

PENDING PETITION MEMO

Date: 1/29/2008

TO : OEGW  
OAFE  
OGC

FROM: CENTRAL OPERATIONS

UTILITY: ENTERGY NUCLEAR FITZPATRICK, LLC

SUBJECT: 08-E-0077

Petition 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 for a Declaratory Ruling Regarding a Corporate Reorganization or, in the Alternative, an Order Approving the Transaction and an Order Approving Debt Financings.

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January 28, 2008

## VIA HAND DELIVERY

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

2008 JAN 28 PM 3:44  
EM  
ANY

Re: Verified Petition Filed By Entergy Nuclear FitzPatrick, LLC, Entergy Nuclear Indian Point 2, LLC, Entergy Nuclear Indian Point 3, LLC, Entergy Nuclear Operations, Inc., NewCo and Entergy Corporation for a Declaratory Ruling Regarding a Corporate Reorganization or, in the Alternative, an Order Approving the Transaction and an Order Approving Debt Financings

Dear Secretary Brilling:

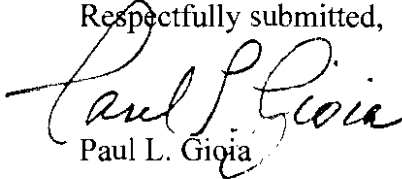
On behalf of Entergy Nuclear FitzPatrick, LLC ("ENFP"), Entergy Nuclear Indian Point 2, LLC ("ENIP2"), Entergy Nuclear Indian Point 3, LLC ("ENIP3"), Entergy Nuclear Operations, Inc. ("ENO"), NewCo and Entergy Corporation (collectively the "Petitioners"), enclosed for filing please find an original and five (5) copies of the Petitioners' Verified Petition for Declaratory Ruling Regarding a Corporate Reorganization or, in the Alternative, an Order Approving the Transaction and an Order Approving Debt Financings ("Petition"). As described more fully therein, the Petitioners seek a declaratory ruling, consistent with New York State Public Service Commission ("Commission") precedent, that the Commission need not review under Public Service Law ("PSL") Section 70 a corporate reorganization resulting, *inter alia*, in Entergy Corporation transferring its indirect ownership interest in ENFP, ENIP2 and ENIP3 to NewCo, a newly formed holding company whose shares and ownership will be distributed directly to the shareholders of Entergy Corporation ("Corporate Reorganization"). In the alternative, the Petitioners request an Order authorizing the Petitioners to consummate the Corporate Reorganization, without modification or condition pursuant to PSL Section 70. The Petitioners also request confirmation that the Corporate Reorganization will have no impact on ENFP's, ENIP2's, ENIP3's, and ENO's status as lightly regulated entities. Additionally, the

Petitioners request an Order, pursuant to PSL Section 69, authorizing NewCo to enter into debt financings with the flexibility to modify, without prior approval, the financing terms, including but not limited to the payment terms, the financing entities and the amount of financing, up to \$4.5 billion in Senior Notes and \$2.0 billion in a Senior Revolving Credit Facility and/or a Term LC facility. The Petitioners also seek authorization to enter into Hedging Arrangements specifically meant to support collateral needs arising from hedging contracts.

The Petitioners respectfully request that the Commission approve the proposed transaction within three (3) months of the date of this filing so that the closing of the proposed transaction may occur as soon as possible thereafter. The requested time frame is reasonable in light of the fact that the proposed transaction involves a change in ownership at the parent company level with no negative impact on ENFP, ENIP2, ENIP3 and ENO and the non-utility wholesale nuclear power plants they own and/or operate.

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

Respectfully submitted,



Paul L. Gioia

PLG:gn (98630)  
Enclosures

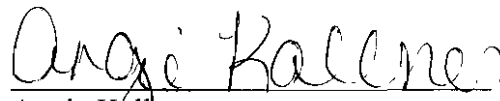
cc: Leonard Van Ryn, Esq. (Via Hand Delivery)  
Mr. Charles Dickson (Via Hand Delivery)  
Mr. Thomas Dvorsky (Via Hand Delivery)  
Mr. John Stewart (Via Hand Delivery)  
Active Party Service Lists for Cases 01-E-0040, 01-E-0113 and  
00-E-1225 (Via 1<sup>st</sup> Class U.S. Mail)

CERTIFICATE OF SERVICE

I hereby certify that I caused an original and five (5) copies of the Petition for a Declaratory Ruling Regarding a Corporate Reorganization or, in the Alternative, an Order Approving the Transaction and an Order Approving Debt Financings 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 to be served, by hand delivery, upon the Honorable Jaclyn A. Brillling, Secretary to the New York State Public Service Commission.

I have also caused a copy to be served by regular mail upon the active party service list for Cases 01-E-0040, 01-E-0113 and 00-E-1225 by mailing a copy of said Petition in a sealed package with postage prepaid.

Dated this 28<sup>th</sup> day of January, 2008.

  
Angie Kallner

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                      Case 08-E- \_\_\_\_\_  
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  
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**VERIFIED PETITION FOR A DECLARATORY RULING**  
**REGARDING A CORPORATE REORGANIZATION OR**  
**IN THE ALTERNATIVE AN ORDER APPROVING THE TRANSACTION**  
**AND AN ORDER APPROVING DEBT FINANCINGS**

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Dated: January 28, 2008

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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

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Case 08-E-\_\_\_\_\_

## I. INTRODUCTION

Entergy Nuclear FitzPatrick, LLC ("ENFP"), Entergy Nuclear Indian Point 2, LLC ("ENIP2"), Entergy Nuclear Indian Point 3, LLC ("ENIP3"), Entergy Nuclear Operations, Inc. ("ENO"), Entergy Corporation and corporate affiliate NewCo<sup>1</sup> (collectively "Petitioners"), through the undersigned counsel, respectfully request a declaratory ruling that the New York State Public Service Commission ("Commission") need not review under Public Service Law ("PSL") Section 70 a series of corporate transactions resulting in a corporate reorganization, as further described herein (the "Corporate Reorganization").<sup>2</sup> In the alternative, Petitioners respectfully request Commission approval, without modification or condition, pursuant to PSL

<sup>1</sup> NewCo is the placeholder name for the holding company as further described herein. Petitioners will notify the Commission when the name of NewCo is decided upon.

<sup>2</sup> Petitioners are also seeking approval of the Corporate Reorganization from the United States Nuclear Regulatory Commission ("NRC"), the Federal Energy Regulatory Commission, and the Vermont Public Service Board, as well as a Private Letter Ruling from the Internal Revenue Service and will make the appropriate filings with the U. S. Securities and Exchange Commission.

Section 70 and any other statutory or regulatory provision deemed applicable, to consummate the Corporate Reorganization. Ultimately, the Corporate Reorganization will result in the creation of a new holding company, NewCo. Entergy Corporation's fleet of six operating wholesale nuclear power plants, including the James A. FitzPatrick Nuclear Power Plant ("FitzPatrick"), the Indian Point 2 Generating Plant ("IP2") and the Indian Point Nuclear Generating Unit No. 3 ("IP3"), as well as the Indian Point 1 Generating Plant ("IP1") that is no longer in operation, will be consolidated under NewCo's ownership. NewCo's common stock and ownership will be distributed directly to the shareholders of Entergy Corporation. Additionally, ENO will be converted into a limited liability company and owned 50% (indirectly) by NewCo and 50% (indirectly) by Entergy Corporation.

Petitioners also respectfully request that the Commission grant NewCo, in connection with the Corporate Reorganization, authority, pursuant to PSL Section 69, to issue up to \$4.5 billion in Senior Notes (which may be floating rate, fixed rate or floating resetting to a fixed rate). NewCo also seeks authorization to enter into a Senior Revolving Credit Facility, which will consist of revolving credit meant to provide working capital and support collateral needs arising from hedging contracts. Additionally, NewCo seeks authorization to enter into a Term LC facility which will be available to post letters of credit to counterparties. The aggregate amount of the Senior Revolving Credit Facility and the Term LC facility would not exceed \$2.0 billion. NewCo also seeks authorization to enter into commodity collateral revolver facilities specifically meant to support collateral needs arising from hedging contracts ("Hedging Arrangements") (collectively the Senior Notes, Senior Revolving Credit Facility, the Term LC facility and Hedging Arrangements will be referred to as, the "Debt"). The Debt may be secured

in part by a pledge of the stock and/or assets of ENIP2, ENIP3 and ENFP as well as the assignment of their material contracts, including fuel and power sale agreements.

Petitioners also request confirmation that the Corporate Reorganization will have no effect upon ENFP's, ENIP2's, ENIP3's, and ENO's status as lightly regulated entities.<sup>3</sup> ENFP, ENIP2 and ENIP3 will continue to be wholesale generators and, as such, will be precluded from making any retail sales. Consequently, Petitioners will continue to meet the requirements for lightened regulation.

Petitioners request that the Commission act on this Petition within three (3) months of the date of this filing as the Petitioners seek to complete the Corporate Reorganization and issuance of debt as expeditiously as possible.

## **II. DESCRIPTION OF THE PARTIES**

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 #I. ENFP's ultimate parent corporation is Entergy Corporation. ENFP's plant office is located in Lycoming, New York. ENFP owns FitzPatrick. ENFP is lightly regulated by the Commission.<sup>4</sup> ENFP's Certificate of Formation is attached hereto as Exhibit 1.

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<sup>3</sup> 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 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").

<sup>4</sup> Id.



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 Buchanan, New York. ENIP2 owns IP2 and the retired Indian Point 1 Generating Plant ("IP1"). ENIP2 is lightly regulated by the Commission.<sup>5</sup> ENIP2's Certificate of Formation is attached hereto as Exhibit 2.

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 Buchanan, New York. ENIP3 owns IP3. ENIP3 is lightly regulated by the Commission.<sup>6</sup> ENIP3's Certificate of Formation is attached hereto as Exhibit 3.

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, New York. ENO is licensed to operate and/or maintain FitzPatrick, IP1, IP2, and IP3 (collectively the "New York Facilities"). ENO is lightly regulated by the Commission.<sup>7</sup> ENO's Certificate of Incorporation is attached hereto as Exhibit 4.

NewCo will be a corporation. NewCo will own nearly 5,000 megawatts of nuclear generation, including the New York Facilities, most of which is located in the northeastern United States. NewCo will be headquartered in Jackson, Mississippi. The shares

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<sup>5</sup> Id.

<sup>6</sup> Id.

<sup>7</sup> Id.

and ownership of NewCo will be distributed directly to the shareholders of Entergy Corporation. NewCo will thereafter be a separate publicly traded company.

NewCo's Chief Executive Officer will be Richard J. Smith, who currently serves as President and Chief Operating Officer for Entergy Corporation, with responsibility for Entergy Nuclear and Entergy Operations including nuclear and fossil plant operations, transmission operations, system environmental and safety, system planning, compliance and performance management. NewCo's Chief Operating Officer will be John R. McGaha, who currently serves as President – Planning, Development & Oversight for Entergy Nuclear Operations, Inc. and Entergy Operations, Inc. and President of Entergy New Nuclear Utility Development, LLC with responsibility for planning and innovation, business development and new plant activities and oversight. NewCo's directors will include Donald C. Hintz (Chairman) and Richard J. Smith. Donald C. Hintz, after retiring as Entergy Corporation's President in 2004 was elected to Entergy Corporation's Board of Directors and currently serves as Chairman of the nuclear committee. Consistent with the practice of other public companies, NewCo intends to expand its Board to include independent directors prior to the distribution of its stock to Entergy Corporation stockholders.

