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September 15, 2008

VIA HAND DELIVERY

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

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:

On behalf of 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, the "Petitioners"), enclosed for filing please find an original and five (5) copies of the Petitioners' Verified Initial Comments in accordance with the July 23, 2008 Ruling Concerning Discovery and Seeking Comments on a Proposed Process and Schedule and the August 14, 2008 Ruling on Discovery, Process, Schedule and Scope of Issues issued by Judges Lynch and Prestemon in the above-referenced matter.

If you have any questions regarding this filing, please contact us.

Respectfully submitted,

Paul L. Gioia
Gregory G. Nickson

PLG:gn (100158)
Enclosures
cc: Honorable Gerald L. Lynch (via e-mail and hand delivery)
Honorable David L. Prestemon (via e-mail and hand delivery)
Active Party Service List for Case 08-E-0077 (via e-mail and regular mail)

BEFORE THE
STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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In the Matter of the 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 Financings

Case 08-E-0077

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PETITIONERS' VERIFIED INITIAL COMMENTS

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Dated: September 15, 2008

BEFORE THE
STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

In the Matter of the 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 Financings	Case 08-E-0077

PETITIONERS' VERIFIED INTIAL COMMENTS

On behalf of Entergy Nuclear FitzPatrick, LLC ("ENFP"), Entergy Nuclear Indian Point 2, LLC ("ENIP2"), Entergy Nuclear Indian Point 3, LLC ("ENIP3"), Entergy Nuclear Operations, Inc. ("ENO"), NewCo[1] and Entergy Corporation ("Entergy") (collectively, the "Petitioners"), the undersigned attorneys respectfully submit the following in response to the July 23, 2008 Ruling Concerning Discovery and Seeking Comments on a Proposed Process and Schedule and the August 14, 2008 Ruling on Discovery, Process, Schedule and Scope of Issues issued in the above-referenced matter (the "July 23 Ruling" and "August 14 Ruling", respectively).

I. BACKGROUND AND PROCEDURAL HISTORY

Shortly after New York State determined that a competitive wholesale electricity market and the divestiture of generation from vertically integrated utilities are in the public

[1] Entergy has determined that NewCo will be named Enexus Energy Corporation ("Enexus"). NewCo will be referred to as Enexus throughout these comments.

interest,[2] Entergy began acquiring its non-utility nuclear plants located in New York State.[3] Entergy acquired FitzPatrick and IP3 in March 2000, when ENFP and ENIP3 entered into contracts with the New York Power Authority ("NYPA") for their purchase, and Entergy acquired IP1 and IP2 in August 2001, when the New York State Public Service Commission ("Commission") authorized Consolidated Edison Company of New York, Inc. to transfer IP1 and IP2 to ENIP2. With the acquisition of the New York Facilities, Entergy became an active and significant participant in New York's competitive electricity market.

The New York Facilities comprise three (3) of Entergy's six (6) non-utility nuclear plants. In addition to the six (6) non-utility nuclear plants, Entergy owns five (5) nuclear power plants that are a part of Entergy's regulated utility business. Owning both regulated and non-utility nuclear plants have presented Entergy with some unique challenges, and, after careful consideration, Entergy's Board of Directors concluded that separating the two lines of business would benefit both its regulated and non-regulated businesses. Entergy will accomplish the separation by a series of transactions that will transfer Entergy's non-utility nuclear plants to a newly created company, Enexus, whose common stock and ownership will be distributed directly to the shareholders of Entergy (the "Corporate Reorganization").

The Corporate Reorganization will isolate and simplify the structure of the businesses that comprise Entergy's wholesale nuclear business segment and would enhance the ability of regulators, analysts, capital markets, and shareholders to understand and evaluate this business segment. This will permit Enexus to take organizational and financial actions that will allow the New York non-utility nuclear companies to more effectively participate in the

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[2] See Cases 94-E-0952 et al. - In the Matter of Competitive Opportunities Regarding Electric Service, Opinion No. 96-12 - Opinion and Order Regarding Competitive Opportunities for Electric Service (May 20, 1996).

[3] Entergy's non-utility nuclear plants located in New York State include: James A. FitzPatrick Nuclear Power Plant ("FitzPatrick"), Indian Point Nuclear Generating Unit No. 2 ("IP2"), Indian Point Nuclear Generating Unit No. 3 ("IP3") and the retired Indian Point 1 Generating Plant ("IP1") (collectively, the "New York Facilities").

competitive electricity market in New York, which the Commission has found to be in the public interest and in the long-term interest of retail electricity consumers. Additionally, as part of the Corporate Reorganization, Enexus and Entergy will establish a joint venture through EquaGen LLC ("EquaGen"). EquaGen will be owned 50% by Entergy and 50% by Enexus, and as a result of a series of corporate transactions, EquaGen will directly own ENO, the licensed operator of the New York Facilities. ENO will be converted into a limited liability company and be renamed EquaGen Nuclear LLC ("EquaGen Nuclear"). The same licensed operator and the same employees who operate the New York Facilities today will continue to operate the facilities under an Amended and Restated Operating Agreement between EquaGen Nuclear and the owners of the New York Facilities.

In order to accomplish the Corporate Reorganization, Enexus plans to issue up to $4.5 billion in Senior Notes, and enter into Credit Facilities (not to exceed $2.0 billion) and Hedging Arrangements[4] (collectively, the "Debt Financings").[5] Enexus will use a portion of the Debt Financings to reduce, retire or pay off certain Entergy debt and capital interests associated with the non-utility nuclear plants, that Entergy used to finance the acquisition of these assets. The Debt Financings will also be used to provide working capital to Enexus.

Before the Petitioners can carry-out the Corporate Reorganization and Debt Financings, they are required to obtain regulatory approval from various regulatory bodies, including the Commission. Accordingly, on January 28, 2008, the Petitioners filed the instant Petition for a Declaratory Ruling Regarding a Corporate Reorganization or, in the Alternative, an Order Approving the Transaction and an Order Approving Debt Financings in Case 08-E-0077

[4] Hedging Arrangements could include but are not limited to a Commodity Collateral Revolver and direct liens on the nuclear assets provided to Power Purchase Agreement ("PPA") counterparties. Given the nature of the Hedging Arrangements, Petitioners are unable to specify an "up to" amount.

[5] The Debt Financings are described in greater detail in the Petition and in the following discovery responses: AG-25 (EN-33), AG-36 (EN-55), AG-54 (EN-79), DPS-2 (EN-21), and WC-2 (EN-87).

(the "Petition"). The Petitioners are required to obtain approval under the New York State Public Service Law ("PSL") Section 70 for the Corporate Reorganization and approval under PSL Section 69 for the Debt Financings.

Following the filing of the Petition, and after comments were filed by various parties, on May 23, 2008, the Commission issued an Order Establishing Further Procedures (the "Order"), which prescribed a minimum sixty (60) day discovery period for this matter.[6] Following the issuance of the Order, discovery commenced immediately, with the New York State Attorney General's Office ("Attorney General") serving nineteen (19) information requests on the Petitioners on May 23, 2008. On May 27, 2008, the Department of Public Service Staff ("Staff") also served discovery requests on the Petitioners. Both the Attorney General and Staff served additional requests, as did Assemblyman Richard Brodsky, Riverkeeper, Westchester County and Oswego County. In total, the parties served a combined one hundred sixty-two (162), multi-part discovery requests on the Petitioners.

In responding to the information requests, the Petitioners provided thousands of pages of relevant documents.[7] On August 1, 2008, a meeting was held at Staff's request to allow the parties to directly question knowledgeable representatives of Petitioners to gain clarification on certain of Petitioners' discovery responses. The Petitioners provided additional information in response to questions raised at the meeting. Through the discovery responses and the information provided at and following the August 1 meeting, the Petitioners have provided all relevant and material information consistent with both the Commission's discovery rules and the

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[6] Case 08-E-0077 - 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 Financings, Order Establishing Further Procedures (May 13, 2008).

[7] The Petitioners also provided the parties relevant information (e.g., Enexus' Form 10 filing with the Securities and Exchange Commission) that was not in response to any discovery request.

scope of discovery set forth in footnote 9 of the Order. The Petitioners, therefore, have provided the parties to this proceeding all the information reasonably necessary for a full and fair evaluation of the proposed Corporate Reorganization and Debt Financings.

