

BEFORE THE
STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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In the Matter of 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
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Case 08-E-0077

ATTACHMENT TO LONG ENVIRONMENTAL ASSESSMENT FORM

OF

**ENERGY NUCLEAR FITZPATRICK, LLC
ENERGY NUCLEAR INDIAN POINT 2, LLC
ENERGY NUCLEAR INDIAN POINT 3, LLC
ENERGY NUCLEAR OPERATIONS, INC.
NEWCO AND ENTERGY CORPORATION**

I. Introduction

The proposed action at issue is New York State Public Service Commission ("Commission") approval, pursuant to Section 70 of the New York Public Service Law, for Entergy Corporation ("Entergy") to transfer its indirect ownership interest in Entergy Nuclear FitzPatrick, LLC ("ENFP"), Entergy Nuclear Indian Point 2, LLC ("ENIP2") and Entergy Nuclear Indian Point 3, LLC ("ENIP3") to NewCo (now Enexus Energy Corporation or "Enexus"), a newly formed holding company (collectively the "Corporate Reorganization" or "Proposed Action" or "Project"). Prior to Enexus becoming a separate publicly traded company, Enexus and Entergy will establish a joint venture through Equagen LLC, a limited liability company. Equagen LLC will be owned 50% (indirectly) by Enexus and 50% (indirectly) by Entergy Corporation. As a result of a series of corporate transactions, Equagen LLC will directly own Entergy Nuclear Operations, Inc. ("ENO") which will be converted into a limited liability company named Equagen Nuclear, LLC.

II. Background

ENFP, a Delaware limited liability company, is currently a direct wholly-owned subsidiary of Entergy Nuclear New York Investment Company I, which in turn is a direct wholly-owned subsidiary of Entergy Nuclear Holding Company #1. ENFP's ultimate parent corporation is Entergy Corporation. ENFP's plant office is located in Lycoming, Oswego County, New York. ENFP owns the James A. FitzPatrick Nuclear Power Plant. ("FitzPatrick").

ENIP2, a Delaware limited liability company, is currently a direct wholly-owned subsidiary of Entergy Nuclear Holding Company #3, LLC. ENIP2's ultimate parent corporation is Entergy Corporation. ENIP2's plant office is located in the Village of Buchanan, Westchester County, New York. ENIP2 owns the Indian Point 2 Nuclear Generating Unit ("IP2") and the retired Indian Point 1 Nuclear Generating Unit ("IP1").

ENIP3, a Delaware limited liability company, is currently a direct wholly-owned subsidiary of Entergy Nuclear New York Investment Company I, which in turn is a direct wholly-owned subsidiary of Entergy Nuclear Holding Company #1. ENIP3's ultimate parent corporation is Entergy Corporation. ENIP3's plant office is located in the Village of Buchanan, Westchester County, New York. ENIP3 owns the Indian Point Nuclear Generating Unit No. 3 ("IP3").

ENO, a Delaware corporation, is currently a direct wholly owned subsidiary of Entergy Nuclear Holding Company #2 and an indirect wholly-owned subsidiary of Entergy Corporation. ENO's principal place of business is located in White Plains, Westchester County, New York. ENO is licensed to operate and/or maintain FitzPatrick, IP1, IP2 and IP3 (collectively, the "New York Facilities").

Enexus will be a publicly traded corporation. Enexus will own nearly 5,000 megawatts of nuclear generation, most of which is located in the northeastern United States, including the New York facilities. Enexus will be headquartered in Ridgeland, Mississippi. Approximately 80.1% of the shares of Enexus will be distributed directly to the shareholders of Entergy Corporation. Enexus will thereafter be a separate publicly traded company. The balance of the shares will be held in a trust. The trust will own and hold legal title to approximately 19.9% of Enexus' shares for Entergy and Entergy's stakeholders. Within a fixed period of time after the spin-off, Entergy is expected to exchange the Enexus shares retained in the trust for Entergy shares through an exchange offer or series of exchange offers. In any exchange offer, Entergy shareholders would be invited to tender their shares of Entergy common stock for shares of Enexus held by the trust at a ratio to be determined by Entergy. At the closing of any exchange offer, the trustee would deliver the required Enexus shares to the tendering Entergy shareholders. Any tendered Entergy shares would be delivered to Entergy. If no exchange offer occurs, or there are any Enexus shares remaining in the trust after the final exchange offer, then any remaining shares held by the Trustee will be distributed to Entergy shareholders of record. The term of the Trust Agreement will be up to 18 months.