Prior to NewCo becoming a separate publicly traded company, NewCo and Entergy will establish a joint venture through ENOI Holdings, LLC, a limited liability company. ENOI Holdings, LLC will be owned 50% by Entergy Corporation (indirectly) and 50% by NewCo (indirectly). As a result of a series of corporate transactions, ENOI Holdings, LLC will directly own ENO and will be converted into a limited liability company and be renamed ENOI LLC.

ENOI Holdings, LLC's Chief Executive Officer will be Michael R. Kansler, who currently serves as Executive Vice President and Chief Nuclear Officer for Entergy Corporation and Chief Executive Officer for ENO, with responsibility for operation of Entergy Corporation's nuclear plants located throughout the country. ENOI Holdings, LLC's Chief Operating Officer will be John T. Herron, who currently serves as Entergy Nuclear Operations Senior Vice President-Operations with responsibility for the operational side of nuclear fleet management. ENOI Holdings, LLC's governing managers will include: Donald C. Hintz, Richard J. Smith, John R. McGaha, Mark T. Savoff, J. Wayne Leonard, and Leo P. Denault. Mark T. Savoff currently serves as Entergy Corporation's Executive Vice President-Operations with responsibility for business operations of system planning, performance management, safety and environment, weekly procurement process, utility group regulatory support, fossil generation and transmission organizations. J. Wayne Leonard currently serves as Entergy Corporation's CEO and is Chairman of Entergy Corporation's Board of Directors. Leo P. Denault currently serves as Entergy Corporation's Executive Vice President and Chief Financial Officer.

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. Entergy Corporation's Certificate of Incorporation is attached hereto as Exhibit 5.

### **III. THE CORPORATE REORGANIZATION**

The Corporate Reorganization would isolate and simplify the structure of the businesses that comprise Entergy Corporation's wholesale nuclear business segment and would

enhance the ability of regulators, analysts, capital markets, and shareholders to understand and evaluate this business segment. The Corporate Reorganization involves certain restructuring transactions that will ultimately result in NewCo becoming the new corporate parent of ENFP, ENIP2, and ENIP3. NewCo's shares and ownership will be distributed directly to the shareholders of Entergy Corporation. Simplified organization charts reflecting the current and post-transaction ownership structures are attached hereto as Exhibits 6 and 7, respectively.

ENIP2 will continue to own IP1 and IP2. ENIP2 will continue as a direct wholly-owned subsidiary of Entergy Nuclear Holding Company #3, LLC. In turn, Entergy Nuclear Holding Company #3, LLC will continue to be owned by Entergy Nuclear Holding Company. Entergy Nuclear Holding Company will be a direct wholly-owned subsidiary of NewCo. As a result of the Corporate Reorganization, ENIP2's ultimate parent corporation will be NewCo, whose common stock will be distributed to Entergy Corporation's shareholders.

ENIP3 will continue to own IP3. ENFP will continue to own FitzPatrick. ENIP3 and ENFP will become direct wholly-owned subsidiaries of Entergy Nuclear Holding Company #1. Entergy Nuclear Holding Company #1 will be a direct wholly-owned subsidiary of NewCo. As a result of the Corporate Reorganization, ENIP3's and ENFP's ultimate parent corporation will be NewCo, whose common stock will be distributed to Entergy Corporation's shareholders.

Petitioners may also eliminate intermediary holding companies from the chain of ownership of the New York Facilities, including Energy Nuclear Holding Company and Entergy Nuclear Holding Company #3, LLC in order to further simplify Petitioners' corporate structure. The elimination of intermediary holding companies would not affect the status of ENIP2, ENIP3 and ENFP as wholly-owned subsidiaries of NewCo, and the ultimate owner of the New York Facilities would not change.

In conjunction with the Corporate Reorganization, NewCo will execute a financial support agreement ("Support Agreement") in favor of all of its subsidiaries that hold the NRC licenses for NewCo's nuclear facilities, including ENIP2, ENIP3 and ENFP.<sup>8</sup> The Support Agreement will provide that from time to time, upon the written request of the subsidiary licensee (e.g., ENIP2, ENIP3 and ENFP) NewCo shall provide such funds as the subsidiary licensee determines to be necessary to pay operating expenses or meet NRC requirements; provided, however, in any event the aggregate amount outstanding under the Support Agreement at any one time shall not exceed \$700 million (the maximum unreimbursed amount NewCo is obligated to provide under the Support Agreement). The Support Agreement, which is subject to NRC approval, will significantly increase the funds committed to support the wholesale nuclear generators to be owned by NewCo.

ENO will continue to operate IP2, IP3 and FitzPatrick and there will be no change in the technical qualifications of ENO.<sup>9</sup> ENO will be converted into a limited liability company and will be renamed ENOI LLC ("ENOI"). As a result of a series of corporate transactions and the establishment of the joint venture, ENOI will become a direct wholly-owned subsidiary of ENOI Holdings, LLC. In turn, ENOI Holdings, LLC will be owned 50% by Entergy Corporation (indirectly) and 50% by NewCo (indirectly).

The Corporate Reorganization will simplify Petitioners' corporate structure and facilitate the financing of NewCo and its direct and indirect subsidiaries as a discrete and

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<sup>8</sup> The following support agreements currently in place will be rescinded upon execution of the Support Agreement: 1) a \$35 million guarantee to the NRC by Entergy International LTD LLC, on behalf of ENIP2; 2) a \$20 million guarantee to the NRC by Entergy Global, LLC, on behalf of ENIP2; 3) a \$50 million guarantee to the NRC by Entergy International LTD LLC, on behalf of ENIP3 and ENFP; 4) a \$20 million guarantee to NRC by Entergy Global, LLC, on behalf of ENIP3; and 5) \$20 million guarantee to the NRC by Entergy Global, LLC, on behalf of ENFP.

<sup>9</sup> ENO currently has separate operating agreements for IP2, IP3 and FitzPatrick. As part of the Corporate Reorganization, each of these agreements will either be amended and restated or replaced by an omnibus single agreement.

integrated business. The Corporate Reorganization will enhance the Petitioners' ability to finance its operations efficiently and enhance their ability to participate in the competitive wholesale energy markets in New York State, which will benefit the markets and, ultimately, the New York consumers served by those markets. ENOI (as converted and renamed) will continue to benefit from Entergy Corporation's continued involvement and ownership interest in ENOI, the NRC-licensed operator of the nuclear power plants owned by NewCo, including the New York Facilities. ENO will also 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. NewCo will be free to deploy operating cash flow to fund its operations without consideration of capital requirements of other Entergy businesses. NewCo will be isolated from the risks of other Entergy businesses, and its access to capital will not be attributable to the financial condition of Entergy in the future. Accordingly, the Corporate Reorganization is in the public interest.

The Corporate Reorganization is fully consistent with the continued ownership and safe and secure 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 as a result of the Corporate Reorganization. The joint ownership of ENOI ensures that the core nuclear operations expertise currently in place at the New York Facilities will continue after the Corporate Reorganization.

#### **IV. THE DEBT FINANCINGS**

In conjunction with the Corporate Reorganization, NewCo expects to issue up to \$4.5 billion in Senior Notes (which may be floating or fixed rate or floating resetting to a fixed rate). NewCo also intends to enter into a Senior Revolving Credit Facility and/or a Term LC

facility in an aggregate amount up to \$2.0 billion and other Hedging Arrangements meant to support collateral needs arising from hedging contracts. Some or all of the Debt may be secured in part by a pledge of the stock and/or assets of ENIP2, ENIP3 and ENFP and an assignment of their material contracts.

Up to \$4.5 billion of Senior Notes will be issued and will mature in approximately 10-12 years, with the possibility that some may have a maturity of approximately 8 years. The Senior Notes may be secured or unsecured. If the Senior Notes are secured, they may be guaranteed jointly and severally by each of NewCo's current and future subsidiaries, including ENIP2, ENIP3 and ENFP. NewCo's obligations under the Senior Notes may be secured by substantially all the present and after-acquired assets of NewCo and each guarantor (including the plant facilities, accounts receivable and cash), including the New York Facilities, and/or by a lien on the stock of the asset owning companies, including ENIP2, ENIP3 and ENFP. The Debt may also be secured by the pledge or assignment of material contracts of NewCo and each guarantor, including power purchase agreements and fuel contracts. The interest rate for the Senior Notes will be set at a rate or rates that is (are) reflective of market conditions for similar issuers at the time the debt is sold and all other terms (e.g., payment default and covenants) will be commercially reasonable. The Senior Notes may also contain certain covenants that would, among other things, limit NewCo's ability and the ability of its subsidiaries, including ENIP2, ENIP3 and ENFP to incur additional debt and issue preferred stock, declare or pay dividends, redeem stock or make other distributions to shareholders, create liens, make certain restricted investments and other payments, enter into transactions with affiliates, sell or transfer assets, consolidate or merge, and create dividend or other payment restrictions affecting subsidiaries. There may also be optional redemptions of the Senior Notes on commercial terms, and there may

also be mandatory redemption of debt if there are certain asset sales where proceeds are not used to reinvest in new acquisitions or to repair damaged assets.

The Senior Revolving Credit Facility will consist of revolving credit with some portion of that amount available for letters of credit and would be outstanding for up to five years. The proceeds from the Senior Revolving Credit Facility would be used for working capital and to support collateral obligations arising from hedging contracts, if necessary. NewCo may also enter into a Term LC facility. Funds would be borrowed and set aside in a collateral account. These funds would back letters of credit posted by financial institutions in support of NewCo's business and operations. The aggregate amount of the Senior Revolving Credit Facility and Term LC facility would not exceed \$2.0 billion. Additionally, NewCo expects to enter into Hedging Arrangements which are specifically intended to support collateral obligations arising from hedging contracts. These facilities would be outstanding for up to five years. The size of the Hedging Arrangements will depend on which contracts are determined to be covered under such facility. All obligations of NewCo under the Senior Revolving Credit Facility, Term LC facility and Hedging Arrangements are expected to be unconditionally guaranteed jointly and severally by each existing and subsequently acquired or organized subsidiary, including ENIP2, ENIP3 and ENFP (collectively the "Guarantors"). NewCo's obligations under the Senior Revolving Credit Facility, the Term LC facility, the guarantees and any Hedging Arrangements may be secured by substantially all the present and after-acquired assets of NewCo and each Guarantor (including the plant facilities, accounts receivable and cash), including the New York Facilities, and/or by a lien on the stock of the asset owning companies, including ENIP2, ENIP3 and ENFP. The Debt may also be secured by the assignment of material contracts of NewCo and each Guarantor, including power purchase



agreements and fuel contracts. The interest rate for the Senior Revolving Credit Facility will be set at a rate or rates that is (are) reflective of market conditions for similar issuers at the time the debt is sold and all other terms (e.g., payment, default and covenants) will be commercially reasonable. The Senior Revolving Credit Facility, the Term LC facility and the Hedging Arrangements may also contain certain covenants that would, among other things, limit NewCo's ability and the ability of its subsidiaries, including ENIP2, ENIP3 and ENFP to incur additional debt and issue preferred stock, declare or pay dividends, redeem stock or make other distributions to shareholders, create liens, make certain restricted investments and other payments, enter into transactions with affiliates, sell or transfer assets, consolidate or merge and create dividend or other payment restrictions affecting subsidiaries. NewCo may be required to maintain on a consolidated basis a maximum total leverage ratio (total debt to EBITDA) and a minimum interest coverage ratio (EBITDA to Interest). There may also be mandatory prepayments of debt and a permanent reduction of facility size if there are certain asset sales where proceeds are not used to reinvest in new acquisitions or to repair damaged assets or if there is an early termination or monetization of contracts or hedges by NewCo or its subsidiaries.