The discovery period closed on August 21, 2008 and the 24-day initial comment period commenced on August 22, 2008. The July 23 Ruling, as supplemented by the August 14 Ruling, requested the parties comment on the following issues: i) Enexus' ability to meet all financial obligations related to the ownership and operation of the FitzPatrick, IP2 and IP3; ii) Enexus' ability to fulfill other obligations associated with the ownership and operation of the plants; iii) the consequences the transaction will have for the rights of Entergy and NYPA under the Value Sharing Agreements ("VSAs"); iv) whether the Commission may consider the VSAs in making its public interest determination under PSL Section 70; v) the appropriate standard of review for the public interest determination required under PSL Section 70 for a transaction of the type proposed; and vi) the appropriate standard of review for the "reasonably necessary" determination required under PSL Section 69 for a transaction of the type proposed. These issues are addressed in depth below.

II. SECTION 70 STANDARD OF REVIEW

A. Application of the Section 70 Standard of Review in this Proceeding

The application of the Section 70 public interest standard in this proceeding must take into consideration the Commission's determination that a competitive wholesale electricity market is in the public interest and the Commission's establishment of a lightened regulation regime to facilitate the participation of merchant generators in the competitive wholesale electricity market. The Commission has granted Petitioners lightened regulation status.[8] The

[8] See 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 and Case 00-E-1225 - Entergy Nuclear

Commission has a well-established policy that a vibrant competitive wholesale electricity market is in the public interest and in the best interests of retail ratepayers.[9] In fact, the Commission was the driving force in the formation of the New York Independent System Operator ("NYISO") and the current competitive electricity market in New York. Among the reasons for the Commission's support for a competitive wholesale electricity market was its determination that competition would bring benefits to retail customers, including lower electricity prices than would occur under a regulated environment.[10] The Commission also determined that the divestiture of generation from vertically integrated utilities is generally in the public interest.[11]

The Commission has recognized that if the competitive market is to remain vibrant, and its expected benefits are to be achieved, competitive wholesale generators should be allowed to make the business and financial decisions that will permit them to compete effectively in the competitive wholesale electricity market.[12] In this regard, the Commission has established a lightened regulatory regime for wholesale generators in New York, including owners and operators of nuclear generating facilities.[13] Under this lightened regulatory regime, the Commission has decided that PSL Section 70 regulation would not adhere to a transfer of

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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 Facility (Aug. 31, 2001); 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, Declaratory Ruling on Lightened Regulation (Aug. 23, 2000) ("Entergy Nuclear Lightened Regulation Orders").

9 See Cases 94-E-0952 et al. - In the Matter of Competitive Opportunities Regarding Electric Service, Opinion No. 96-12 - Opinion and Order Regarding Competitive Opportunities for Electric Service (May 20, 1996).

10 Id. at 26.

11 Id. at 59.

12 See Case 99-E-0148 - AES Eastern Energy, L.P. and AES Creative Resources, L.P. – Petition on Regulation, Order Providing for Lightened Regulation (Apr. 23, 1999); Case 98-E-1670, Carr Street Generating Station, L.P. – Petition on Regulation, Order Providing for Lightened Regulation (Apr. 23, 1999).

13 Id.; see also, Entergy Nuclear Lightened Regulation Orders.

ownership interests in parent entities upstream from the affiliates owning and operating New York competitive electric generation facilities, unless there was a potential for harm to the interests of captive utility ratepayers sufficient to override the presumption (the "Wallkill Presumption").[14] In other words, there is a presumption that the public interest requirement of Section 70 with respect to a transfer of ownership of a merchant wholesale generator participating in the competitive wholesale electricity market will be satisfied without a Commission review of the transfer.

In this case, however, the Commission determined that Section 70 review was appropriate because it involves the proposed reorganization of nuclear facilities that "are unique in characteristics and of crucial importance to preserving the adequacy of generation service to New York ratepayers."[15] While the Commission did order a more thorough review of this transaction then would be conducted under the Wallkill Presumption, the scope of the review ordered by the Commission was limited and carefully circumscribed. In its Order, the Commission expressly stated that the scope of discovery in this proceeding would be tightly bounded by the "public interest inquiry relevant to this proceeding,"[16] namely: i) the adequacy and security of support for the de-commissioning of the New York nuclear facilities; ii) the financial sufficiency of the proposed capital structure in supporting continued operation of the facilities; and iii) the arrangements for managing, operating and maintaining the facilities. The Commission went on to state that other matters, including the relicensing of these facilities, will

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[14] Case 91-E-0350 - Wallkill Generating Company, L.P. - Regulation, Order Establishing Regulatory Regime (Apr. 11, 1994) ("Wallkill Order").

[15] Order at 6.

[16] Id. at 6, n.9.

not be litigated here.[17] The Petitioners respectfully submit, therefore, that the Order has clearly defined the public interest considerations relevant to this proceeding.

The limited public interest review ordered by the Commission recognizes the fundamental differences between utilities subject to traditional regulation and merchant generation facilities. The competitive wholesale electricity market in New York State was established in response to a policy initiative by the Commission, based on its determination that a competitive wholesale market is in the public interest and would benefit New York consumers and New York's economy. In response to the Commission's policy initiatives, including the lightened regulation of merchant plants, entities, including the Petitioners, invested billions of dollars in New York generation facilities.

In fact, the competitive wholesale electricity market fostered by the Commission, in which the New York Facilities are major participants, has achieved benefits for New York consumers. The report by Commission staff on the state of competitive energy markets[18] (the "Staff Report") recognizes the Commission's continued active support of the transition to competitive markets in New York State. The report notes that the Commission encouraged the divestiture of the generation assets of vertically integrated utilities to unaffiliated privately owned entities in order to reduce vertical market power and to more vigorously support competition in the wholesale generation market. The Staff Report states that the competitive market has encouraged new generation in areas where electric energy and capacity are needed

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[17] Id.

[18] New York State Department of Public Service Staff Report on the State of Competitive Energy Markets: Progress To Date and Future Opportunities (March 2, 2006). Available at: http://www3.dps.state.ny.us/pscweb/WebFileRoom.nsf/ArticlesByCategory/B7DF044A3E938FD685257282004BBFC6/$File/StaffReportCompetition.pdf?OpenElement.

and that "unlike past investments by regulated utilities, ratepayers will not be at risk for cost overruns or inefficient operations."[19]

The Staff Report notes, in particular, the importance to the public of improvements in the availability of generating units, because forced outages require emergency actions to address load/capacity imbalances and cause higher energy costs resulting from the need to operate higher-cost replacement generation. In addition, the Staff Report notes that improved performance by generators reduces the amount of installed capacity that must be purchased and paid for by consumers. The Staff Report goes on to state that since the inception of the competitive wholesale market, the duration of nuclear unit outages has been greatly reduced, while their reliability has improved. According to the Staff Report, the average capacity factor for nuclear units has increased from approximately 60 percent prior to 2000 to approximately 90 percent currently.

The significant increase in the availability of nuclear units in New York State is a major factor in the reduction in the installed capacity reserve requirement ("IRM"), the amount of installed capacity in excess of forecasted peak load that must be purchased by load serving entities, and paid for by consumers, to maintain system reliability. At the inception of the wholesale competitive market, the IRM was 22.0%. In recent years the IRM has declined, and the Commission recently adopted the New York State Reliability Council's ("NYSRC") IRM of 15.0%.[20] In its order, the Commission identifies the increased availability of generating units as a major factor justifying the reduced IRM.[21] Attached to these comments as Exhibit A is a graph

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[19] Staff Report at 14.

[20] Case 07-E-0088 - In the Matter of the Adoption of an Installed Reserve Margin for the New York Control Area, Case 05-E-1180 - In the Matter of the Reliability Rules of the New York State Reliability Council and the Criteria of the Northeast Power Coordinating Council, Order Adopting Installed Reserve Margin for the New York Control Area for the 2008-2009 Capability Year (Feb. 29, 2008).

[21] Id.

from the NYSRC's IRM Study, which was submitted by the NYSRC in the Commission's IRM proceeding. The graph illustrates the dramatic improvement in the availability of nuclear units since the transfer of those units to merchant wholesale generators. In addition to the benefits noted in the Staff Report, a lower IRM results in lower prices for installed capacity under the NYISO's demand curve.[22] Given that purchases in the NYISO's installed capacity market are estimated at approximately $1 billion annually, one readily can conclude that the increase in nuclear unit availability has resulted in significant savings to New York consumers.

