of the subsidiary limited liability companies are the respective operating nuclear facility and the revenues it generates, which revenues apparently will be passed up to the Parent company. In effect, if a plant is shut down, for whatever reason, the above Agreement authorizes the new Parent 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. This appears to be nothing more than an attempt to siphon off all profits while the plants operate and after the revenue stream terminates to leave the remaining responsibilities and obligations to the ratepayers and taxpayers of the respective states.

Westchester has a direct stake in the outcome of this transfer and the eventual decommissioning of this facility. In fact, in 2001 Entergy Nuclear Northeast's and Entergy Nuclear Operations, Inc.'s Senior Vice President & Chief Operating Officer, Michael R. Kansler, made a number of commitments to the County on behalf of Entergy. Among those commitments was that MOX fuel will not be used at the Indian Point facilities, that Entergy will not import spent or used fuel into Westchester County, nor will it store spent or used fuel in Westchester County that comes from facilities other than the Indian Point Plants. Entergy further committed to removing high-level waste (spent fuel) in a reasonable amount of time after operation of the three units ends, to limit to a reasonable period the duration the facilities will remain in a "SAFESTOR" condition and to eventually return the surrounding site to a "Greenfield" condition. (copy of March 16, 2001 letter attached). It now appears that Entergy is attempting to avoid those commitments, as well as numerous others, as noted above.

In fact, 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. Therefore any weakening of the standards for decommissioning will benefit Entergy or the new Parent company and will only further burden the local communities in which these plants reside. This is of particular concern when the full extents of these decommissioning funds are considered. It was quoted that in 2000 decommissioning funds made up over 7% of Entergy's total assets.³

The information that has been made available to the public, and presumably to the Commission, in the filings by the Petitioners, consists of just a series of headings with all of the essential material related to assets, liabilities and equity redacted. The County is unable, from what has been provided to date, to derive any degree of clarity as to NewCo's assets and liabilities. Entergy claims this will change when NewCo's Form 10 is filed at the Securities and Exchange Commission on or about May 13, 2008. However, Petitioners clearly admit

³ The New York Observer, July 21, 2002 (<http://www.observer.com/2002/zap-entergy-winning-battle-indian-point>).

that NewCo will issue up to \$4.5 billion in debt (Petitioner's Response, p. 22) plus another \$2 billion in equity loans.

"Because nuclear facilities have a greater impact on the public interest than hydro and fossil facilities, Article 4 implementation for nuclear wholesale generators requires reporting and monitoring requirements beyond those applicable to operators of non-nuclear generators that are lightly regulated. More complete information on nuclear facilities is needed because nuclear units are more complex to operate and maintain than other types of generation units. Moreover, the potential for extended outages is greater, given the stringent regulatory scrutiny directed towards the safe operation of these facilities. Additional reporting and monitoring requirements will ensure that the public is adequately informed of events that occur at nuclear facilities and that the impact of these major generators on the availability of supply in New York is adequately tracked."⁴ "Accordingly, nuclear generators will be subject to more requirements under PSL Article IV than other forms of generation." "Entergy 1 and II are therefore subject to provisions ... that prevent producers of electricity from taking actions that are contrary to the public interest."⁵ These stricter standards must be applied when a transfer, such as proposed by Petitioners, is before the Commission.

It is the responsibility of the Commission to determine whether the transfer would result in "safe and adequate" electric service at "just and reasonable" rates.⁶ Even when the Commission has determined to treat a matter under the provisions of "lightened regulation" it clearly did so at its own option. The Commission was not required to do so. No one can argue that a nuclear power plant is the same as a hydro or fossil fuel electric plant. Therefore, the Petitioners' argument that this transfer should be treated with "lightened regulation" is ill

⁴ Case 04-E-0030 - Petition of R.E. Ginna Nuclear Power Plant, LLC for a Declaratory Ruling on Regulatory Regime. ORDER PROVIDING FOR LIGHTENED REGULATION OF NUCLEAR GENERATION FACILITY OWNER (Issued and Effective May 20, 2004) (p. 5)