Certain financial terms and conditions will not be decided until syndication and pricing just prior to the closing of the Debt. The Petitioners will inform the Commission of any covenants that will affect ENFP, ENIP2 or ENIP3, the New York operating companies.

## **V. DISCUSSION**

### **A. The Walkkill Presumption Applies**

The Commission has established a lightened regulatory regime for wholesale generators in New York, including owners and operators of nuclear generating facilities, under

which Section 70 review of changes in ownership is not required.<sup>10</sup> In the Wallkill Order, the Commission decided that under this lightened regulatory regime, Section 70 regulation would not adhere to a transfer of 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"). The Commission granted ENFP, ENIP2, ENIP3, and ENO such lightened regulation and Petitioners are afforded the Wallkill Presumption for transfers of ownership interests in the parent entities upstream from the affiliates owning and operating the New York Facilities.<sup>11</sup>

In past decisions, the Commission has determined that the Wallkill Presumption applies to transactions involving changes of control of lightly regulated entities and has declined to review those transactions under Section 70.<sup>12</sup> As discussed more fully above, the Corporate Reorganization involves a change of ownership interests in parent entities upstream from the

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<sup>10</sup> Case 91-E-0350 - Wallkill Generating Company, L.P. - Regulation, Order Establishing Regulatory Regime (Apr. 11, 1994) ("Wallkill Order"); see also Entergy Nuclear Lightened Regulation Orders.

<sup>11</sup> See Entergy Lightened Regulation Orders.

<sup>12</sup> See Case 07-E-0462 – Joint Petition of Horizon Wind Energy LLC, f/k/a Zilkha Renewable Energy, and GS Wind Holdings LLC for a Declaratory Ruling, Declaratory Ruling on Review of Transfer Transactions (June 26, 2007); Case 07-E-0332 – Astoria Generating Company Holding LLC, Astoria Generating Company, L.P., and EBG Holdings LLC – Joint Petition for a Declaratory Ruling, Or, in the Alternative, For Authorization under Public Service Law § 70 to Transfer Ownership, Declaratory Ruling on Review of Merger Transaction (May 22, 2007); Case 07-E-0009 - Joint Petition of Scottish Power plc, PPM Energy, Inc., and Iberdrola, S.A. For a Declaratory Ruling Regarding the Application of Public Service Law §70, Declaratory Ruling on Review of an Acquisition Transaction (Feb. 28, 2007); Case 05-E-0368 – Zilkha Renewable Energy, LLC and GS Wind Holdings, LLC – Joint Petition for a Declaratory Ruling that the Commission Will Not Review or Regulate the Proposed Sale of Membership Interests in Zilkha Renewable Energy to GS Wind Holdings, Declaratory Ruling on the Review of the Transfer of Ownership Interests (May 19, 2005); Case 04-M-1592 – WPS Power Development, Inc. and WPS Energy Services, Inc. – Joint Petition for a Declaratory Ruling that the Commission Will Not Review the Proposed Restructuring of WPS Power Development and WPS Energy Services, Declaratory Ruling on Review of an Intra-Corporate Restructuring (Feb. 16, 2005); Case 02-E-0939 – Orion Power New York, L.P. – Petition for Expedited Approval Under §69 to Restructure Corporate Debt and for a Declaratory Ruling Under §70, Declaratory Ruling on Review of Corporate Reorganization and Order Clarifying Prior Order (Sept. 24, 2002); Case 01-E-1900 - Athens Generating Company, L.P. – Petition for a Declaratory Ruling that Section 70 of the Public Service Law Does Not Apply to Its Proposed Intracorporate Reorganization or in the Alternative for Approval of the Reorganization, Declaratory Ruling on Review of Corporate Reorganization (Dec. 21, 2001).

affiliates owning and operating New York competitive electric generation facilities. The Petitioners request that the Commission follow its precedent, continue to afford Petitioners the Wallkill Presumption, and issue a declaratory ruling stating that the Commission need not review the Corporate Reorganization.

Moreover, under the Corporate Reorganization, there is no potential for harm to the interests of captive New York ratepayers such that would override the Wallkill Presumption. The Corporate Reorganization will not alter the operations of the New York Facilities and Petitioners' horizontal market concentration will not increase. ENIP2, ENIP3, ENFP, and ENO will continue to own and operate the New York Facilities. Additionally, no new entity that owns or controls generation assets is being brought into the organizational structure. Therefore, the Corporate Reorganization will have no adverse effect on market concentration in New York. Consequently, the Corporate Reorganization does not raise horizontal market power concerns.

In addition, vertical market power cannot be exercised because Petitioners, including NewCo, do not exercise control over delivery facility assets, or inputs into the production of generation supply, within New York markets. The Petitioners do not provide retail services in New York.<sup>13</sup> As a result, those avenues of undue exercise of market power are foreclosed and the Corporate Reorganization does not pose the potential for adverse impacts to New York ratepayers. Accordingly, the basis for overcoming the presumption established in the Wallkill Order is not present here and the Wallkill Presumption, that further Section 70 review is not required by the Commission, is applicable in this case.

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<sup>13</sup> Entergy Solution Ltd currently an affiliate of Entergy Corporation, was authorized as an energy service company by the Commission on July 7, 2005. Entergy Solutions Ltd markets power to a limited number of large commercial and industrial customers. Following the Corporate Reorganization, Entergy Solutions Ltd will be affiliated with NewCo.

Additionally, Petitioners respectfully request that the Commission find that any future transactions whereby the Petitioners eliminate one or more intermediary holding companies from the chain of ownership of the New York Facilities, will not require further review by the Commission. Replacing a wholly-owned indirect ownership interest with a wholly-owned direct ownership interest through the dissolution of an intermediate entity in a corporate structure does not amount to a transfer under PSL Section 70, since there is no change in the identity of the ultimate owner.<sup>14</sup> Accordingly, Petitioners should not have to seek Commission approval prior to eliminating any intermediary holding companies from the chain of ownership of the New York Facilities. Petitioners will submit an informational filing to the Commission to inform it of any such action.

#### **B. The Corporate Reorganization is in the Public Interest**

If the Commission decides to review the Corporation Reorganization pursuant to PSL Section 70 rather than issue a declaratory ruling, the Commission should approve the Corporate Reorganization as in the public interest.<sup>15</sup>

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<sup>14</sup> Case 05-E-1582 – NRG Energy, Inc. and NRG Northeast Generating LLC, NRG Energy Inc. and NRG Northeast Generating LLC – Petition for a Declaratory Ruling that the Public Service Law Does not Apply to an Intra-Corporate Dissolution Transaction, Declaratory Ruling on Review of an Intra-Corporate Dissolution Transaction (Jan. 26, 2006); see also, Case 07-E-0584 – NRG Energy, Inc. - Petition for a Declaratory Ruling That Public Service Law §70 Does Not Apply to a Proposed Corporate Reorganization and Stock Transfer, Declaratory Ruling on Review of an Intra-Corporate Transaction (July 23, 2007); Case 06-E-1106 – PPM Energy, Inc., PPM Wind Energy LLC, Atlantic Renewable Projects LLC, and Aeols Wind Power II LLC – Joint Petition for Declaratory Ruling Regarding the Application of Public Service Law §§ 69 and 70; Case 06-E-1073 – Atlantic Renewable Projects LLC and Atlantic Renewable Projects II LLC – Joint Petition for a Declaratory Ruling Regarding the Application of Public Service Law § 70, Declaratory Ruling on Regulation of Intra-Corporate and Other Transactions (Oct. 19, 2006); Case 06-E-0006 – Petition of Horizon Wind Energy LLC for a Declaratory Ruling Regarding the Application of Section 70 to the Public Service Law, Declaratory Ruling on Review of an Intra-Company Restructuring Transaction (Feb. 14, 2006).

<sup>15</sup> Should the Commission decide to review the Corporation Reorganization, Petitioners respectfully request waiver of the filing requirements set forth in 16 N.Y.C.R.R. §§ 18, 31.1 and 39.1. The Commission has waived such filing requirements in the past for lightly regulated companies like Petitioners. See Case 06-M-0948 - Re Alliance Energy, New York LLC, Order Approving Transfer (Oct. 25, 2006); Case 05-E-0746 - In re Power City Partners, L.P., Order (Sept. 7, 2005); Case 03-E-1694 - Re UtilCo Group Inc., Declaratory Ruling and Order Concerning Transfer of Ownership Interests (Feb. 13, 2004); Case 03-E-0516 - Re Athens Generating Company, L.P., Order Approving Transfer and Providing for Lightened Regulation (Sept. 17, 2003).

As discussed herein, the Corporate Reorganization would isolate and simplify the structure of the businesses that comprise Entergy Corporation's wholesale nuclear business segment and would enhance the ability of regulators, analysts, capital markets, and shareholders to understand and evaluate this business segment. In addition, 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. This will enhance their ability to effectively participate in the competitive wholesale energy markets in New York State, which will ultimately benefit the New York consumers served by those markets.

The New York Facilities will continue to be safely and efficiently operated as ENOI will continue to have the same level of expertise and experience in the operation of nuclear facilities and will continue to benefit from Entergy Corporation's involvement (though Entergy Corporation will no longer have any direct liability associated with the operation of the New York Facilities) and indirect ownership of ENOI (as converted and renamed), the operator of the NRC-licensed commercial nuclear power plants owned by NewCo, including the New York Facilities. 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 is fully consistent with the continued ownership and safe 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 as a result of the Corporate Reorganization. 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.

In conducting a review under PSL Section 70, the Commission also examines the Petitioners' affiliations, if any, with fully-regulated New York utilities or power marketers that might afford opportunities for the exercise of market power or pose the potential for other transactions detrimental to captive ratepayer interests.<sup>16</sup> As discussed above, Petitioners have demonstrated that NewCo's acquisition of the ENIP1, ENIP2, ENIP3, and ENFP will not result in a concentration of wholesale generation market ownership that could enable NewCo to exercise horizontal market power. Moreover, because NewCo is not affiliated with entities that own or control traditional public utilities, or electric transmission, or fuel inputs into generation that operate in markets affecting New York, vertical market power concerns are also absent.

Accordingly, the Corporate Reorganization satisfies the PSL Section 70 public interest standard for lightly regulated entities operating in wholesale electric markets and, if the Commission declines to issue a declaratory ruling, the Commission should approve the Corporate Reorganization.

Should the Commission review the Corporate Reorganization under PSL Section 70, Petitioners request, as part of the approval Order, confirmation that the Commission will not require further review of any future transactions whereby the Petitioners eliminate intermediary holding companies from the chain of ownership of the New York Facilities. As previously stated, replacing a wholly-owned indirect ownership interest with a wholly-owned direct ownership interest through the dissolution of an intermediate entity in a corporate structure does

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<sup>16</sup> 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).

not amount to a transfer under PSL Section 70, since there is no change in the identity of the ultimate owner.<sup>17</sup> Accordingly, Petitioners should not have to seek Commission approval prior to eliminating any intermediary holding companies from the chain of ownership of the New York Facilities. In the alternative, Petitioners respectfully request the Commission approve, pursuant to PSL Section 70, the future elimination of intermediary holding companies from the chain of ownership of the New York Facilities as in the public interest.