The public interest benefits provided by merchant generators, such as the New York Facilities, and the need for merchant generators to have flexibility in their organizational and financial decisions, justify the Commission's lightened regulation policy and support the limited scope of the public interest review in this proceeding. The limited public interest review in this proceeding is further supported by significant difference in the public interest in assets of traditional utilities and the assets of merchant generators.

In the case of traditionally regulated utilities, captive ratepayers fund the utility's investments. The utility is permitted a return on its rate base, which is comprised of its original investment less depreciation. The utility's rate base does not vary up or down with the market value of the assets. The economic consequences of changes in the market value of the utility's assets are borne by its captive ratepayers. Indeed, the Commission, in addressing the PSL Section 70 public interest standard for traditional regulated utilities, has stated that "the public interest standard is broad and encompasses an intent to ensure that sales of utility assets the costs

[22] NYISO Market Services Tariff § 5.14.1(b); NYISO Installed Capacity Manual § 5.5. These documents are available at NYISO's website: www.nyiso.com.

of which were borne by ratepayers, are in the best interests of those ratepayers."[23] Consequently, there is a strong public interest in subjecting the transfer of utility assets to a more heightened standard of review in light of the potentially significant effect on customers' interests.

The situation with respect to the assets of a merchant generator, however, is entirely different. As noted, merchant generators are funded by private investors who assume all risks with respect to the recovery of their investments and must rely entirely on revenues from the competitive wholesale market for the recovery of their capital costs and operating expenses, rather than support from captive ratepayers. Thus, the public interest considerations related to the transfer of the assets of a merchant generator are very different from the public interest in the transfer of the assets of a traditional utility with captive ratepayers. Accordingly, the standard utilized by the Commission in recent PSL Section 70 reviews for traditional regulated utilities is not appropriate for lightly regulated entities like the Petitioners.[24]

When the Commission determined that lightly regulated entities would be subject to PSL Section 70, it stated that ". . . the [Article 4 provisions] can be implemented in a fashion that limits the impact in a competitive market. Authority over these matters has been exercised flexibly, at our discretion, with the extent of scrutiny afforded a particular transaction reduced to the level the public interest requires."[25] The Commission clearly did not intend for the PSL Section 70 public interest standard to apply equally to lightly regulated entities and traditional

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[23] Cases 94-E-0098, 94-E-0099 and 96-E-0898 - Re Niagara Mohawk Power Corporation, Order Confirming Prior Order Approving Transfer of the Oswego Generating Facility and Making Other Findings (Dec. 24, 1999) (emphasis added).

[24] See e.g., Case 07-M-0906 - Iberdrola, S.A., Energy East Corporation, et al. - Joint Petition for Approval of the Acquisition of Energy East Corporation by Iberdrola, S.A., Abbreviated Order Authorizing Acquisition Subject to Conditions (Sept. 9, 2008); Case 06-M-0878 - Joint Petition of National Grid PLC and KeySpan Corporation for Approval of Stock Acquisition and Other Regulatory Authorizations, Order Authorizing Acquisition Subject to Conditions and Making Some Revenue Requirement Determinations for KeySpan Energy Delivery New York and KeySpan Energy Delivery Long Island (Sept. 17, 2007).

[25] Case 98-E-1670, Carr Street Generating Station, L.P. - Petition on Regulation, Order Providing for Lightened Regulation (Apr. 23, 1999) (emphasis added).

regulated utilities. Even in cases where the Commission has not applied the Wallkill Presumption to wholesale generators (i.e., lightly regulated entities), it has determined that the public interest is satisfied if the petitioners' affiliations, if any, with fully-regulated New York utilities or power marketers do not afford opportunities for the exercise of market power or pose the potential for other transactions detrimental to captive ratepayer interests.[26] There is no precedent for applying the standard applicable to traditional regulated utilities to lightly regulated utilities such as the Petitioners.

Therefore, the public interest determination in this case, should be consistent with the public interest considerations set forth in the Commission's Order. Specifically, the focus of the public interest inquiry established in the Order is on Enexus' ability to own, operate and decommission the New York Facilities. As discussed in greater detail below, the Corporate Reorganization satisfies the public interest considerations identified in the Commission's Order because the New York Facilities will have enhanced financial strength and management focus to support their continued safe and efficient operation in New York's competitive wholesale electricity market as well as adequate resources for the decommissioning of the New York Facilities. In addition, the reorganization will provide positive benefits.

B. The Financial Sufficiency of the Proposed Capital Structure in Supporting Continued Operation of the New York Facilities

Enexus will be financially strong and able to deploy its substantial capital and other resources exclusively to operating its non-utility nuclear plants safely and reliably. Enexus is projected to have very strong cash flows in future years, and the margins Enexus is realizing

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[26] See e.g., Case 07-E-0170 - Re Alliance Energy Renewables LLC, Order Approving Transfer and Making Other Findings (Apr. 23, 2007); Case 05-E-1341 - Orion Power Holdings, Inc., Astoria Generating Company, L.P. and Astoria Generating Company Acquisitions, LLC - Petition for Authority to Transfer Ownership Interests and to Issue Corporate Debt, Order Approving Transfer and Financings and Making Other Findings (Feb. 15, 2006); Case 04-E-0789 - Re Orion Power Holdings, Inc., Order Approving Transfers and Financing and Making Other Findings (Sept. 22, 2004).

today will increase as existing forward contracts expire and are replaced by new contracts, with market prices that reflect the significant increase in the price of natural gas. Furthermore, wholesale electricity prices in the northeastern markets are projected to have a positive effect on nuclear units with low operating costs, and provide support for the projected cash flows. The plants, including the New York Facilities, also will be backed by a $700 million Support Agreement directly between Enexus and the companies owning the units, which compares favorably to the unrated intercompany lines of credit that back the New York Facilities today. Additionally, Enexus will have direct access to up to $2 billion in lines of credit to support the operation of its nuclear operating companies. Furthermore, Enexus' Credit Facilities, its substantial projected cash flow and its management focus will be dedicated solely to operating its non-utility nuclear companies, including the New York Facilities. The financial benefits resulting from the Corporate Reorganization are paramount in light of the current event risks associated with the 2008 Hurricanes Gustav and Ike.

i. Enexus Will Have Robust Cash Flow and an Adequate Capital Structure

The pro forma financials from Enexus' Form 10 filing showed that the non-utility nuclear business had net cash flow of $837.7 million in 2007; net cash flow was $579 million for the six months ending July 30, 2008; and for 2008 Enexus' cash flow is projected to be in excess of $800 million. Enexus is projected to have $500 million of working capital and access to up to $2 billion of credit under its revolving-credit and term-loan facilities. Enexus also has modeled various stress scenarios including one in which the company's largest unit, IP3, is offline for a year and another in which projected market price for electricity are reduced by $25/MWh through 2010. Even with IP3 offline for a year, Enexus would remain adequately capitalized and

have sufficient cash flow to meet its obligations. Enexus also remains financially sound in the scenario in which the market prices for electricity falls by $25/MWh.

Capitalized with debt targeted in the BB-range rating by Standard and Poor's and Ba3-range by Moody's, Enexus will have debt between 30% and 45% of its projected enterprise value, which is conservative in the merchant-generation business (ultimately debt-to-total-enterprise value will depend on the market value of Enexus' common stock after closing). An appropriate credit rating for a merchant power generation business is different from what is considered an appropriate credit rating for a traditional regulated utility. Most regulated utilities maintain an investment grade rating ("BBB-" and above on the Standard & Poor's scale) because of regulatory rules that allow the recovery of costs (including return of and on capital invested) under a regulated rate tariff. Merchant wholesale generators must recover costs (including return of and on invested capital) through wholesale commodity markets. As a result, most merchant power generation companies carry non-investment grade ratings. In comparison to stand alone merchant power generation companies, Enexus is expected to carry higher ratings than most comparable companies.