EquaGen LLC will be a limited liability company. EquaGen LLC will be owned 50% by Entergy Corporation (indirectly) and 50% by Enexus (indirectly). As a result of a series of

corporate transactions, Equagen LLC will directly own ENO which will be converted into a limited liability company and renamed Equagen Nuclear, LLC.

Entergy Corporation is headquartered in New Orleans, Louisiana. Entergy Corporation is an energy company with power production, distribution operations and related diversified services. Entergy Corporation owns, manages or invests in power plants generating nearly 30,000 megawatts of electricity. Entergy Corporation, through its subsidiaries, owns and operates eleven nuclear power plants at nine sites in the United States.

The Corporate Reorganization is fully consistent with the continued ownership and safe, secure and reliable operation and maintenance of the New York Facilities. There will be no physical changes to the New York Facilities and no changes in the personnel or day-to-day operations of the New York Facilities. The joint ownership of ENOI ensures that the core nuclear operations expertise currently in place at the New York facilities will remain after the Corporate Reorganization. ENOI will also continue to operate and make capital improvements at the plants in accordance with the operating agreements and in accordance with the operating licenses and applicable laws and regulatory requirements. The Corporate Reorganization will not affect any environmental permits or cause new environmental impacts. The Corporate Reorganization will allow greater management focus on each of the companies and provide the Petitioners with increased financial flexibility and enhance their ability to finance their operations efficiently.

In addition to the Commission's approval sought herein, certain other federal and state regulatory filings and approvals must be made and approvals obtained, including filings with the United States Nuclear Regulatory Commission, the Federal Energy Regulatory Commission, and the Vermont Public Service Board, as well as a Private Letter Ruling from the Internal Revenue Service and the appropriate filings with the U.S. Securities and Exchange Commission. In addition, filings in compliance with the Hart Scott Rodino Antitrust Improvements Act of 1976, as amended, are required.

Following the Commission's approval, certain operating permits or approvals for the New York Facilities issued by the Department of Environmental Conservation and the Westchester County Department of Health will be transferred to Enexus. However, because these transfers will not involve any material change in permit conditions or the scope of permitted activities, these subsequent permit transfers are Type II actions not subject to review under SEQRA. *See* 6 NYCRR 617.5(b)(26).

III. Responses to Individual Questions in the Long EAF

The same factual determination is needed to evaluate both potential environmental impacts under SEQRA and potential for harm to captive ratepayers under PSL section 70 – namely, whether Enexus' financial and other capabilities will be at least as strong as Entergy's for purposes of continuing the safe, secure and reliable operation of the New York nuclear facilities. A determination that Enexus meets this standard means that Enexus will be as capable as Entergy of avoiding both harm to captive ratepayers (in the form of diminished reliability) and harm to the environment (in the form of increased air emissions from the fossil plants that would have to operate while the nuclear facilities were out of service, or the availability of lesser

resources to support decommissioning). In other words, the Commission's determination that the Corporate Reorganization will not pose a risk to reliability also means that there is no risk associated with the Corporate Reorganization of increased air emissions from fossil plants. In addition, the Nuclear Regulatory Commission's decommissioning regulations and the Petitioners' Indian Point Site Restoration Trust commitment ensure there is no environmental impact from the Corporate Reorganization with respect to site restoration.

As described above, the Corporate Reorganization does not involve *any* alteration of the physical environment or the New York Facilities, which have been in operation for more than thirty years at their present locations. Because there is no physical construction or alteration of the environment associated with the Corporate Reorganization, comparisons between existing and post-project environmental conditions are not applicable in the context of the action at issue – namely, the Commission's approval of the Corporate Reorganization. Accordingly, the response "N.A." or "Not Applicable" appears frequently on the Long Form EAF.