**C. Section 69 Approval is Appropriate**

Pursuant to PSL Section 69, the Commission has jurisdiction over New York electric corporations' debt transactions. Specifically, PSL Section 69 provides in relevant part: "electric corporations ... may issue stocks, bonds, notes or other evidences of indebtedness payable at periods of more than twelve months after the date thereof ... provided and not otherwise that there shall have been secured from the commission an order authorizing such issue."<sup>18</sup> The Commission interprets PSL Section 69 as extending to approval of a parent company's pledge of assets or stock of New York generating facilities as collateral for debt transactions.<sup>19</sup> However, the Commission has in the past reduced the scrutiny applicable to monopoly utilities for a lightly-regulated company that operates in a competitive environment.<sup>20</sup>

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<sup>17</sup> See *supra* n. 15.

<sup>18</sup> N.Y. Pub. Serv. Law § 69 (McKinney 2000).

<sup>19</sup> Case 03-E-1181 – Dynegy Danskammer, LLC and Dynegy Roseton, LLC – Petition For Expedited Approval Under Section 69 to Restructure Corporate Debt and Under Section 70 for the Collateral Pledge of Securities and Certain Assets Pursuant to Lightened Regulation, Order Authorizing Entry Into Credit Facility and Issuance of Secured Notes (Nov. 26, 2003) (approving debt financing of a parent company of New York utility).

<sup>20</sup> Id.; see also Case 06-E-1301 and Case 06-E-1307 - WPS Empire State, Inc., WPS Niagara Generation LLC and USRG Niagara Biomass LLC - Joint Petition For Expedited Approval of the Transfer of All Membership Interests USRG Niagara Biomass LLC - Petition For Financing Approval, Order Approving Transfer and Financing (Jan. 22, 2007); Case 06-E-1223 – New Athens Generating Company, LLC – Petition for a Declaratory Ruling on Financing Flexibility; and Case 01-E-0816 – Athens Generating Company, L.P. – Petition for Authority to Enter into Indebtedness Payable at Periods of More than Twelve Months, Order Clarifying Prior Order (Nov. 26, 2006); Case 05-E-0098 – In re Caithness Long Island, LLC, Order Granting a Certificate of Public Convenience and Necessity, Providing for Lightened Regulation and Approving Financing (Nov. 15, 2006); Case 01-E-0611 – Nine Mile Point Nuclear Station, LLC – Petition Under Public Service Law

In doing so, the Commission need not make an in-depth analysis of the proposed financing transactions and, by relying on the representations in the petition itself, may take swift action.<sup>21,22</sup>

Moreover, the Commission has afforded lightly-regulated companies the flexibility to modify, without prior approval, the identity of the financing entities, the payment terms, and the amount of financing under the transactions up to a certain limit.<sup>23</sup> Affording lightly-regulated companies this flexibility avoids disrupting their financing arrangements, and enables them to operate more effectively in competitive wholesale electric markets, thereby promoting the efficient development of those markets.<sup>24</sup> Reduced scrutiny is further supported when the lightly-regulated company and its affiliates bear all the financial risk associated with their financial arrangements, thereby insulating the captive New York ratepayers from harm.<sup>25</sup>

As described more fully above, in conjunction with the Corporate Reorganization, the Petitioners expect NewCo to issue up to \$4.5 billion in Senior Notes and enter into a Senior Revolving Credit Facility consisting of revolving credit and a Term LC facility in an aggregate

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§69 for Authorization to Assume Promissory Notes, Execute an Inter-Company Credit Agreement, Demand Note and Additional Debt Financings, Order Authorizing Issuance of Promissory Notes and Additional Debt Financings, and Making Additional Findings (Oct. 26, 2001).

<sup>21</sup> Id.

<sup>22</sup> Given the reduced scrutiny applicable to lightly regulated entity filings and the financial information provided in the Petition, Petitioners respectfully request the Commission follow precedent and waive the filing requirements contained in 16 NYCRR §§ 18 and 37. See Case 04-E-1009 - Petition of AES Eastern Energy, L.P. for Approval of a \$75,000,000 Working Capital Facility, Order Approving Financing (Nov. 10, 2004); Case 04-M-1235 - Brooklyn Navy Yard Cogeneration Partners, L.P. - Petition for Approval to Issue and Provide Security for Long-Term Debt in an Amount not to Exceed \$36 Million, Order Approving Financing (Nov. 10, 2004); Case 04-E-0789 - Re Orion Power Holdings, Inc., Order Approving Transfers and a Financing and Making Other Findings (Sept. 22, 2004); Case 04-E-0734 - Petition of Pinelawn Power LLC for (1) a Certificate of Public Convenience and Necessity; (2) an Order Regarding Regulatory Regime; (3) Financing Approval for its 79.9 Megawatt Generation Facility in the Town of Babylon, Suffolk County, Order Granting a Certificate of Public Convenience and Necessity, Providing for Lightened Regulation, and Approving Financing (Aug. 25, 2004); Case 04-E-0195 - Petition of KeySpan-Ravenswood, LLC for Approval of the Transfer of the New 250-MW Generating Facility for a Purchase Price of Approximately \$363 Million and the Subsequent Lease of Ravenswood Unit 40 Back to Ravenswood, Order Authorizing Transaction and Providing for Other Relief (May 3, 2004).

<sup>23</sup> See supra n. 19.

<sup>24</sup> Id.

<sup>25</sup> Id.



amount up to \$2.0 billion as well as enter into Hedging Arrangements. The Debt is appropriate as it is for a statutory purpose in that it is being issued to: i) allow NewCo to acquire property, including the stocks and assets of New York wholesale generating facilities (viz. ENIP2, ENIP3 and ENFP); ii) improve and maintain its service; iii) reduce the weighted average costs of capital for NewCo and the New York Facilities; iv) provide working capital and collateral for hedging contracts; and v) discharge or lawfully refund NewCo's obligations. Although the debt may be secured in part by pledging the stock and/or assets of ENIP2, ENIP3 and ENFP, there is no potential harm to captive New York ratepayers as the Petitioners will bear all of the financial risk associated with the Debt. The Debt will also be made on commercially reasonable terms. The Petitioners request that, consistent with its precedent, the Commission approve the Debt financings, without undertaking an in-depth analysis.

Furthermore, in order for them to fairly compete with other merchant generators, Petitioners request that NewCo be granted the flexibility to modify, without Commission approval, the terms of the financing, including but not limited to the payment terms, the financing entities, and the amount of financing, up to \$4.5 billion in Senior Notes and \$2.0 billion in aggregate in a Senior Revolving Credit Facility and/or Term LC facility, including Hedging Arrangements. This flexibility will allow NewCo to modify quickly its Debt financings to take advantage of changing market conditions. As the Commission has recognized, financing flexibility is important to the development of a competitive electricity market.

## **VI. LIGHTENED REGULATION**

For all of the reasons set forth in the Entergy Nuclear Lightened Regulation Orders, Petitioners should continue to be subject to lightened regulation. ENIP2, ENIP3 and ENFP will remain wholesale generators. FitzPatrick, IP2 and IP3 will continue to be owned and

operated as wholesale power plants. Because Petitioners will continue to own and operate the New York Facilities and participate exclusively in the wholesale generation market, ENIP2's, ENIP3's, ENFP's, and ENO's (as converted and renamed) status as lightly regulated entities should continue.

In past decisions, the Commission has determined that lightly regulated entities continue to be lightly regulated following the consummation of corporate transactions or reorganizations transferring their ownership interests in the affiliates (or parent entities upstream from the affiliates) owning and operating the New York competitive electric generating facilities.<sup>26</sup> Accordingly, following the consummation of the Corporate Reorganization, the Commission should follow precedent and continue the lightened regulation of Petitioners consistent with the Entergy Nuclear Lightened Regulation Orders.

## **VII. STATE ENVIRONMENTAL QUALITY REVIEW ACT**

Under the State Environmental Quality Review Act ("SEQRA"), Article 8 of the Environmental Conservation Law, and its implementing regulations (6 NYCRR §617 and 16 NYCRR §7) the Commission must determine whether certain actions it is authorized to approve may have a significant impact on the environment. SEQRA review, however, is not required if the Commission issues a declaratory ruling and determines that further PSL Section 70 review is

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<sup>26</sup> See Case 07-E-0462 - Joint Petition of Horizon Wind Energy LLC, f/k/a Zilkha Renewable Energy, and GS Wind Holdings LLC for a Declaratory Ruling, Declaratory Ruling on Review of Transfer Transactions (June 26, 2007); Case 07-E-0288 - Astoria Energy LLC, SCS Energy, LLC, and Suez Energy Development NA, Inc. - Petition for a Declaratory Order Finding That Commission Review of a Transaction is Not Required or, in the Alternative, for Approval of a Transaction Pursuant to Public Service Law §70, and for Reaffirmation of Lightened Regulation, Declaratory Ruling on Review of an Ownership Interest Transfer and Making Other Findings (May 22, 2007); Case 07-E-0170 - Re Alliance Energy Renewables LLC, Order Approving Transfer and Making Other Findings (Apr. 23, 2007); Case 04-E-0789 - Orion Power Holdings, Inc. and Great Lakes Power, Inc. - Joint Petition for Application of Lightened Regulation, Approval of a Financing and a Declaratory Ruling That the Commission Will Not Assert Jurisdiction Over a Transfer, or, in the Alternative, Approval of the Transfer, Order Approving Transfers and a Financing and Making Other Findings (Sept. 22, 2004).

not necessary.<sup>27</sup> Likewise, SEQRA review is also not required for PSL Section 69 approval because issuance of debt is a Type II action, "which [has] been determined not to have a significant adverse impact on the environment."<sup>28</sup>

However, if the Commission decides to review the Corporate Reorganization under PSL Section 70, SEQRA review is required as the Corporate Reorganization does not meet the definition of Type I or Type II actions listed in 6 NYCRR §§617.4, 617.5 and 16 NYCRR §7.2 and, therefore, is appropriately classified as "unlisted," requiring SEQRA review.<sup>29</sup> Accordingly, if the Commission reviews the Corporate Reorganization under PSL Section 70, it is proper for the Commission, as lead agency, to conduct an environmental assessment and to determine the significance of the actions proposed. To facilitate such assessment, attached hereto as Exhibit 8, is a complete Short Environmental Assessment Form describing the potential impact, if any, of the Corporate Reorganization.

Petitioners maintain that the Corporate Reorganization concerns the indirect transfer of ownership of the New York Facilities and will not change the operation of those assets 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. The Corporate Reorganization will not affect any environmental permits or

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<sup>27</sup> See 6 N.Y.C.R.R. §617.5(c)(31) ("The following actions are not subject to review under this Part: . . . interpreting an existing code, regulation or rule.").

<sup>28</sup> Case 03-E-1181 – Dynegy Danskammer, LLC and Dynegy Roseton, LLC – Petition For Expedited Approval Under Section 69 to Restructure Corporate Debt and Under Section 70 for the Collateral Pledge of Securities and Certain Assets Pursuant to Lightened Regulation, Order Authorizing Entry Into Credit Facility and Issuance of Secured Notes at fn 5 (Nov. 26, 2003) (quoting 16 NYCRR §§7.2(a) and 7.2(b)(2)(v)).