In terms of business risk, rating agencies assess nuclear power companies very conservatively based on the fact that a nuclear incident could potentially have a lengthy forced outage, stressing the operator's liquidity position and financial flexibility. Enexus' financials demonstrate that it will have three sources of cash to deal with an extended outage scenario: i) substantial cash balance, ii) access to capital markets, and iii) discontinuing discretionary stock repurchases. These strong financials are expected to enable Enexus to achieve a BB rating. However, because of the business risk associated with the nuclear business, Enexus will not initially be able to achieve an investment-grade rating, and simply reducing the amount of debt in

the Enexus capital structure would not enable Enexus to achieve an investment-grade rating. Enexus' debt, moreover, will be placed with sophisticated lenders, and will be well supported by the company's balance sheet and the underlying value of the cash flow from its nuclear operating companies.

ii. The New York Facilities Will Be Backed by a $700 Million Support Agreement

Currently, affiliates of Entergy, Entergy Global, LLC and Entergy International LTD, LLC, provide lines of credit to ENIP2, ENIP3 and ENFP. Entergy Global provides three separate lines to ENIP2, ENIP3 and ENFP each for $20 million that are revolving lines of credit meant to be drawn upon for working capital. Entergy International LTD, LLC has issued a $35 million line to ENIP2 and a $50 million combined line to both ENIP3 and ENFP in the form of lines of credit that are meant to function as stand-by financial assurance facilities that may not be drawn upon in the normal course of business but instead are available only in the event of a shutdown. The primary purpose of the financial assurance facilities is to pay costs during the period between an unplanned, premature shutdown of the plants and the eventual access by the plants to funds from the decommissioning-trust funds. It should be noted that neither Entergy Global, LLC nor Entergy International LTD, LLC has a credit rating. These guarantees will be replaced with the $700 million Support Agreement with Enexus, which is expected to have a BB credit rating. The $700 million Support Agreement provides funding from Enexus to the plants when necessary to pay plant-operating expenses and meet other NRC requirements, including costs related to an unplanned or premature shutdown.

The Support Agreement is a regulatory commitment to the NRC and the amount of $700 million is calculated under NRC Guidelines and was selected based upon an estimate of the amount required to fund the fixed operating costs of all six operating units during an assumed

six (6) month outage of all six (6) units. Pursuant to its guidance in NUREG-1577, Rev. 1, "Standard Review Plan on power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance," Section III.1.b (page 5), the NRC established that "information on cash or cash equivalents that would be sufficient to pay fixed operating costs during an outage of at least 6 months" would be a factor considered by the NRC staff in reviewing the financial qualifications of licensees for commercial reactor operating licenses. The $700 million level of financial assurance is more than twice the total amount that is available today under various arrangements with multiple subsidiaries of Entergy. Moreover, the Support Agreement is directly with Enexus, not unrated subsidiaries of Enexus. As a result, Enexus can rely on the revenue and cash flow from its entire fleet of nuclear assets to meet its obligations under the Support Agreement, including providing for continued safe plant operations and meeting NRC requirements.

If any of Enexus' plants draws on the Support Agreement, it will have to notify the NRC, and the NRC can and is highly likely to increase the agreement's cap in the event that the plants draw down the resources of the Support Agreement substantially. Enexus will ensure that its subsidiaries have adequate working capital through access to credit facilities or, if necessary, through capital contributions or intra-company loans. It is not anticipated that the $700 million Support Agreement would be utilized in the ordinary course of business. Rather, the nuclear facilities will receive routine capital contributions or advances from Enexus as they do from their affiliates today. The terms of the Support Agreement would be invoked only if necessary to meet an unexpected regulatory or operating requirement. In the event a plant draws upon the Support Agreement, the capital investment by Enexus will be made through a loan

agreement and note payable to Enexus or a capital contribution by Enexus, and as the principal is repaid, the Support Agreement will be restored to its $700 million cap.

Moreover, the NRC has a statutory duty pursuant to Section 182(a) of the Atomic Energy Act of 1954, as amended, (the "AEA") to review the financial and technical qualifications of any proposed licensees, and it requires that applicants submit specified financial information pursuant to 10 C.F.R. § 50.33(f). The NRC also requires that this information be submitted in connection with the NRC's review of any direct or indirect transfer of control of a license, as required by Section 184 of the AEA. Pursuant to NRC's implementing regulations at 10 C.F.R. § 50.80, no license may be transferred, directly or indirectly through the transfer of control of the license, unless the NRC gives its consent in writing. Such action is contingent upon an NRC determination that the transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders of the NRC. Ultimately, the NRC must determine that both the estimated operating costs and the assumptions used in projections of revenues or sources of funds are reasonable. In other words, the NRC has a statutory obligation and the jurisdiction to obtain reasonable assurance that, under Enexus' ownership, the NRC licensees, including the New York Facilities, will be able to obtain adequate funds to operate the nuclear plants safely.

The NRC approved the Corporate Reorganization on July 28, 2008.[27] The financial qualifications of the non-utility nuclear plants, including the New York Facilities, under the proposed Enexus ownership structure were evaluated consistent with the guidance provided in NUREG-1577, Rev. 1, "Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance," dated March 1999. Based on its

[27] NRC Orders Approving Indirect Transfer of Facility Operating Licenses (July 28, 2008); 73 Fed. Reg. 45083-89 (Aug. 1, 2008); 73 Fed. Reg. 45252-56 (Aug. 4, 2008).

review of the five-year forecast of revenues and expenses for Entergy's non-utility nuclear plants, and backed by the $700 million Support Agreement, the NRC found that there is adequate financial assurance to support Enexus' ownership of the plants. The NRC, moreover, will monitor Enexus' financial qualifications and any potential impact on safety as part of its ongoing inspection and enforcement program.

iii. The New York Facilities Will Benefit From Separation From Entergy's Regulated Business

The proposed Corporate Reorganization simplifies the corporate structure of the non-utility nuclear companies so that the capital markets can more easily analyze and provide credit to that business. The non-utility, wholesale-nuclear companies that will be transferred to Enexus do not today have access to the financial resources of Entergy's regulated utilities. The only current financial commitments to the New York Facilities are from their affiliates, Entergy Global, LLC and Entergy International LTD, LLC, discussed above. Regulatory restrictions require that Entergy's non-utility, wholesale-nuclear fleet and Entergy's regulated utility business be operated as two distinct business segments. Entergy's regulated utility businesses operate in the southern United States in geographical areas that are prone to large-scale event risks, including the events of 2008 with Hurricanes Gustav and Ike, that require enormous resources; for example, the devastation caused by Hurricanes Katrina and Rita cost Entergy approximately $2 billion, with about $1.5 billion of this being incurred within 60 days' time. As a result, Entergy New Orleans had to be reorganized in bankruptcy.

Entergy's regulated utility businesses are entering a large capital investment phase in which much of that cash flow to Entergy would likely be invested in the utility business, whereas the Corporate Reorganization will allow Enexus to retain the cash flow from the operating nuclear companies to be used exclusively for those companies. Under the proposed

Corporate Reorganization, Enexus will be able to tailor its financial policy to the needs of its nuclear operating companies, without consideration of the needs of Entergy's utility business. The creation of separate credit structures without event risks such as hurricanes, provides clear benefits cost and efficiency benefits to the New York Facilities. Enexus and its nuclear operating companies should realize financial benefits in the form of a reduced cost of capital, an optimized capital structure and reinforced capital discipline.

C. The Adequacy and Security of Support for the Decommissioning of the New York Facilities

When Entergy acquired the New York Facilities, they were acquired by its subsidiaries ENIP2, ENIP3 and ENFP, and it is these Entergy subsidiaries that became the licensed owners of the units. As the licensees for these facilities, it is these entities (ENIP2, ENIP3, and ENFP) rather than the parent corporation, Entergy, that are responsible for the decommissioning of the New York Facilities, including the management of any spent nuclear fuel, until the Department of Energy accepts title to and takes possession of the spent nuclear fuel. These obligations are also affirmed in the Operating Agreements between the licensed owners, and ENO, which is the licensed operator of the facilities. The Corporate Reorganization will not change this basic relationship. After the Corporate Reorganization, ENIP2, ENIP3 and ENFP will remain the licensed owners of the units, and it is these entities rather than the new parent corporation, Enexus, that will be responsible for the decommissioning of each the New York Facilities.

Pursuant to NRC regulations at 10 CFR § 50.75 relating to decommissioning, the licensed owners of the New York Facilities maintain nuclear decommissioning trust funds ("NDTs") to ensure that sufficient funds exist to safely decommission the plant and that decommissioning costs are not shifted to the state, the local community or other stakeholders.

Specifically, ENIP2 maintains NDTs for IP1 and IP2, and ENIP3 and ENFP rely upon NDTs maintained by NYPA for IP3 and FitzPatrick.

NRC's rules also require that the amounts of decommissioning funding assurance for each unit be assessed each year and adjusted to assure that adequate levels of funding in the NDTs are maintained. 10 CFR § 50.75(b)(2). Status reports are submitted to the NRC either annually or biennially. 10 CFR § 50.75(f). The NDTs must be maintained as segregated accounts outside the administrative control of ENIP2, ENIP3, and ENFP. Accordingly, an independent trustee administers the NDTs. NRC oversees these trusts, and in a Staff Requirements Memorandum, dated January 9, 2008, for SECY-07-0197, the NRC approved a plan to begin conducting periodic inspections or "spot checking" of original trustee documents maintained by licensees as compared with the licensee status reports submitted to the NRC.