Some of the questions on the Long Form EAF presume that the Proposed Action will result in alteration of the environment, the discharge of waste, or operational consequences at the New York Facilities. For example, question B(1)(b) asks for the "Project acreage to be developed," and question B(8) asks, "Will blasting occur during construction?" Such questions are not answered on the Long Form EAF because the underlying presumption is inapplicable to the Proposed Action. Where specific answers are provided on the Long Form EAF, those answers should not be interpreted to suggest that there will be any physical alteration of the environment or the New York Facilities as a result of the Corporate Reorganization.

A. Site Description – Indian Point

Indian Point Units 1, 2 and 3 are located on the eastern bank of the Hudson River at Indian Point, in the Village of Buchanan, in upper Westchester County. The site contains facilities located on approximately 239 acres, bounded on the north, south, and east by privately-owned land and on the west by the Hudson River. The site is located about 24 miles north of the New York City boundary line, and the nearest urban area within six miles of the site is the City of Peekskill, which is located approximately 2.5 miles northeast of Indian Point.

Units 2 and 3 include containment buildings, auxiliary buildings, turbine buildings, intake structures, a discharge structure, switchyard, associated transmission lines, and an Independent Spent Fuel Storage Installation (“ISFSI”). Unit 1 is in safe storage until subsequent decommissioning. The immediate area around the Indian Point facilities is completely enclosed by a fence with access controlled by a security gate. Areas adjacent to Indian Point are primarily residential, large parks, and military installations.

Approximate land cover is as follows: open water ~ 1%; commercial, industrial and transportation ~ 52%; deciduous forest ~ 3%; evergreen forest ~ 17%; mixed forest ~24%; and urban/recreational grasses ~ 3%.

B. Site Description – James A. FitzPatrick

FitzPatrick is located on approximately 702 acres of land on the south shore of Lake Ontario, at a location known as Nine Mile Point. The plant is in a rural area, approximately seven miles northeast of Oswego, 36 miles north of Syracuse, and 65 miles east of Rochester.

The area surrounding FitzPatrick is generally flat, rising gently from Lake Ontario to the Appalachian Uplands on the south, and bounded on the east by the Tug Hill Upland. The site is partially wooded and surrounded primarily by residential and recreational areas except for the adjacent Nine Mile Point Nuclear Station. There is no residential, agricultural, or industrial development (other than FitzPatrick) on the FitzPatrick site.

The buildings associated with FitzPatrick lie on the northwest part of the site. Plant features include the reactor building, turbine building, administration building and control room, ISFSI, and several support facilities. The facility is enclosed by a security fence and access to the site is controlled.

Dominant plant communities on the site include 66% forest, 21% open grasslands, and 10% wetlands and ponds.

IV. Conclusion

The Corporate Reorganization will have no potentially significant environmental impact. There are no proposed operational changes for the New York Facilities as a result of the Corporate Reorganization. Petitioners will continue to operate in accordance with all of their existing New York permits and certificates.

This conclusion is consistent with prior Commission decisions holding that transfers of ownership of electric generating facilities do not, by themselves, lead to significant environmental impacts:

The present action will not, in and of itself, directly lead to more than a change in ownership of the sites and facilities. The generating facilities that will be transferred will continue to operate in accordance with existing environmental permits, which will not change as a result of the sales. The plants are now, and will continue, operating within limits imposed by federal, state and local environmental laws and regulations. Permits are unaffected by the transfer of ownership. Any new construction, addition or repair would be subjected to appropriate environmental review.

Case 96-E-0897 - In the Matter of Consolidated Edison Company of New York, Inc., Comprehensive Order Approving Transfers Of Generating Facilities and Making Other Findings, at 40 (Jun. 17, 1999). Similarly, where no changes to the operation of the facilities will result from the transfer of ownership, the Commission has concluded that the change in ownership will not result in adverse environmental impacts. See Case 05-E-1341 - Orion Power Holdings, Inc., et. al., Order Approving Transfer and Financings and Making Other Findings (Feb. 15, 2006); Case 08-M-0436 - Keyspan-Ravenswood LLC, et al., Order Approving Transfer and Making Other Findings (Aug. 21, 2008). The same is true for the Proposed Action here. The Proposed Action at issue is merely a change in the corporate ownership and structure at the parent holding company level. The New York facilities will continue to operate under their existing approvals and no operational changes at the New York facilities will result. Thus, the Commission should issue a Negative Declaration for the Proposed Action.