<sup>29</sup> 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 Transfers and Financings and Making Other Findings (Feb., 15, 2006); Case 04-E-0789 - Orion Power Holdings, Inc. and Great Lakes Power, Inc. – Joint Petition for Application of Lightened Regulation, Approval of a Financing, and a Declaratory Ruling that the Commission Will Not Assert Jurisdiction Over a Transfer, or, in the Alternative, Approval of the Transfer, Order Approving Transfers and a Financing and Making Other Findings (Sept. 22, 2004).

cause new environmental impacts and, as such, should the Commission review the Corporate Reorganization under PSL Section 70, it should follow precedent and issue a negative declaration and undertake no further environmental review.<sup>30</sup>

## **VIII. NOTICE**

Petitions for declaratory rulings do not trigger the notification requirements for rule making proceedings set forth in the New York State Administrative Procedure Act ("SAPA") Section 202.<sup>31</sup> However, if the Commission decides to review the Corporate Reorganization under PSL Section 70, the Commission must comply with the requirements of SAPA.<sup>32,33</sup> As such, should the Commission decide to review the Corporate Reorganization under Section 70, a draft form of notification suitable for publication in the New York State Register pursuant to the provisions of SAPA is attached hereto as Exhibit 9.

## **IX. CONCLUSION**

Based on the foregoing, the Petitioners respectfully request that the Commission:

1. Issue a declaratory ruling that the Wallkill Presumption applies and the Commission need not review the Corporation Reorganization under PSL Section 70;
2. In the alternative, issue an Order authorizing Petitioners to consummate the Corporate Reorganization, without modification or condition;
3. Confirm that the Commission will not require further review or, in the alternative, approve any future transactions whereby Petitioners eliminate intermediary holding companies from the chain of ownership of the New York Facilities;

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<sup>30</sup> Id.


<sup>31</sup> N.Y. State Admin. Proc. Act § 102(b)(iii) (McKinney 2000) (excluding declaratory rulings from the definition of "rule").

<sup>32</sup> N.Y. State Admin. Proc. Act § 102(a)(ii) (McKinney 2000).

<sup>33</sup> Petitions seeking Section 69 authorization also trigger SAPA Section 202 notification requirements. N.Y. State Admin. Proc. Act § 102(a)(ii) (McKinney 2000).

4. Issue an Order authorizing NewCo to enter into debt financings as described herein with the flexibility to modify, without prior approval, the financing terms, including but not limited to the payment terms, the financing entities, and the amount of financing, up to \$4.5 billion in Senior Notes, \$2.0 billion in a Senior Revolving Credit Facility and/or Term LC facility, and Hedging Arrangements; and
5. Confirm that the Corporate Reorganization will have no impact on Petitioners' status as lightly regulated entities.

Dated: January 28, 2008

  
Paul L. Gioia  
Gregory G. Nickson  
Dewey & LeBoeuf LLP  
99 Washington Avenue, Suite 2020  
Albany, New York 12210-2820  
Tel: (518) 626-9000  
Fax: (518) 626-9010

Attorneys for  
Entergy Nuclear FitzPatrick, LLC,  
Entergy Nuclear Indian Point 2, LLC,  
Entergy Nuclear Indian Point 3, LLC,  
Entergy Nuclear Operations, Inc.,  
Entergy Corporation and  
NewCo

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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  
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Case 08-E- \_\_\_\_\_

**VERIFICATION**

STATE OF LOUISIANA )

)ss:.

PARISH OF ORLEANS )

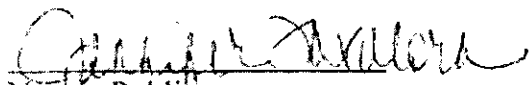
Paul A. Castanon being duly sworn, deposes and states as follows:

1. I am Assistant Secretary of Entergy Corporation.
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 Verified Petition and the statements of fact contained therein are true and correct to the best of my knowledge, information and belief.



Paul A. Castanon,  
Assistant Secretary of Entergy Corporation

Sworn to and subscribed before me  
this 30<sup>th</sup> day of January, 2008.

  
Notary Public

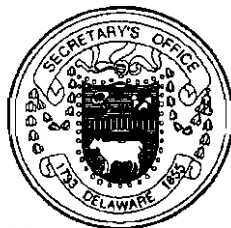
JENNIFER B. FAVALORA  
NOTARY PUBLIC (ID # 57639)  
Parish of Orleans, Louisiana  
Commission Issued For Life

# Delaware

PAGE 1

*The First State*

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF FORMATION OF "ENTERGY NUCLEAR FITZPATRICK, LLC", FILED IN THIS OFFICE ON THE THIRD DAY OF FEBRUARY, A.D. 2000, AT 11:10 O'CLOCK A.M.



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You may verify this certificate online  
at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

*Harriet Smith Windsor*

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 6305428

DATE: 01-11-08

CERTIFICATE OF FORMATION  
OF  
ENTERGY NUCLEAR FITZPATRICK, LLC

This Certificate of Formation of Entergy Nuclear Fitzpatrick, LLC (the "LLC"), dated February 2, 2000 is being duly executed and filed by Entergy Nuclear New York Investment Company I and Entergy Nuclear New York Investment Company II, as authorized persons to form a limited liability company under the Delaware Limited Liability Company Act (6 Del.C. §18-101, et seq.).

FIRST. The name of the limited liability company formed hereby is Entergy Nuclear Fitzpatrick, LLC.

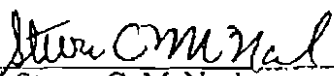
SECOND. The address of the registered office of the LLC in the State of Delaware is One Rodney Square, 10<sup>th</sup> Floor, Tenth & King Street in the City of Wilmington, County New Castle.

THIRD. The name and address of the registered agent for service of process on the LLC in the State of Delaware is RL&F Service Corp., One Rodney Square, 10<sup>th</sup> Floor, Tenth & King Street, Wilmington, Delaware 19899.

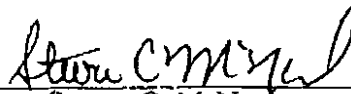
FOURTH. This Certificate of Formation shall be effective upon filing.

IN WITNESS WHEREOF, the undersigned have executed this Certificate of Formation as of the date first written above.

ENTERGY NUCLEAR NEW YORK  
INVESTMENT COMPANY I,  
as authorized person

  
Name: Steven C. McNeal  
Title: Vice President and Treasurer

ENTERGY NUCLEAR NEW YORK  
INVESTMENT COMPANY II,  
as authorized person

  
Name: Steven C. McNeal  
Title: Vice President and Treasurer



# Delaware

PAGE 1

*The First State*

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF FORMATION OF "ENTERGY NUCLEAR INDIAN POINT 2, LLC", FILED IN THIS OFFICE ON THE NINETEENTH DAY OF OCTOBER, A.D. 2000, AT 9 O'CLOCK A.M.



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You may verify this certificate online  
at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

*Harriet Smith Windsor*

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 6305440

DATE: 01-11-08

CERTIFICATE OF FORMATION

OF

ENTERGY NUCLEAR INDIAN POINT 2, LLC

This Certificate of Formation of Entergy Nuclear Indian Point 2, LLC (the "LLC"), dated October 18, 2000 is being duly executed and filed by Entergy Nuclear New York Investment Company I and Entergy Nuclear New York Investment Company II, as authorized persons to form a limited liability company under the Delaware Limited Liability Company Act (6 Del.C. §18-101, et seq.).

FIRST. The name of the limited liability company formed hereby is Entergy Nuclear Indian Point 2, LLC.

SECOND. The address of the registered office of the LLC in the State of Delaware is One Rodney Square, 10<sup>th</sup> Floor, Tenth & King Street in the City of Wilmington, County New Castle.

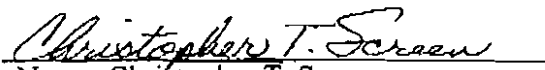
THIRD. The name and address of the registered agent for service of process on the LLC in the State of Delaware is RL&F Service Corp., One Rodney Square, 10<sup>th</sup> Floor, Tenth & King Street, Wilmington, Delaware 19899.

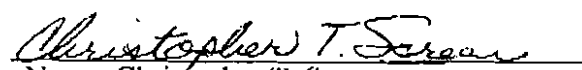
FOURTH. This Certificate of Formation shall be effective upon filing.

IN WITNESS WHEREOF, the undersigned have executed this Certificate of Formation as of the date first written above.

ENTERGY NUCLEAR NEW YORK  
INVESTMENT COMPANY I,  
as authorized person

ENTERGY NUCLEAR NEW YORK  
INVESTMENT COMPANY II,  
as authorized person

  
Name: Christopher T. Screen  
Title: Assistant Secretary

  
Name: Christopher T. Screen  
Title: Assistant Secretary

# Delaware

PAGE 1

*The First State*

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF FORMATION OF "ENTERGY NUCLEAR INDIAN POINT 3, LLC", FILED IN THIS OFFICE ON THE THIRD DAY OF FEBRUARY, A.D. 2000, AT 11:05 O'CLOCK A.M.



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You may verify this certificate online  
at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

*Harriet Smith Windsor*

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 6305452

DATE: 01-11-08

CERTIFICATE OF FORMATION  
OF  
ENTERGY NUCLEAR INDIAN POINT 3, LLC

This Certificate of Formation of Entergy Nuclear Indian Point 3, LLC (the "LLC"), dated February 2, 2000 is being duly executed and filed by Entergy Nuclear New York Investment Company I and Entergy Nuclear New York Investment Company II, as authorized persons to form a limited liability company under the Delaware Limited Liability Company Act (6 Del.C. §18-101, et seq.).

FIRST. The name of the limited liability company formed hereby is Entergy Nuclear Indian Point 3, LLC.

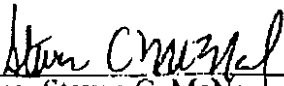
SECOND. The address of the registered office of the LLC in the State of Delaware is One Rodney Square, 10<sup>th</sup> Floor, Tenth & King Street in the City of Wilmington, County New Castle.

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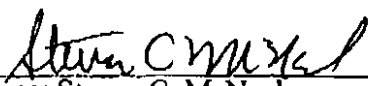
FOURTH. This Certificate of Formation shall be effective upon filing.

IN WITNESS WHEREOF, the undersigned have executed this Certificate of Formation as of the date first written above.

ENTERGY NUCLEAR NEW YORK  
INVESTMENT COMPANY I,  
as authorized person

  
Name: Steven C. McNeal  
Title: Vice President and Treasurer

ENTERGY NUCLEAR NEW YORK  
INVESTMENT COMPANY II,  
as authorized person

  
Name: Steven C. McNeal  
Title: Vice President and Treasurer

# Delaware

PAGE 1

*The First State*

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED ARE TRUE AND CORRECT COPIES OF ALL DOCUMENTS ON FILE OF "ENTERGY NUCLEAR OPERATIONS, INC." AS RECEIVED AND FILED IN THIS OFFICE.

THE FOLLOWING DOCUMENTS HAVE BEEN CERTIFIED:

CERTIFICATE OF INCORPORATION, FILED THE NINTH DAY OF MAY, A.D. 2000, AT 11:25 O'CLOCK A.M.

CERTIFICATE OF CHANGE OF REGISTERED AGENT, FILED THE EIGHTH DAY OF MARCH, A.D. 2006, AT 2:29 O'CLOCK P.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE AFORESAID CERTIFICATES ARE THE ONLY CERTIFICATES ON RECORD OF THE AFORESAID CORPORATION, "ENTERGY NUCLEAR OPERATIONS, INC.".



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You may verify this certificate online  
at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

*Harriet Smith Windsor*

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 6305459

DATE: 01-11-08

**CERTIFICATE OF INCORPORATION  
OF  
ENTERGY NUCLEAR OPERATIONS, INC.**

**FIRST:** The name of the Corporation is Entergy Nuclear Operations, Inc. (hereinafter the "Corporation").

**SECOND:** The address of the registered office of the Corporation in the State of Delaware is One Rodney Square, 10<sup>th</sup> Floor, Tenth & King Street, in the City of Wilmington, County of New Castle. The name of its registered agent at that address is RL&F Service Corp.