In their request for NRC approval of the proposed license transfers associated with the Corporate Reorganization, the applicants, including ENIP2, ENIP3, and ENFP provided assurances to the NRC that the existing NDT arrangements would remain in place unchanged. On pages 10-11 of the Application submitted to the NRC on July 29, 2007, this was summarized as follows:

> Other than the changes to the Parent Guaranty for Big Rock Point described above, the Applicants do not anticipate any changes in the existing decommissioning funding assurance provided in connection with the proposed indirect transfers of control. Applicants also do not anticipate any changes or amendments to any nuclear decommissioning trust fund agreements, and if any amendments are to be made in the future, the existing trust agreements require prior written notice be provided to the NRC. Moreover, any existing NRC license conditions governing these trust agreements will remain in effect and unchanged.

The Petitioners do not anticipate any changes to the existing trust fund arrangements, and, therefore, there has not been any subsequent notice.[28]

The NRC will also ensure that each NRC licensee provides adequate assurance of decommissioning funding in an amount adequate to ensure the protection of public health and safety. Specifically, 10 C.F.R. § 50.33(k) requires that an application for an operating license for a utilization facility contain information "indicating how reasonable assurance will be provided that funds will be available to decommission the facility." Furthermore, pursuant to 10 C.F.R. § 50.75(b), each power reactor licensee must certify, subject to annual readjustment, that it will provide decommissioning funding assurance in an amount that may be more, but not less, than the amount determined under the formulas in 10 C.F.R. §§ 50.75(c)(1) and (2).

Additionally, when ENIP2 acquired IP1 and IP2, it assumed the responsibility and obligations for returning IP1 and IP2 to greenfield status at the end of decommissioning process. Michael Kansler's (the then Senior Vice President and Chief Operating Officer of Entergy Nuclear Northeast and Entergy Nuclear Operations) March 16, 2001 letter to Alan D. Scheinkman (the then attorney for Westchester County) extended the commitment made by ENIP2 to ENIP3 for the restoration of the IP3.[29] As has been stated on numerous occasions throughout this proceeding, ENIP2's and ENIP3's responsibility and obligation to decommission the sites will continue after the corporate reorganization.[30] In that regard, Enexus confirms that ENIP2 and ENIP3 will return the Indian Point facilities to greenfield status and, as set forth in

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[28] Effective July 1, 2008, The Bank of New York Mellon became the successor Trustee to the current Trustees, Mellon Bank, N.A. and The Bank of New York. This did not involve any change to the trust agreements, but notice was provided to NRC regarding this change, which occurred by operation of law in connection with a reorganization planned by The Bank of New York Mellon Corporation.

[29] See Attachment 1 to the response to information request WC-13 (EN-98).

[30] The decommissioning cost estimates prepared by TLG, Services Inc. for the Indian Point facilities include the costs to: remove non-contaminated structures to a nominal depth of three feet below grade; backfill voids with clean debris and cap with soil; regrade the sites to conform to the adjacent landscape; and establish vegetation to inhibit erosion.

the March 2001 Kansler letter, MOX fuel will not be used at any of the Indian Point facilities and spent or used fuel from facilities other than the Indian Point plants will not be imported/stored in Westchester County.

D. The Arrangements for Managing, Operating and Maintaining the New York Facilities

Enexus and EquaGen will have the technical qualifications for managing, operating and maintaining the New York Facilities and will have the resources to continue to provide safe and reliable power to New York State. Entergy, EquaGen and Enexus are taking steps reasonably necessary to ensure a smooth transition and that Enexus and EquaGen Nuclear, at closing, will be ready to own and operate the New York Facilities as safely and reliably as ENO operates the plants today. The same licensed operator, ENO, and the same employees who operate the New York Facilities today will continue to operate the stations under an Amended and Restated Operating Agreement between EquaGen Nuclear and the owners of the New York Facilities. As a result, the New York Facilities will continue to operate in accordance with all existing environmental permits and the owners of the facilities will honor all arrangements and agreements currently in place.

i. Agreements to Manage/Operate/Maintain the New York Facilities

The existing operator of the New York Facilities will remain in place following the Corporate Reorganization subject only to changes in corporate name (from ENO to EquaGen Nuclear) and a change from being organized as a corporation to a limited-liability company. The joint-venture structure means that the same employees (approximately 3,500) that operate the six non-utility units, including the New York Facilities, will remain employed and managed by the same company (EquaGen Nuclear). This structure not only avoids the need to renegotiate collective-bargaining agreements, but importantly it ensures that the New York Facilities will

have the benefit of having personnel aligned to ensure that best practices are applied to all of the fleet's units. Large nuclear fleets enable sharing of practices and procedures across locations and units that result in better availability performance, reduced refueling outage durations and improved efficiencies.

As the licensed operator, the managers and executive personnel of EquaGen Nuclear (by virtue of the Amended and Restated Operating Agreement) will act for ENIP2, ENIP3 and ENFP on operational matters and will be responsible to the NRC for the operation of the New York Facilities; thus, under the terms of the Amended and Restated Operating Agreement, EquaGen Nuclear will have the authority and responsibility to operate and maintain the plant subject to certain rights and oversight by Enexus. Under the Amended and Restated Operating Agreement, EquaGen Nuclear, as the operator, has substantial authority and, in any event, all authority necessary under the NRC Operating License to operate each non-utility nuclear plant (the "Unit"); the Amended and Restated Operating Agreements also reserve certain rights to the Unit-owning entities of Enexus (the "Owner"). In general, the authority granted to EquaGen Nuclear as the NRC-licensed operator is similar to the authority that ENO has today as the holder and operator of the licenses of the non-utility nuclear plants (including the New York Facilities); EquaGen Nuclear will have authority under the Amended and Restated Operating Agreement to:

- Operate and make capital improvements to each Unit in accordance with good utility practice, applicable laws and regulations, the applicable NRC Operating License, Owner-approved budgets and additional, Owner-specified policies and procedures;
- Act as agent of Owner and in the best interests of the Owner and its Unit;
- Generally obtain and maintain permits and other approvals (including the NRC Operating License) necessary to operate, maintain and make capital improvements to the Owner's Unit;

- Exercise authority with respect to its role and obligations as the NRC operating licensee for the Owner's Unit; however, EquaGen Nuclear will be required to coordinate all emergency planning regarding a Unit with its Owner (including the development of all emergency-planning templates and procedures), and if time permits and subject to its obligations under the NRC Operating License and the Unit's emergency-plan-communication requirements, EquaGen Nuclear must seek an Owner's prior consent for emergency-response actions it proposes to take and before submitting required incident reports to the applicable government agency;

- Administer all contracts either assigned to EquaGen Nuclear or retained by Owner and delegated to EquaGen Nuclear; and

- Enter into contracts with respect to a Unit as Owner's agent and in accordance with existing, management-level policies of EquaGen Nuclear, until such time as those policies are amended or replaced by mutual agreement.

The Amended and Restated Operating Agreement also limits EquaGen Nuclear's ability to take certain actions; without the Owner's (e.g., ENIP2, ENIP3 and ENFP) prior written consent, EquaGen Nuclear may not:

- Define the economic life of a Unit, retire or reduce the Unit's output for economic reasons or amend the Unit's Operating License to extend the operating life of the Unit;

- Make capital improvements to increase the thermal output of a Unit or enter into contracts to do so;

- Incur costs for operation or capital expenditures that are in excess of or materially different from those authorized in budgets approved by Owner;

- Enter into new contracts for the purchase of Nuclear Fuel or related Nuclear Fuel enrichment, conversion or fabrication services, which may resulting payments in excess of $50 million over the term of such contract;

- Enter into new contracts with respect to a Unit, which may result in payments in excess of $15 million over the term of such contract;

- Enter into contracts that are not freely assignable to Owner or promptly terminable by Owner without a termination fee in the event of the Operating Agreement's termination;

- Sell, encumber or dispose of any real property or any equipment, materials or other personal property comprising a Unit, provided that Operator may in the in the ordinary course of business, sell encumber or dispose of surplus non-capital equipment, materials or other personal property in the Owner's inventory;

- Release any material claims of Owner or waive or otherwise impair any material contractual or other legal rights benefiting Owner;

- Initiate or resolve any material legal or administrative proceedings on behalf of an Owner;

- Take any action or fail to take any action when performing its obligations under the Operating Agreement that would create a breach or default under any agreement, law or regulation to which Owner is a party or by which it or any of its assets is bound;

- Market or sell output or generation products of any kind from a Unit, including enter into any agreement or activity relating to the brokering, marketing, dispatch, sale or pricing of capacity or energy, whether real or reactive of a Unit; and

- Engage in any activity that could reasonably be expected to require the transfer of the NRC Operating License for a Unit to a third party.