⁵ Case 01-E-0113 Entergy Nuclear Indian Point 2, LLC and Entergy Nuclear Operations, Inc. – Joint Petition for a Declaratory Ruling that Lightened Regulation be Applied; Case 00-E-1225 Entergy Nuclear Fitzpatrick, LLC, Entergy Nuclear Indian Point 3, LLC, and Entergy Nuclear Operations, Inc. – Joint Petition for a Declaratory Ruling that Lightened Regulation be Applied Concerning Their Purchase of Nuclear Power Facilities From the Power Authority of the State of New York ORDER PROVIDING FOR LIGHTENED REGULATION OF NUCLEAR GENERATING FACILITIES (Issued and Effective August 31, 2001) (p. 9)

⁶ PSL §65(1)

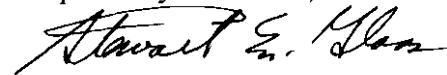
advised. In fact, Petitioners are arguing for less than lightened regulation, they are asking for a declaratory ruling without any opportunity for a hearing or review of the facts.

PSL §69, 69-a and 70 provide for the review of securities issuances, reorganizations, and transfers of securities or works or systems.⁷ Under Public Service Law §66 the Commission has authority, actually the responsibility, to examine the books, records, contracts, documents and papers of any electric corporations. There is no reason for an exception in this case. Accordingly, the Commission should proceed with a full hearing on the issues related to this requested corporate transfer so that all aspects and ramifications of such a transfer are clearly provided and examined.

CONCLUSION

For the above captioned reasons and the reasons previously set forth in the County's Comments of April 4, 2008, the Commission should deny the relief requested by the Petitioners and conduct a full hearing on the proposed "Corporate Reorganization".

Respectfully submitted,



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⁷ Ibid, (p. 10)

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS CONTINUED

net insurance recoveries for the losses caused by the hurricanes, including the effects of the primary insurance aggregation limit being exceeded and the litigation against the excess insurer, will be approximately \$270 million, including \$31 million for Entergy Gulf States Louisiana, \$27 million for Entergy Louisiana, \$151 million for Entergy New Orleans and \$51 million for Entergy Texas.

To the extent that Entergy New Orleans receives insurance proceeds for future construction expenditures associated with rebuilding its gas system, the October 2006 City Council resolution approving the settlement of Entergy New Orleans' rate and storm-cost recovery filings requires Entergy New Orleans to record those proceeds in a designated sub-account of other deferred credits. This other deferred credit is shown as "Gas system rebuild insurance proceeds" on Entergy New Orleans' balance sheet.

NYPA VALUE SHARING AGREEMENTS

Non-Utility Nuclear's purchase of the FitzPatrick and Indian Point 3 plants from NYPA included value sharing agreements with NYPA. In October 2007, Non-Utility Nuclear and NYPA amended and restated the value sharing agreements to clarify and amend certain provisions of the original terms. Under the amended value sharing agreements, Non-Utility Nuclear will make annual payments to NYPA based on the generation output of the Indian Point 3 and FitzPatrick plants from January 2007 through December 2014. Non-Utility Nuclear will pay NYPA \$6.59 per MWh for power sold from Indian Point 3, up to an annual cap of \$48 million, and \$3.91 per MWh for power sold from FitzPatrick, up to an annual cap of \$24 million. The annual payment for each year is due by January 15 of the following year, with the payment for year 2007 output due on January 15, 2008. If Entergy or an Entergy affiliate ceases to own the plants, then, after January 2009, the annual payment obligation terminates for generation after the date that Entergy ownership ceases.

Non-Utility Nuclear will record its liability for payments to NYPA as power is generated and sold by Indian Point 3 and FitzPatrick. Non-Utility Nuclear recorded a \$72 million liability for generation through December 31, 2007. An amount equal to the liability will be recorded to the plant asset account as contingent purchase price consideration for the plants. This amount will be depreciated over the expected remaining useful life of the plants.

Non-Utility Nuclear had previously calculated that \$0 was owed to NYPA under the value sharing agreements for generation output in 2005 and 2006. In November 2006, NYPA filed a demand for arbitration claiming that \$90.5 million was due to NYPA for 2005 under these agreements, and NYPA filed in April 2007 an amended demand for arbitration claiming that an additional \$54 million was due to NYPA for 2006 under the value sharing agreements. As part of their agreement to amend the value sharing agreements, Non-Utility Nuclear and NYPA waived all present and future claims under the previous value sharing terms, including the claims for 2005 and 2006 pending before the arbitrator.