**THIRD:** The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of the State of Delaware as set forth in Title 8 of the Delaware Code.

**FOURTH:** The total number of shares of stock which the Corporation shall have authority to issue is three thousand 3,000 shares of capital stock having \$.01 par value per share and of one class; such class is hereby designated as common stock.

**FIFTH:** The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors, which shall consist of not less than one (1) nor more than fifteen (15) directors, the exact number of directors to be determined from time to time by resolution adopted by affirmative vote of a majority of the entire Board of Directors. A director shall hold office until the next succeeding annual meeting of stockholders and until his successor shall be elected, subject, however, to prior death, resignation, retirement or removal from office. Vacancies occurring in the Board of Directors and newly created directorships resulting from an increase in the authorized number of directors may be filled by a majority of the directors then in office, even if less than a quorum, or by a sole remaining director. Any director elected to fill a vacancy shall serve until the next succeeding annual meeting of stockholders and until his or her successor shall be elected and qualified.

**SIXTH:** In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, adopt, alter, amend, change or repeal the Bylaws of the Corporation. In addition to the powers and authority hereinbefore or by statute expressly conferred upon them, the directors are hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, subject, nevertheless, to the provisions of the statutes of Delaware, this Certificate of Incorporation, and by any Bylaws adopted by the stockholders; *provided, however*, that no Bylaws hereafter

adopted by the stockholders or otherwise shall invalidate any prior act of the directors which would have been valid if such Bylaws had not been adopted.

**SEVENTH:** Notwithstanding any other provision of this Certificate of Incorporation or the Bylaws of the Corporation to the contrary, no action required to be taken or which may be taken at any annual or special meeting of stockholders of the Corporation may be taken by written consent without such a meeting except any action taken upon the signing of a consent in writing by the holders of not less than the greater of (a) a majority of the outstanding stock of the Corporation entitled to vote thereon and (b) that number of shares of stock of the Corporation that would be required to take such action at a special or annual meeting of stockholders where holders of all outstanding stock of the Corporation were present, setting forth the action to be taken. Special meetings of the stockholders of the Corporation may be called only by the Board of Directors, the Chairman of the Board, the person, if any, designated by the Board of Directors as the Chief Executive Officer of the Corporation, a majority of the members of the entire Executive Committee of the Board of Directors, if there shall be one, or by the holders of not less than a majority of the outstanding stock of the Corporation entitled to vote at the special meeting.

**EIGHTH:** A. To the fullest extent authorized or permitted by the General Corporation Law of the State of Delaware, as the same exists or may hereafter be amended, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director.

Any repeal or modification of this Section A of Article EIGHTH shall not have any effect on the liability or alleged liability of any director of this Corporation for any act or omission of such director occurring prior to such repeal or modification, or otherwise adversely affect any right or protection of a director of the corporation existing at the time of such repeal or modification.

B. The Corporation shall indemnify its directors and officers to the fullest extent authorized or permitted by the General Corporation Law of the State of Delaware, as the same exists or may hereafter be amended, and such right to indemnification shall continue as to a person who has ceased to be a director or officer of the Corporation and shall inure to the benefit of his or her heirs, executors and administrators; *provided, however,* that, except for proceedings to enforce rights to indemnification, the Corporation shall not be obligated to indemnify any director or officer (or his or her heirs, executors or administrators) in connection with a proceeding (or part thereof) initiated by such person unless such proceeding (or part thereof) was authorized by the Board of Directors of the Corporation. The right to indemnification conferred in this Section B of Article EIGHTH shall include the right to be paid by the Corporation the expenses incurred in defending or otherwise participating in any proceeding in advance of its final disposition.

The Corporation may, to the extent authorized from time to time by the Board of Directors, provide rights to indemnification and the to advancement of expenses to employees and agents of the Corporation who are not directors or officers similar to those conferred in this Section B of Article EIGHTH to directors and officers of the Corporation.

The rights to indemnification and to the advancement of expenses conferred in this Section B of Article EIGHTH shall not be exclusive of any other right which any person may have hereafter acquire under this Certificate of Incorporation, the Bylaws, any statute, agreement, vote of stockholders or disinterested directors, or otherwise.

Any repeal or modification of this Section B of Article EIGHTH by the stockholders of the Corporation shall not adversely affect any rights to indemnification and advancement of expenses of a director or officer of the Corporation existing pursuant to this Section B of Article EIGHTH with respect to any acts or omissions occurring prior to such repeal or modification.

C. The Corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the General Corporation Law of the State of Delaware. The Corporation may also obtain a letter of credit, act as self-insurer, create a reserve, trust, escrow, cash collateral or other fund or account, enter into indemnification agreements, pledge or grant a security interest in any assets or properties of the Corporation, or use any the mechanism or arrangement whatsoever in such amounts, at such costs, and upon such other terms and conditions as the Board of Directors shall deem appropriate for the protection of any or all such persons.

**NINTH:** Each of the directors of the Corporation may be removed from office at any time, with or without cause, but a director may be removed without cause only by the affirmative vote of the holders of not less than two-thirds of the outstanding stock of the Corporation then entitled to vote for the election of such director.

**TENTH:** The name of the Incorporator is Denise C. Redmann and her mailing address is c/o Entergy Services, Inc., 639 Loyola Avenue, New Orleans, Louisiana 70113.

**ELEVENTH:** Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws may provide. The books of the Corporation may be kept (subject to any provision contained in the General Corporation Law of the State of Delaware) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws of the Corporation.



**TWELFTH:** The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

THE UNDERSIGNED, being the Incorporator hereinbefore named, for the purpose of forming a corporation pursuant to the General Corporation Law of the State of Delaware, do make this Certificate hereby declaring and certifying that this is my act and deed and the facts herein stated are true, and accordingly have hereunto set my hand this 9<sup>th</sup> day of May 2000.

Denise C. Redmann  
Denise C. Redmann - Incorporator

Witness:

Sylvia R. Boneri

State of Delaware  
Secretary of State  
Division of Corporations  
Delivered 02:30 PM 03/08/2006  
FILED 02:29 PM 03/08/2006  
SRV 060228076 - 3225349 FILE

**CERTIFICATE OF CHANGE OF REGISTERED AGENT**

**AND**

**REGISTERED OFFICE**

\*\*\*\*\*

Entergy Nuclear Operations, Inc., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware, DOES HEREBY CERTIFY:

That the registered office of the corporation in the state of Delaware is hereby changed to Corporation Trust Center, 1209 Orange Street, Wilmington, New Castle County, Delaware 19801.

That the registered agent of the corporation is hereby changed to THE CORPORATION TRUST COMPANY, the business address of which is identical to the aforementioned registered office as changed.

That the changes in the registered office and registered agent of the corporation as set forth herein were duly authorized by resolution of the Board of Directors of the corporation.

IN WITNESS WHEREOF, the corporation has caused this Certificate to be signed by an authorized officer, this 6<sup>th</sup> day of MARCH, 200<sup>6</sup>.

Amy A. Blaylock  
Name/Title:  
AMY BLAYLOCK  
ASSISTANT SECRETARY

# Delaware

PAGE 1

## The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED ARE TRUE AND CORRECT COPIES OF ALL DOCUMENTS ON FILE OF "ENTERGY CORPORATION" AS RECEIVED AND FILED IN THIS OFFICE.

THE FOLLOWING DOCUMENTS HAVE BEEN CERTIFIED:

CERTIFICATE OF INCORPORATION, FILED THE NINETEENTH DAY OF AUGUST, A.D. 1992, AT 10:30 O'CLOCK A.M.

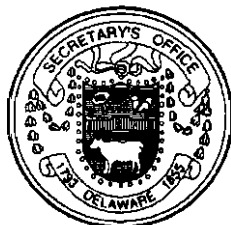
CERTIFICATE OF CORRECTION, FILED THE FOURTH DAY OF NOVEMBER, A.D. 1992, AT 1:30 O'CLOCK P.M.

CERTIFICATE OF OWNERSHIP, CHANGING ITS NAME FROM "ENTERGY-GSU HOLDINGS, INC." TO "ENTERGY CORPORATION", FILED THE THIRTY-FIRST DAY OF DECEMBER, A.D. 1993, AT 5:33 O'CLOCK P.M.

CERTIFICATE OF AMENDMENT, FILED THE TWELFTH DAY OF JUNE, A.D. 2006, AT 7:35 O'CLOCK P.M.

RESTATED CERTIFICATE, FILED THE TENTH DAY OF OCTOBER, A.D. 2006, AT 8:51 O'CLOCK P.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE AFORESAID CERTIFICATES ARE THE ONLY CERTIFICATES ON RECORD OF THE AFORESAID CORPORATION, "ENTERGY CORPORATION".



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You may verify this certificate online  
at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

*Harriet Smith Windsor*

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 6305471

DATE: 01-11-08

**CERTIFICATE OF INCORPORATION  
OF  
ENTERGY-GSU HOLDINGS, INC.**

**FIRST:** The name of the Corporation is Entergy-GSU Holdings, Inc. (hereinafter the "Corporation").

**SECOND:** The address of the registered office of the Corporation in the State of Delaware is 1209 Orange Street, in the City of Wilmington, County of New Castle. The name of its registered agent at that address is The Corporation Trust Company.

**THIRD:** The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of the State of Delaware as set forth in Title 8 of the Delaware Code.

**FOURTH:** The total number of shares of stock which the Corporation shall have authority to issue is 500,000,000 shares, par value \$.01 per share, of common stock.

**FIFTH:** The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors, which shall, prior to the Effective Time defined in and contemplated by the Agreement and Plan of Reorganization, dated as of June 3, 1992, between Entergy Corporation and Gulf States Utilities Company, as the same may be amended from time to time, consist of two (2) directors, and thereafter shall consist of not less than nine (9) nor more than nineteen (19) directors, the exact number of directors to be determined from time to time by resolution adopted by affirmative vote of a majority of the entire Board of Directors. A director shall hold office until the next succeeding annual meeting of stockholders and until his successor shall be elected, subject, however, to prior death, resignation, retirement or removal from office. Vacancies occurring in the Board of Directors and newly created directorships resulting from an increase in the authorized number of directors may be filled by a majority of the directors then in office, even if less than a quorum, or by a sole remaining director. Any director elected to fill a vacancy shall serve until the next succeeding annual meeting of stockholders and until his or her successor shall be elected and qualified.

**SIXTH:** In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, adopt, alter, amend, change or repeal the By-Laws of the Corporation. In addition to the powers and authority hereinbefore or by statute expressly conferred upon them, the directors are hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, subject, nevertheless, to the provisions of the statutes of Delaware, this Certificate of Incorporation, and any By-Laws adopted by the stockholders; *provided, however*, that no By-Laws hereafter adopted by the stockholders or otherwise shall invalidate any prior act of the directors which would have been valid if such By-Laws had not been adopted.

**SEVENTH:** Notwithstanding any other provision of this Certificate of Incorporation or the By-Laws of the Corporation to the contrary, no action required to be taken or which may be taken at any annual or special meeting of stockholders of the Corporation may be taken by written consent without such a meeting except any action taken upon the signing of a consent in writing by the holders of not less than the greater of (a) a majority of the outstanding stock of the Corporation entitled to vote thereon and (b) that number of shares of stock of the Corporation that would be required to take such action at a special or annual meeting of stockholders where holders of all outstanding stock of the Corporation were present, setting forth the action to be taken. Special meetings of stockholders of the Corporation may be called only by the Board of Directors, the Chairman of the Board, the person, if any, designated by the Board of Directors as the Chief Executive Officer of the Corporation, a majority of the members of the entire Executive Committee of the Board of Directors, if there shall be one, or by the holders of not less than a majority of the outstanding stock of the Corporation entitled to vote at the special meeting.