Enexus through the owner licensee also has the ability under the Amended and Restated Operating Agreement to choose which services it will take from EquaGen Nuclear and can decline to take a particular service. The primary difference between the Amended and Restated Operating Agreement and the existing agreement is that the Amended and Restated Operating Agreement contains additional commercial terms to reflect that following the Corporate Reorganization, each Operating Agreement will no longer be a purely intra-affiliate arrangement; these additional terms include providing for the payment of operating fees, contractual procedures for the development of outage schedules, payment of a termination fee for early termination under certain circumstances and mutual indemnities. The Amended and Restated Operating Agreement fairly represents the interests of all parties; the agreement's terms were considered and negotiated by current Entergy executives who prospectively will hold senior-management positions in Entergy and the future companies of Enexus and the joint venture, EquaGen LLC, and that discussion and negotiation also was informed by outside consultants and advisors experienced in similar transactions.

Under the terms of the Amended and Restated Operating Agreement, it is the Owner that is entitled to 100% of the capacity, energy, ancillary services and other attributes produced by the Unit, which can be used by the Owner to satisfy its contractual power arrangements; for example, ENIP3 has this entitlement with respect to the IP3, and currently 100% of the IP3's capacity is contracted to ENIP3's marketing affiliate, Entergy Nuclear Power Marketing, LLC ("ENPM"). The Amended and Restated Operating Agreement requires EquaGen Nuclear and each Owner to jointly develop a schedule for planned outages; EquaGen Nuclear must also coordinate with the Owner on any decision to shut down or discontinue a Unit's operation, except that it need not coordinate with the Owner for a shutdown either performed in accordance with the Unit's emergency-operating procedures, technical specifications, operating licenses, normal operating procedures or ordered by the NRC, under circumstances in which EquaGen Nuclear does not reasonably have any discretion to coordinate with the Owner, but except as approved by the Owner, EquaGen Nuclear will not have authority to schedule any refueling outages for the months of June through August or the months of December and January. The Amended and Restated Operating Agreement provides Enexus, through its wholly-owned subsidiaries, the exclusive right to determine the economic life of the Units.

In addition, the Amended and Restated Operating Agreement requires EquaGen Nuclear to make capital improvements to each nuclear unit in accordance with, among other factors, owner approved budgets. Under the agreement, therefore, ENIP3, for example, must pay costs incurred by EquaGen Nuclear under a budget approved by ENIP3. EquaGen Nuclear will have incentives, moreover, that will motivate both of its ultimate owners, Enexus and Entergy, to

make non-safety (as well as NRC-required-safety) improvements to the nuclear plants, including the New York Facilities.

If EquaGen Nuclear achieves savings greater than 5% of the approved budget, it will share in these savings, and if a capital investment enables the nuclear units to operate with a capability factor exceeding the nuclear industry's median capability factor, the owners of the units (e.g., ENIP3) will pay incentive fees to EquaGen Nuclear. These incentives are clearer and more distinct than those that exist today and are directly attributable to the performance metrics designed to incent EquaGen Nuclear to achieve the highest level of performance for the Enexus units, including the New York Facilities, which in turn will benefit Entergy and Enexus. The joint-venture structure, therefore, creates strong incentives for EquaGen Nuclear to make approved capital improvements.

Furthermore, as the owner of the New York Facilities (and the other nuclear-power plants), Enexus will have a strong economic and commercial interest in the management of the nuclear plants because its business depends entirely on operating the non-utility nuclear units safely and reliably. Consequently, Enexus will put in place an organization devoted to overseeing these assets while they are being operated by EquaGen Nuclear. Enexus will oversee EquaGen's performance of the Amended and Restated Operating Agreement, providing additional oversight of the operations at the New York Facilities as compared to operations today. Enexus is in the process of hiring employees who will oversee key aspects of EquaGen Nuclear's performance. These positions include environmental, nuclear and industrial safety, regulatory oversight, the plant's interface with the North American Electric Reliability Council, procurement of fuel and the site representatives, who will be located at each of the New York Facilities and oversee EquaGen Nuclear's operation of them.

If shortcomings exist in EquaGen Nuclear's performance, Enexus will notify EquaGen Nuclear. Shortcomings can also be addressed through Enexus' participation in the EquaGen LLC Board of Managers, and the negotiated, incentive-fee structure of the joint venture is an additional driver for both organizations to have in place qualified people to ensure safe, reliable and cost-effective operations. Although Enexus will not be responsible for nuclear-fuel design and procurement, an Enexus entity, Enexus Nuclear Fuels Company, will take title to the procured fuel, and title to the fuel will pass to the plant once the fuel is fabricated to a unit-specific design.

Following the Corporate Reorganization, Entergy Operations, Inc. ("EOI"), the company that operates Entergy's regulated nuclear plants, will receive management and technical services provided by EquaGen through a Shared Services Agreement. EquaGen will provide to EOI a contract officer to fill the position of Chief Nuclear Officer of and other executive and management personnel to provide management services for EOI; in addition, EquaGen will provide management services and technical-support services to EOI in the following functional areas: Nuclear Safety and Licensing; Operations Support; Emergency Planning; Oversight; Business Development; Planning and Innovation; Nuclear Workforce Planning; and Nuclear Retention Planning. Pursuant to a separate Shared Services Agreement, Entergy, through Entergy Services, Inc. ("ESI"), a service-company subsidiary of Entergy, will provide technical services to EquaGen in the following functional areas: Engineering; Project Management; Information Technology; Materials, Procurement, and Contracts; Nuclear Fuels Procurement; Security; Safety and Human Performance; Alliances; Administrative Services; and Relicensing. These two Shared Service Agreements will allow each Enexus unit to retain the same organizational structure, with each individual in a given area of operations ultimately reporting to

an EquaGen employee charged with ensuring that industry's best practices, whether developed by individual units or through peer-group processes and committees, will be applied to all of the units, including to the New York Facilities.

The two Shared Services Agreements cover the services that are necessary to maintain the benefits of being part of a fleet of nuclear plants, and through this structure and these agreements, fleet-wide programs and procedures will be standardized and best practices applied to all the units; the proposed structure will also enhance the Enexus' ability to attract and retain the talent and expertise to operate and maintain its existing plants and be in a position to build new nuclear-power plants.

Additionally, the Shared Services Agreements will enable EquaGen to preserve and create efficiencies that will benefit New York in the long term. The alignment of Entergy's and Enexus' integrated nuclear fleet is designed to improve safety and operational performance continuously and to achieve efficiencies that reduce cost by providing the scale that management of a large fleet of nuclear plants provides. In addition, EquaGen intends to provide nuclear services to third parties, such as operating other plants or the decommissioning-estimations services of TLG Services, and Entergy and Enexus will have a 50-percent interest in this line of business through the joint venture.

After the Corporate Reorganization, EquaGen Nuclear will also continue to receive services from a variety of third-party vendors in the normal course of business as well as certain services from ESI. EquaGen Nuclear will compensate ESI for these costs at 105% of cost in accordance with applicable agreements embodied in filings at the Federal Energy Regulatory Commission. Although there will be little need to obtain services from EOI after the

proposed transactions close, EquaGen Nuclear will be able to draw upon EOI personnel as it does today to help with field and maintenance services, such as outage or dry-cask work.