EMPLOYMENT AND LABOR-RELATED PROCEEDINGS

The Registrant Subsidiaries and other Entergy subsidiaries are responding to various lawsuits in both state and federal courts and to other labor-related proceedings filed by current and former employees. These actions include, but are not limited to, allegations of wrongful employment actions; wage disputes and other claims under the Fair Labor Standards Act or its state counterparts; claims of race, gender and disability discrimination; disputes arising under collective bargaining agreements; unfair labor practice proceedings and other administrative proceedings before the National Labor Relations

Board; claims of retaliation; and claims for or regarding benefits under various Entergy Corporation sponsored plans. Entergy and the Registrant Subsidiaries are responding to these suits and proceedings and deny liability to the claimants.

ASBESTOS AND HAZARDOUS MATERIAL LITIGATION

Numerous lawsuits have been filed in federal and state courts in Texas, Louisiana, and Mississippi primarily by contractor employees in the 1950-1980 timeframe against Entergy Gulf States, Inc., Entergy Louisiana, Entergy New Orleans, and Entergy Mississippi as premises owners of power plants, for damages caused by alleged exposure to asbestos or other hazardous material. Many other defendants are named in these lawsuits as well. Presently, there are approximately 600 lawsuits involving approximately 8,000 claimants. Management believes that adequate provisions have been established to cover any exposure. Additionally, negotiations continue with insurers to recover reimbursements. Management believes that loss exposure has been and will continue to be handled successfully so that the ultimate resolution of these matters will not be material, in the aggregate, to the financial position or results of operation of these companies.

NOTE 9. ASSET RETIREMENT OBLIGATIONS

SFAS 143, "Accounting for Asset Retirement Obligations," requires the recording of liabilities for all legal obligations associated with the retirement of long-lived assets that result from the normal operation of those assets. For Entergy, substantially all of its asset retirement obligations consist of its liability for decommissioning its nuclear power plants. In addition, an insignificant amount of removal costs associated with non-nuclear power plants is also included in the decommissioning line item on the balance sheets.

These liabilities are recorded at their fair values (which are the present values of the estimated future cash outflows) in the period in which they are incurred, with an accompanying addition to the recorded cost of the long-lived asset. The asset retirement obligation is accreted each year through a charge to expense, to reflect the time value of money for this present value obligation. The accretion will continue through the completion of the asset retirement activity. The amounts added to the carrying amounts of the long-lived assets will be depreciated over the useful lives of the assets. The application of SFAS 143 is expected to be earnings neutral to the rate-regulated business of the Registrant Subsidiaries.

In accordance with ratemaking treatment and as required by SFAS 71, the depreciation provisions for the Utility operating companies and System Energy include a component for removal costs that are not asset retirement obligations under SFAS 143. In accordance with regulatory accounting principles, the Utility operating companies and System Energy have recorded regulatory assets (liabilities) in the following amounts to reflect their estimates of the difference between estimated incurred removal costs and estimated removal costs recovered in rates (in millions):

December 31,	2007	2006
Entergy Arkansas	\$ 23.0	\$45.0
Entergy Gulf States Louisiana	\$(13.9)	\$ 5.6
Entergy Louisiana	\$(64.0)	\$ 2.3
Entergy Mississippi	\$ 35.7	\$41.2
Entergy New Orleans	\$ 1.5	\$13.9
Entergy Texas	\$ (4.9)	\$ (1.8)
System Energy	\$ 16.9	\$20.7



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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.

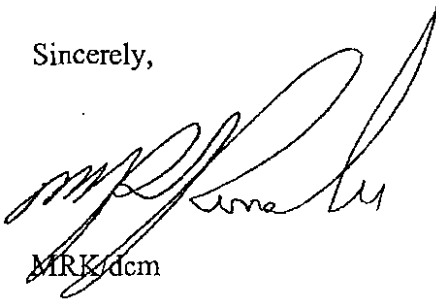
March 16, 2001

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 R. Kohn", is written over the word "Sincerely,". The signature is fluid and cursive, with a large, sweeping "M" and "K".

MRK/dcm