**EIGHTH:** A. To the fullest extent authorized or permitted by the General Corporation Law of the State of Delaware, as the same exists or may hereafter be amended, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director.

Any repeal or modification of this Section A of Article EIGHTH shall not have any effect on the liability or alleged liability of any director of this Corporation for any act or omission of such director occurring prior to such repeal or modification, or otherwise adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

B. The Corporation shall indemnify its directors and officers to the fullest extent authorized or permitted by the General Corporation Law of the State of Delaware, as the same exists or may hereafter be amended, and such right to indemnification shall continue as to a person who has ceased to be a director or officer of the Corporation and shall inure to the benefit of his or her heirs, executors and administrators; *provided*, however, that, except for proceedings to enforce rights to indemnification, the Corporation shall not be obligated to indemnify any director or officer (or his or her heirs, executors or administrators) in connection with a proceeding (or part thereof) initiated by such person unless such proceeding (or part thereof) was authorized by the Board of Directors of the Corporation. The right to indemnification conferred in this Section B of Article EIGHTH shall include the right to be paid by the Corporation the expenses incurred in defending or otherwise participating in any proceeding in advance of its final disposition.

The Corporation may, to the extent authorized from time to time by the Board of Directors, provide rights to indemnification and to the advancement of expenses to employees and agents of the Corporation who are not directors or officers similar to those conferred in this Section B of Article EIGHTH to directors and officers of the Corporation.

The rights to indemnification and to the advancement of expenses conferred in this Section B of Article EIGHTH shall not be exclusive of any other right which any person may have or hereafter acquire under this Certificate of Incorporation, the By-laws, any statute, agreement, vote of stockholders or disinterested directors, or otherwise.

Any repeal or modification of this Section B of Article EIGHTH by the stockholders of the Corporation shall not adversely affect any rights to indemnification and advancement of expenses of a director or officer of the Corporation existing pursuant to this Section B of Article EIGHTH with respect to any acts or omissions occurring prior to such repeal or modification.

C. The Corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise against any such expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the General Corporation Law of the State of Delaware. The Corporation may also obtain a letter of credit, act as self-insurer, create a reserve, trust, escrow, cash collateral or other fund or account, enter into indemnification agreements, pledge or grant a security interest in any assets or properties of the Corporation, or use any other mechanism or arrangement whatsoever in such amounts, at such costs, and upon such other terms and conditions as the Board of Directors shall deem appropriate for the protection of any or all such persons.

**NINTH:** Each of the directors of the Corporation may be removed from office at any time, with or without cause, but a director may be removed without cause only by the affirmative vote of the holders of not less than two-thirds of the outstanding stock of the Corporation then entitled to vote for the election of such director.

**TENTH:** The name and mailing address of the Sole Incorporator is as follows:

<u>Name</u>	<u>Mailing Address</u>
Deborah M. Reusch	P.O. Box 636 Wilmington, DE 19899

**ELEVENTH:** Meetings of stockholders may be held within or without the State of Delaware, as the By-Laws may provide. The books of the Corporation may be kept (subject to any provision contained in the General Corporation Law of the State of Delaware) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the By-Laws of the Corporation.

**TWELFTH:** The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

I, THE UNDERSIGNED, being the Sole Incorporator hereinbefore named, for the purpose of forming a corporation pursuant to the General Corporation Law of the State of Delaware, do make this Certificate, hereby declaring and certifying that this is my act and deed and the facts herein stated are true, and accordingly have hereunto set my hand this 19th day of August, 1992.



Deborah M. Reusch  
Sole Incorporator

CERTIFICATE OF CORRECTION  
OF  
ENTERGY-GSU HOLDINGS, INC.

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Pursuant to Section 103(f) of the General  
Corporation Law of the State of Delaware

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ENTERGY-GSU HOLDINGS, INC., a Delaware corpora-  
tion (the "Corporation"), does hereby certify as follows:

FIRST: The Corporation filed its Certificate  
of Incorporation on August 19, 1992.

SECOND: The Certificate of Incorporation in-  
cluded, in Article EIGHTH, Section C, an erroneous word.  
This error is an inaccurate record of the corporate in-  
tent.

THIRD: Article EIGHTH, Section C is hereby  
corrected to read in its entirety as follows:

C. The Corporation may maintain insur-  
ance, at its expense, to protect itself and any  
director, officer, employee or agent of the  
Corporation or another corporation, partner-  
ship, joint venture, trust, employee benefit  
plan or other enterprise against any expense,  
liability or loss, whether or not the Corpora-  
tion would have the power to indemnify such  
person against such expense, liability or loss  
under the General Corporation Law of the State  
of Delaware. The Corporation may also obtain a  
letter of credit, act as self-insurar, create a  
reserve, trust, escrow, cash collateral or  
other fund or account, enter into indemnifica-  
tion agreements, pledge or grant a security  
interest in any assets or properties of the  
Corporation, or use any other mechanism or  
arrangement whatsoever in such amounts, at such  
costs, and upon such other terms and conditions  
as the Board of Directors shall deem appropri-  
ate for the protection of any or all such per-  
sons.

FOURTH: This Certificate of Correction has  
been prepared in accordance with the provisions of Sec-  
tion 103(f) of the General Corporation Law of the State  
of Delaware.

IN WITNESS WHEREOF, the Corporation has caused  
this Certificate to be executed in its corporate name  
this 26th day of October, 1992.

ENTERGY-GSU HOLDINGS, INC.

By 

Name: Edwin Lybberger

Title: Chairman of the  
Board

ATTEST:

By 

Name: Leslie Cobb

Title: Secretary



## CERTIFICATE OF OWNERSHIP AND MERGER

OF

ENTERGY CORPORATION

MERGING INTO

ENTERGY-GSU HOLDINGS, INC.

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Pursuant to Section 253 of the  
General Corporation Law of the State of  
Delaware

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Enterigy-GSU Holdings, Inc., a Delaware corporation  
("Parent"), hereby certifies as follows:

FIRST: That the name and state of incorporation of  
each of the constituent corporations to the merger are as fol-  
lows:

<u>Name</u>	<u>State of Incorporation</u>
Enterigy-GSU Holdings, Inc.	Delaware
Enterigy Corporation	Florida

SECOND: Parent owns all of the outstanding shares of  
common stock, par value \$5.00 per share, which is only outstand-  
ing class of capital stock of Enterigy Corporation ("Sub").

THIRD: The Board of Directors of Parent, acting by  
written consent pursuant to Section 141(f) of the General Corpo-  
ration Law of the State of Delaware ("DGCL") this 31st day of  
December, 1993, has duly adopted resolutions authorizing the  
merger of Sub with and into Parent pursuant to Section 253 of the  
DGCL. A true copy of such resolutions is annexed hereto as  
Exhibit A. Such resolutions have not been modified or rescinded  
and are in full force and effect on the date hereof.

FOURTH: The Certificate of Incorporation of Parent  
shall be the Certificate of Incorporation of the surviving corpo-  
ration except that ARTICLE FIRST of the Certificate of Incorpo-

ration of the surviving corporation shall be amended to read as follows:

"The name of the Corporation is Entergy Corporation (hereinafter the "Corporation")."

FIFTH: The merger shall become effective on December 31, 1993 at 5:33 p.m., New York City time.

IN WITNESS WHEREOF, Entergy-GSU Holdings, Inc. has caused this Certificate of Ownership and Merger to be signed by its duly authorized officers this 31st day of December, 1993.

ENTERGY GSU HOLDINGS, INC.

By: 

Chairman

Attest:

By: 

Secretary

## EXHIBIT A

TO

CERTIFICATE OF OWNERSHIP AND MERGER MERGING  
ENTERGY CORPORATION INTO  
ENTERGY-GSU HOLDINGS, INC.RESOLUTIONS OF THE BOARD OF DIRECTORS  
OF ENTERGY-GSU HOLDINGS, INC. (THE "CORPORATION")

RESOLVED, that it is deemed advisable that Entergy Corporation, a Florida corporation ("Entergy"), merge with and into the Corporation, at which time the Corporation will change its corporate name to "Entergy Corporation"; and

FURTHER RESOLVED, that the merger of Entergy with and into the Corporation shall become effective, the corporate existence of Entergy shall cease and all outstanding shares of capital stock of Entergy shall be cancelled and no consideration paid therefor, upon the filing of a Certificate of Ownership and Merger, prepared in accordance with the Delaware General Corporation Law (the "DGCL"), with the Secretary of State of the State of Delaware in accordance with Sections 103 and 253 of the DGCL, and the filing of the articles of merger, prepared in accordance with the Florida Business Corporation Act (the "FBCA"), with the Secretary of State of the State of Florida in accordance with Section 607.1105 of the FBCA (or at such later date and time as may be specified in such Certificate and articles of merger); and

FURTHER RESOLVED, that the President and the Secretary of the Corporation or such other appropriate officers are authorized and directed to execute and cause to be filed with the Secretary of State of the State of Delaware such Certificate of Ownership and Merger merging Entergy into the Corporation and with the Secretary of State of the State of Florida such articles of merger merging Entergy into the Corporation and to take any and all other actions necessary or appropriate to accomplish the purpose and intent of the foregoing resolutions; and

FURTHER RESOLVED, that all actions heretofore taken by any officer or director of the Corporation in connection with any matter referred to or contemplated in any of the foregoing resolutions be, and they hereby are, approved, ratified and confirmed in all respects.

CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
ENTERGY CORPORATION

Entergy Corporation, a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware, does hereby certify:

FIRST: That at a meeting of the Board of Directors of ENTERGY CORPORATION held on December 2, 2005 resolutions were duly adopted setting forth a proposed amendment to the Certificate of Incorporation of said corporation, declaring said amendment to be advisable and proposing such amendment to the stockholders of the corporation for consideration at the next annual meeting of the corporation. The resolution setting forth the proposed amendment is as follows:

RESOLVED, That Article NINTH of the Certificate of Incorporation of this corporation be amended and said Article shall read as follows:

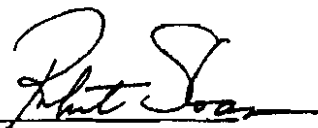
"NINTH: Each of the directors of the Corporation may be removed from office at any time, with or without cause, by the affirmative vote of the holders of not less than a majority of the outstanding stock of the Corporation then entitled to vote for the election of such director."

SECOND: That thereafter, pursuant to resolution of its Board of Directors, at the 2006 Annual Meeting of Stockholders of said corporation, which was duly called and held upon notice in accordance with Section 222 of the General Corporation Law of the State of Delaware, the necessary number of shares as required by statute were voted in favor of the amendment.

THIRD: That said amendment was duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, ENTERGY CORPORATION has caused this certificate to be signed this 12<sup>th</sup> day of June 2006.