Finally, it should be noted that the NRC also addressed the technical qualifications of the proposed operators, using the guidance as described in the NRC Standard Review Plan (NUREG-0800), Chapter 13, "Conduct of Operations," Section 13.1.1, "Management and Technical Support Organization," and Sections 13.1.2-13.1.3, "Operating Organization."[31] NRC staff have based its evaluation on 10 C.F.R. § 50.40(b), "Common Standards," and American National Standards Institute N18.1-1971, "Selection and Training of Nuclear Power Plant Personnel." The purpose of the evaluation was to ensure that the corporate management of the proposed operator is involved with, informed of, and dedicated to the safe operation of the plant and, that sufficient qualified technical resources will be provided to support safe plant operation and maintenance, and to evaluate proposed changes to the operating organization that may occur as a result of the license transfer. Importantly, on July 28, 2008, the NRC approved the indirect transfer of the licenses for the non-utility nuclear plants, and in doing so, the NRC necessarily determined that Enexus, EquaGen and EquaGen Nuclear, have the technical qualifications and sufficient qualified technical resources to support safe plant operation and maintenance.[32]

Based on the foregoing, Enexus, EquaGen and its subsidiary EquaGen Nuclear, have appropriate arrangements in place to safely and reliably manage, operate and maintain the New York Facilities.

ii. State Pollutant Discharge Elimination System Permits

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[31] Safety Evaluation, "Application for Indirect Transfer of Facility operating licenses Due to Entergy Corporation Restructuring," (July 28, 2008).

[32] Id.; see also, supra n.27.

The Corporate Reorganization will not change the operation of the New York Facilities in any way that could cause an adverse environmental effect. The Petitioners will continue to operate the New York Facilities in accordance with their environmental permits and all applicable environmental laws, including the State Pollutant Discharge Elimination System ("SPDES") permits. SPDES permits are water pollution control permits that are issued by the state, under authority delegated by the United States Environmental Protection Agency ("EPA") under the federal Clean Water Act, to IP2, IP3 (there are separate permits for the two units) and FitzPatrick. The permits are held by ENIP2, ENIP3 and ENFP and are issued by the state in their names. The expectation is that when the Corporate Reorganization occurs, there will be no change in the corporate structure of these entities (but that there will be a name change, for example, from "Entergy Indian Point 2 LLC" to "Enexus Indian Point 2 LLC", or something similar). The SPDES permits will move with the ENIP2, ENIP3 and ENFP as the Corporate Reorganization occurs, and Petitioners will have to file a name change with the New York State Department of Environmental Conservation. Nothing else about the permits (current or pending through the permit renewal process) should change. The new entity will be taking full responsibility for complying with both the current and the new SPDES permit(s). The same will be true for all of the other environmental permits held by the facilities.

iii. Oswego County Commitments

During the course of discovery, Oswego County raised concern that the Corporate Reorganization might adversely affect various arrangements and agreements between Oswego County and ENFP. However, as stated in the responses to OC-1 (EN-158) through OC-5 (EN-162) the Corporate Reorganization will have no effect on these arrangements/agreements. Specifically, ENFP, in order to assist the county's Emergency Management Office in its

radiological/emergency planning efforts related to FitzPatrick, will continue the supplemental payments to Oswego County at or above $75,000 per annum. Additionally, with regard to the Payments in lieu of Taxes ("PILOT") agreement between ENFP and Oswego County, following the Corporate Reorganization, ENFP agrees to be bound by its terms since the property covered by the PILOT agreement will be retained by ENFP and will not be sold, but indirectly transferred to Enexus. The rights of ENFP in the PILOT agreement, moreover, will not be sold, pledged, mortgaged, or assigned pursuant to Article V of the PILOT agreement. The Power Purchase Agreement between ENFP and the County of Oswego, which runs through December 31, 2010, and provides the Oswego County Public Utility Service with up to 10 MWh, all hours, at the fixed rate of $32 per MWh, will also be honored. Finally, Enexus and ENFP shall continue the current level of cooperation and coordination that Oswego County enjoys with Entergy/ENFP in the emergency management/radiological planning, training and exercising fields.

E. Positive Benefits

The Corporate Reorganization will provide several benefits to New York State and the customers of New York electric power distribution companies. The Corporate Reorganization will simplify Petitioners' corporate structure and facilitate the financing of Enexus and its direct and indirect subsidiaries as a discrete and integrated business. The Corporate Reorganization will enhance the Petitioners' ability to finance their operations efficiently and enhance their ability to participate in the competitive wholesale energy markets in New York State, which will benefit the New York consumers served by those markets.

Enexus' increased financial flexibility including direct access to capital markets, unfettered access to its own free cash flow, and freedom from event risk at the currently affiliated regulated utility will also enhance the financial viability of the New York Facilities and

their ability to participate in New York's competitive electricity market. Under the current complicated structure, Entergy's non-utility wholesale nuclear power business does not have direct access to capital markets which is required to reduce its overall cost of capital. While it is true that the cost of debt will increase with leverage, this increase does not match the reduction in the higher cost of equity, and therefore a lower, overall, weighted average cost of capital results. All stakeholders will receive more transparency into the overall financial strength of Enexus. The financial strength and cash flow that will be dedicated to the non-utility wholesale nuclear ownership provides substantial resources for the safe and reliable operations and maintains the intrinsic value of the nuclear assets, including the availability of baseload energy and capacity resources in the NYISO markets.

The proposed Support Agreement will also provide benefits to New York State and the customers of New York electric power distribution companies, which purchase energy and capacity in the competitive electricity markets. At $700 million, the level of financial assurance represents a substantial increase over the combined $255 million that is currently available under various arrangements with multiple subsidiaries of Entergy. Not only is the increase in the amount of total support in and of itself a benefit to New York, the Support Agreement is directly with Enexus, not subsidiaries of Enexus. As a result, Enexus can rely on revenue from its entire fleet of nuclear assets to meet its obligations under the Support Agreement, including providing for continued safe plant operations and meeting NRC requirements.

EquaGen will benefit from Entergy's continued involvement and ownership interest in EquaGen Nuclear, the NRC-licensed operator of the nuclear power plants owned by Enexus, including the New York Facilities. EquaGen will continue to operate and make capital

improvements at the plants in accordance with the operating agreement and in accordance with the operating licenses and applicable laws and regulatory requirements, and Enexus will be free to deploy operating cash flow to fund its operations without consideration of capital requirements of other Entergy businesses. Enexus will also be isolated from the risks of other Entergy businesses.

The Corporate Reorganization will also create more effective management incentives. Entergy currently uses stock options, phantom stock plans, and stock rights as incentive compensation to retain and motivate executives and key employees. These plans are generally tied to the price of Entergy common stock. Because the value of Entergy stock represents a blend of both the regulated and non-utility nuclear operations, value creation in one business can be offset by decreased value in the other business, making Entergy stock an imperfect tool for rewarding and retaining key employees in either business. The separation will allow for more focused stock compensation plans for the non-utility nuclear operations and will better allow Enexus to retain those employees that are key to the safe and reliable operation of the New York Facilities.

III. SECTION 69 STANDARD OF REVIEW

PSL Section 69 does not refer to the public interest specifically. Instead, it requires the Commission to find that a proposed debt issuance is "reasonably required for the purposes specified in the order" approving it. As demonstrated below, regardless of whether the standard requires a finding that the proposed Debt Financings are an appropriate, or rational, means of effectuating the spin-off, thereby placing the emphasis on "reasonable", or that the Debt Financings are essential to accomplishing the purposes of the transaction, thereby placing the emphasis on "necessary", the Debt Financings satisfy PSL Section 69's standard of review.

In developing the non-utility nuclear business, Entergy used its own sources of capital, including debt as well as shareholder equity, to finance the cost of acquiring the non-utility nuclear plants, including the New York Facilities. This debt and the associated capital interests in the non-utility nuclear fleet currently reside with Entergy. Enexus must replace Entergy's investments and debt in order to create an independent, stand-alone company for these assets. Enexus will use the Debt Financings to reduce, retire or pay off certain Entergy debt and capital interests associated with these assets, as well as to provide working capital to Enexus as the owner of the assets.[33]

It is necessary for Enexus to enter into the Debt Financings to create the stand-alone company and to achieve the goal of increased financial flexibility for the New York Facilities and non-utility nuclear business. One of the primary objectives of the Corporate Reorganization is to separate the two business segments in a manner that will increase access to credit markets for the non-utility nuclear business without losing the fleet's scale and alignment through the EquaGen joint-venture. By aggregating the ownership and financing activities of the non-utility nuclear fleet under Enexus within a discrete, independent business-segment structure and by transferring control of this segment, the non-utility nuclear plants will achieve direct corporate benefits, including, but not limited to, the strategic and financial flexibility of the non-utility nuclear business over the current diversified structure. Enexus' cash flow and credit facilities can then be dedicated to the capital needs of the non-utility units, including the New York Facilities, rather than to Entergy's utility business in the South. All of this would be impossible to accomplish without the Debt Financings. It is not appropriate for Enexus to retain additional debt proceeds to increase its cash balances for doing so would increase Enexus' debt

[33] Importantly, these uses are permitted under PSL § 69.

costs without reducing the amount of equity; Enexus would be over capitalized and would have no incremental investment alternatives for the retained debt proceeds.

Moreover, the amount and terms of the Debt Financings will be commercially reasonable. The amount of debt that Enexus will incur was established at a level that will result in the optimal ratio between equity and debt in its capital structure and the lowest cost of capital for Enexus. Total capitalization is based on historical book value and, in Enexus' case, is not an accurate indication of the true market value of the Enexus assets. To determine if the proposed capital levels are reasonable, capital ratios using enterprise value (based on the expected market value of debt and equity) and coverage ratios were used to determine projected credit ratings (expected in the "BB/Ba" range). In addition, comparisons to peer companies were made to analyze if the level of debt was reasonable.[34]

Enexus will be able to place its debt with sophisticated lenders and the interest rates and other terms will be commercially reasonable and the loan agreements will have covenants that are usual and customary for the merchant-generation industry. Enexus will be able to obtain debt on the commercial terms that it projects because of its substantial cash flow. Enexus may issue debt before closing which would confirm that Enexus will be able to place its debt on reasonable terms.

Specifically, the Senior Notes will be subject to an Indenture between Enexus and a financial institution that will serve as trustee, and the Indenture may impose certain restrictions on Enexus' ability and the ability of its unit owners to incur additional debt or issue preferred stock, declare or pay dividends, redeem stock or make other distributions to shareholders and to sell certain assets.

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[34] Similar analyses were not performed on Enexus' subsidiaries, EquaGen or EquaGen Nuclear because public debt is not anticipated to be placed directly on the balance sheets of those companies. However, their capital structures are also considered reasonable.

Additionally, the Credit Facilities may contain financial covenants that will be calculated on a consolidated basis and are typical of the covenants used in credit facilities for non-utility generators and may include: i) maximum-total-leverage ratio (i.e., total debt, which will include issued and outstanding letters of credit under the senior facilities, to EBITDA); and ii) interest coverage ratio (EBITDA to Interest). The Credit Facilities may also have affirmative covenants that are usual and customary for such credit facilities, including but not limited to the following (which will apply to Enexus and the unit-owning entities, including ENIP2, ENIP3 and ENFP, subject to exceptions and qualifications to be agreed): financial statements and other reports; delivery of notices; visitation and inspection; preservation and maintenance of existence and rights; maintenance of books and records; maintenance of insurance; maintenance of properties; compliance with laws (including ERISA and applicable environmental laws); regulatory matters; payment of obligations, taxes and claims; use of proceeds; changes in fiscal year; changes in lines of business; maintenance of ratings; additional collateral and guarantors; and cash management and further assurances.

The Credit Facilities may also have negative covenants that are usual and customary for such credit facilities, including, but not limited to the following limitations (which will apply to Enexus and the unit-owning entities, including ENIP2, ENIP3 and ENFP, subject to exceptions and qualifications to be agreed): indebtedness; liens and negative pledges; restricted payments (dividends, redemptions and voluntary payments on certain debt); restrictions on subsidiary distributions; investments, consolidations, mergers and acquisitions; sales of assets (including subsidiary interests); sales and lease-backs; capital expenditures; transactions with affiliates; conduct of business; amendments and waivers of organizational documents, junior

indebtedness and other material agreements; changes to fiscal year; and a prohibition on speculative commodity hedges.

Based on the foregoing, including the projected terms and covenants of the Senior Notes and Credit Facilities, it is both reasonable and necessary for Enexus to undertake the Debt Financings.

IV. NYPA VALUE SHARING AGREEMENTS

The Value Sharing Agreements ("VSAs"), which were originally executed with NYPA when ENFP and ENIP3 acquired the FitzPatrick and IP3 plants and amended in October 2007, require ENFP and ENIP3 to make payments to NYPA based on a fixed dollar amount per unit of output from the FitzPatrick and IP3 plants, up to a maximum annual amount of $72 million. Under the VSAs, ENFP and ENIP3 agreed to make guaranteed value sharing payments to NYPA for the years 2007 and 2008 in the total amount of $144 million even if one or both of the plants ceased to be owned by Entergy or an affiliate. For subsequent years, however, each agreement provided that payments would terminate if the plant ceased to be owned by Entergy or an affiliate. The Petitioners believe that the Corporate Reorganization would qualify as a Cessation Event and, therefore, the payments due to NYPA under the VSAs would terminate. NYPA, on the other hand, does not agree that the Corporate Reorganization would trigger the termination provisions in the VSAs.

Notwithstanding the positions of both parties, ENFP and ENIP3 have reached an agreement with NYPA, the Resolution of Dispute Over Application of VSAs to Certain Facts ("Resolution of Dispute"), in which they will not treat the Corporate Reorganization as a Cessation Event as defined in Section 3 of the VSAs and that ENFP and ENIP3 will continue to

make the value sharing payments otherwise provided for in the VSAs. The Resolution of Dispute will become effective upon the closing of the Corporate Reorganization.

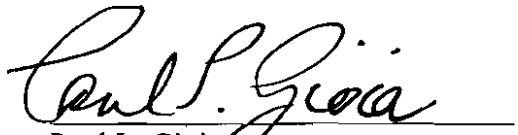
The Resolution of Dispute provides public benefits to the State of New York because it assures that the Corporate Reorganization will not result in any loss of revenue for NYPA (potentially totaling $432 million from 2009 through 2014) and avoids ENFP, ENIP3 and NYPA having to engage in costly and lengthy negotiations and possible arbitration to resolve their differences over the payments due under the VSAs.

V. CONCLUSION

Based on the foregoing, the Petitioners respectfully submit that the Corporate Reorganization meets the public interest standard of PSL Section 70 because it satisfies all of the public interest considerations identified in the Commission's Order. The Corporate Reorganization also provides positive benefits. Following the Corporate Reorganization, Enexus' proposed capital structure and projected cash flows will support the continued safe and reliable operation of the New York Facilities, Enexus will have sufficient resources to decommission the New York Facilities, and Enexus and EquaGen will have adequate arrangements in place for managing, operating and maintaining the New York Facilities. Moreover, the Debt Financings are necessary and reasonable pursuant to PSL Section 69. The Debt Financings will be on commercially reasonably terms and the debt will be placed with sophisticated lenders. Enexus will use the Debt Financings to create an independent, stand-alone company that owns Entergy's non-utility nuclear plants, including the New York Facilities by reducing, retiring or paying off certain Entergy debt and capital interests associated with these assets, as well as to provide working capital to Enexus as the owner of the assets. Accordingly,

the Commission should issue an order authorizing the Petitioners to consummate the Corporate Reorganization, without modification or condition, and enter into the Debt Financings.

Dated: September 15, 2008



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Entergy Nuclear Operations, Inc.,
Entergy Corporation and NewCo

cc: Honorable Gerald L. Lynch (via e-mail and hand delivery)
Honorable David L. Prestemon (via e-mail and hand delivery)
Active Party Service List for Case 08-E-0077 (via e-mail and regular mail)

- x

In the Matter of the 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 Financings

Case 08-E- 0077

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VERIFICATION

CITY OF WASHINGTON)

)ss:.

DISTRICT OF COLUMBIA)

Walter C. Ferguson being duly sworn, deposes and states as follows:

1. I am Vice President System Regulatory Affairs, of Entergy Services, Inc.

2. I am authorized to sign this verification on behalf of Entergy Nuclear FitzPatrick, LLC, Entergy Nuclear Indian Point 2, LLC, Entergy Nuclear Indian Point 3, LLC, Entergy Nuclear Operations, Inc., Entergy Corporation and NewCo.

3. I have reviewed the foregoing Initial Comments and the statements of fact contained therein are true and correct to the best of my knowledge, information and belief.

Walter C. Ferguson

Sworn to and subscribed before me
this 15 day of September, 2008.

Rashidah Ali
Notary Public

District of Columbia : SS
Subscribed and Sworn to before me
this 15 day of September, 2008
Rashidah Ali
Notary Public, D.C.
My commission expires July 14, 2012

Figure A-6

NYCA EQUIVALENT AVAILABILITY

BASED ON NERC-GADS DATA FROM 1982 – 2006

ANNUAL WEIGHTED AVERAGES FOR NUCLEAR, COAL, OIL & GAS, AND COMBUSTION TURBINES