ENTERGY CORPORATION

By:   
Robert D. Sloan  
Executive Vice President, General Counsel and  
Secretary (Authorized Officer)

State of Delaware  
Secretary of State  
Division of Corporations  
Delivered 09:45 PM 10/10/2006  
FILED 08:51 PM 10/10/2006  
SRV 060930832 - 2307137 FILE

**RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
ENTERGY CORPORATION**

Entergy Corporation, a corporation organized and existing under the laws of the State of Delaware, hereby certifies as follows:

1. The name of the Corporation is Entergy Corporation and the name under which the corporation was originally incorporated is Entergy-GSU Holdings, Inc.
2. The original Certificate of Incorporation of this corporation was filed with the Secretary of State of Delaware on August 19, 1992.
3. This Restated Certificate of Incorporation only restates and integrates and does not further amend the provisions of the Certificate of Incorporation of this corporation as heretofore amended or supplemented and there is no discrepancy between those provisions and the provisions of this Restated Certificate of Incorporation.
4. The text of the Certificate of Incorporation as amended or supplemented heretofore is hereby restated without further amendments or changes to read as herein set forth in full:
5. This Restated Certificate of Incorporation was duly adopted by the Board of Directors in accordance with Section 245 of the General Corporation Law of the State of Delaware.

**FIRST:** The name of the Corporation is Entergy Corporation (hereinafter the "Corporation").

**SECOND:** The address of the registered office of the Corporation in the State of Delaware is 1209 Orange Street, in the City of Wilmington, County of New Castle. The name of its registered agent at that address is The Corporation Trust Company.

**THIRD:** The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of the State of Delaware as set forth in Title 8 of the Delaware Code.

**FOURTH:** The total number of shares of stock which the Corporation shall have authority to issue is 500,000,000 shares, par value \$.01 per share, of common stock.

**FIFTH:** The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors, which shall, prior to the Effective Time defined in and contemplated by the Agreement and Plan of Reorganization, dated as of June 5, 1992, between Entergy Corporation and Gulf States Utilities Company, as the same may be amended from time to time, consist of two (2) directors, and thereafter consist of not less than nine (9) nor more than nineteen (19) directors, the exact number of directors to be determined from time to time by resolution adopted by affirmative vote of a majority of the entire Board of Directors. A director shall hold office until the next succeeding annual meeting of stockholders and until his successor shall be elected, subject, however, to prior death, resignation, retirement or removal from office. Vacancies occurring in the Board of Directors and newly created directorships resulting from an increase in the authorized number of directors may be filled by a majority of

Entergy Corporation  
Restated Certificate of Incorporation  
Page 2 of 4

the directors then in office, even if less than a quorum, or by a sole remaining director. Any director elected to fill a vacancy shall serve until the next succeeding annual meeting of stockholders and until his or her successor shall be elected and qualified.

**SIXTH:** In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, adopt, alter, amend, change or repeal the By-Laws of the Corporation. In addition to the powers and authority hereinbefore or by statute expressly conferred upon them, the directors are hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, subject, nevertheless, to the provisions of the statutes of Delaware, this Certificate of Incorporation, and any By-Laws adopted by the stockholders; *provided, however*, that no By-Laws hereafter adopted by the stockholders or otherwise shall invalidate any prior act of the directors which would have been valid if such By-Laws had not been adopted.

**SEVENTH:** Notwithstanding any other provision of this Certificate of Incorporation or the By-Laws of the Corporation to the contrary, no action required to be taken or which may be taken at any annual or special meeting of stockholders of the Corporation may be taken by written consent without such a meeting except any action taken upon the signing of a consent in writing by the holders of not less than the greater of (a) a majority of the outstanding stock of the Corporation entitled to vote thereon and (b) that number of shares of stock of the Corporation that would be required to take such action at a special or annual meeting of stockholders where holders of all outstanding stock of the Corporation were present, setting forth the action to be taken. Special meetings of stockholders of the Corporation may be called only by the Board of Directors, the Chairman of the Board, the person, if any, designated by the Board of Directors as the Chief Executive Officer of the Corporation, a majority of the members of the entire Executive Committee of the Board of Directors, if there shall be one, or by the holders of not less than a majority of the outstanding stock of the Corporation entitled to vote at the special meeting.

**EIGHTH:** A. To the fullest extent authorized or permitted by the General Corporation Law of the State of Delaware, as the same exists or may hereafter be amended, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director.

Any repeal or modification of this Section A of Article EIGHTH shall not have any effect on the liability or alleged liability of any director of this Corporation for any act or omission of such director occurring prior to such repeal or modification, or otherwise adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

B. The Corporation shall indemnify its directors and officers to the fullest extent authorized or permitted by the General Corporation Law of the State of Delaware, as the same exists or may hereafter be amended, and such right to indemnification shall continue as to a person who has ceased to be a director or officer of the Corporation and shall inure to the benefit of his or her heirs, executors and administrators; *provided, however*, that, except for proceedings to enforce rights to indemnification, the Corporation shall not be obligated to indemnify any director or officer (or his or her heirs, executors or administrators) in connection with a proceeding (or part thereof) initiated by such person unless such proceeding (or part thereof) was authorized by the Board of Directors of the Corporation. The right to

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**Entergy Corporation**  
**Restated Certificate of Incorporation**  
**Page 3 of 4**

indemnification conferred in this Section B of Article EIGHTH shall include the right to be paid by the Corporation the expenses incurred in defending or otherwise participating in any proceeding in advance of its final disposition.

The Corporation may, to the extent authorized from time to time by the Board of Directors, provide rights to indemnification and to the advancement of expenses to employees and agents of the Corporation who are not directors or officers similar to those conferred in this Section B of Article EIGHTH to directors and officers of the Corporation.

The rights to indemnification and to the advancement of expenses conferred in this Section B of Article EIGHTH shall not be exclusive of any other right which any person may have or hereafter acquire under this Certificate of Incorporation, the By-Laws, any statute, agreement, vote of stockholders or disinterested directors, or otherwise.

Any repeal or modification of this Section B of Article EIGHTH by the stockholders of the Corporation shall not adversely affect any rights to indemnification and advancement of expenses of a director or officer of the Corporation existing pursuant to this Section B of Article EIGHTH with respect to any acts or omissions occurring prior to such repeal or modification.

C. The Corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the General Corporation Law of the State of Delaware. The Corporation may also obtain a letter of credit, act as self-insurer, create a reserve, trust, escrow, cash collateral or other fund or account, enter into indemnification agreements, pledge or grant a security interest in any assets or properties of the Corporation, or use any other mechanism or arrangement whatsoever in such amounts, at such costs, and upon such other terms and conditions as the Board of Directors shall deem appropriate for the protection of any or all such persons.

**NINTH:** Each of the directors of the Corporation may be removed from office at any time, with or without cause, by the affirmative vote of the holders of not less than a majority of the outstanding stock of the Corporation then entitled to vote for the election of such director.

**TENTH:** The name and mailing address of the Sole Incorporator is as follows:

<u>Name</u>	<u>Mailing Address</u>
Deborah M. Reusch	P.O. Box 638 Wilmington, DE 19899


**ELEVENTH:** Meetings of stockholders may be held within or without the State of Delaware, as the By-Laws may provide. The books of the Corporation may be kept (subject to any provision contained in the General Corporation Law of the State of Delaware) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the By-Laws of the Corporation.

Entergy Corporation  
Restated Certificate of Incorporation  
Page 4 of 4

**TWELFTH.** The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

IN WITNESS WHEREOF, said Board of Directors has caused this Certificate to be signed by Robert D. Sloan, its Executive Vice President, General Counsel and Secretary this 10 day of October, 2006.

ENTERGY CORPORATION

By:   
Name: Robert D. Sloan  
Title: Executive Vice President, General  
Counsel and Secretary

Attest:

By:   
Name: Paul A. Castanon  
Title: Assistant Secretary



Figure 1: SIMPLIFIED ORGANIZATION CHART – CURRENT

NOTE: NRC Licenses held by E N entities are referenced in parentheses and italics, e.g., (IP1 & IP2).

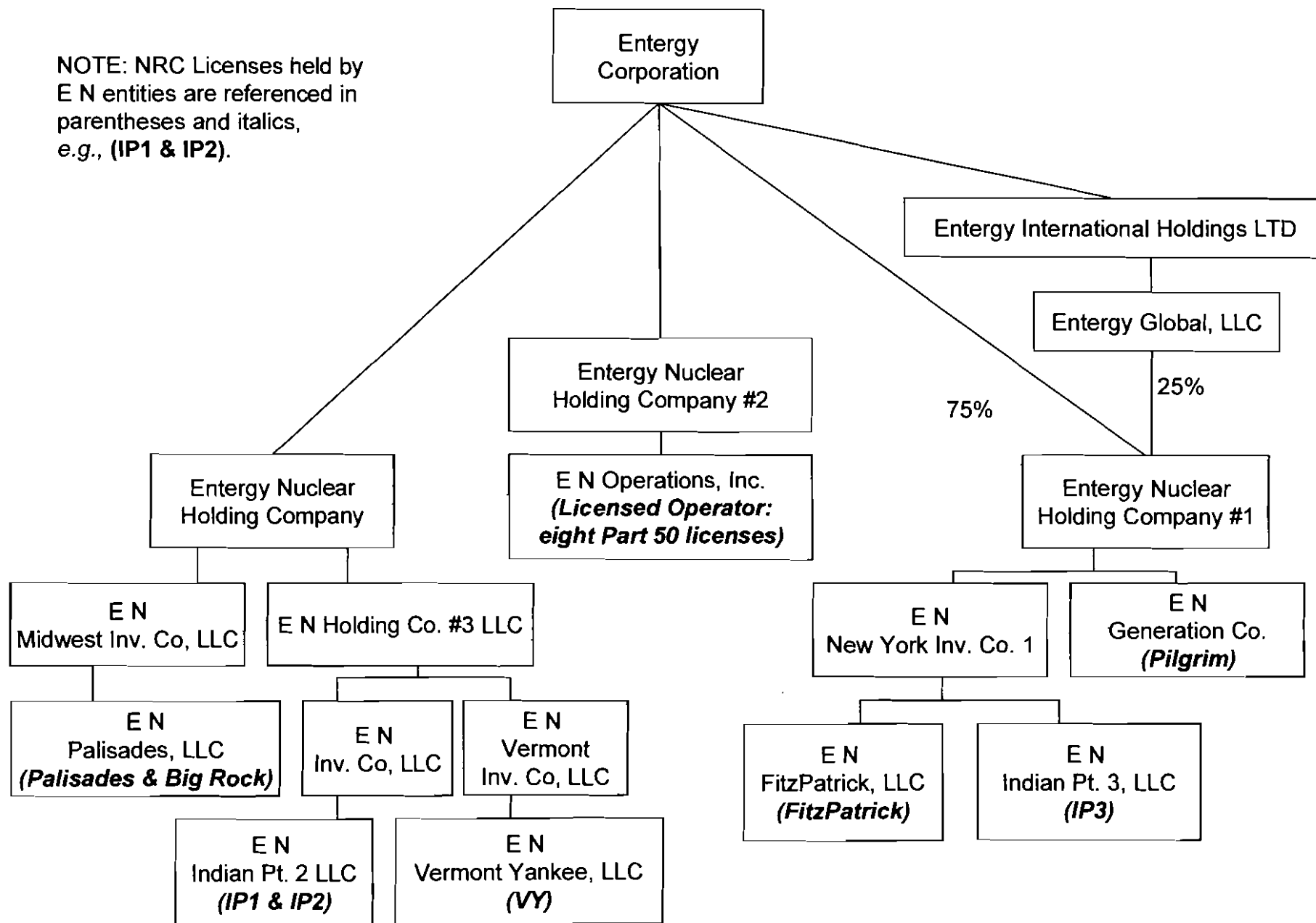
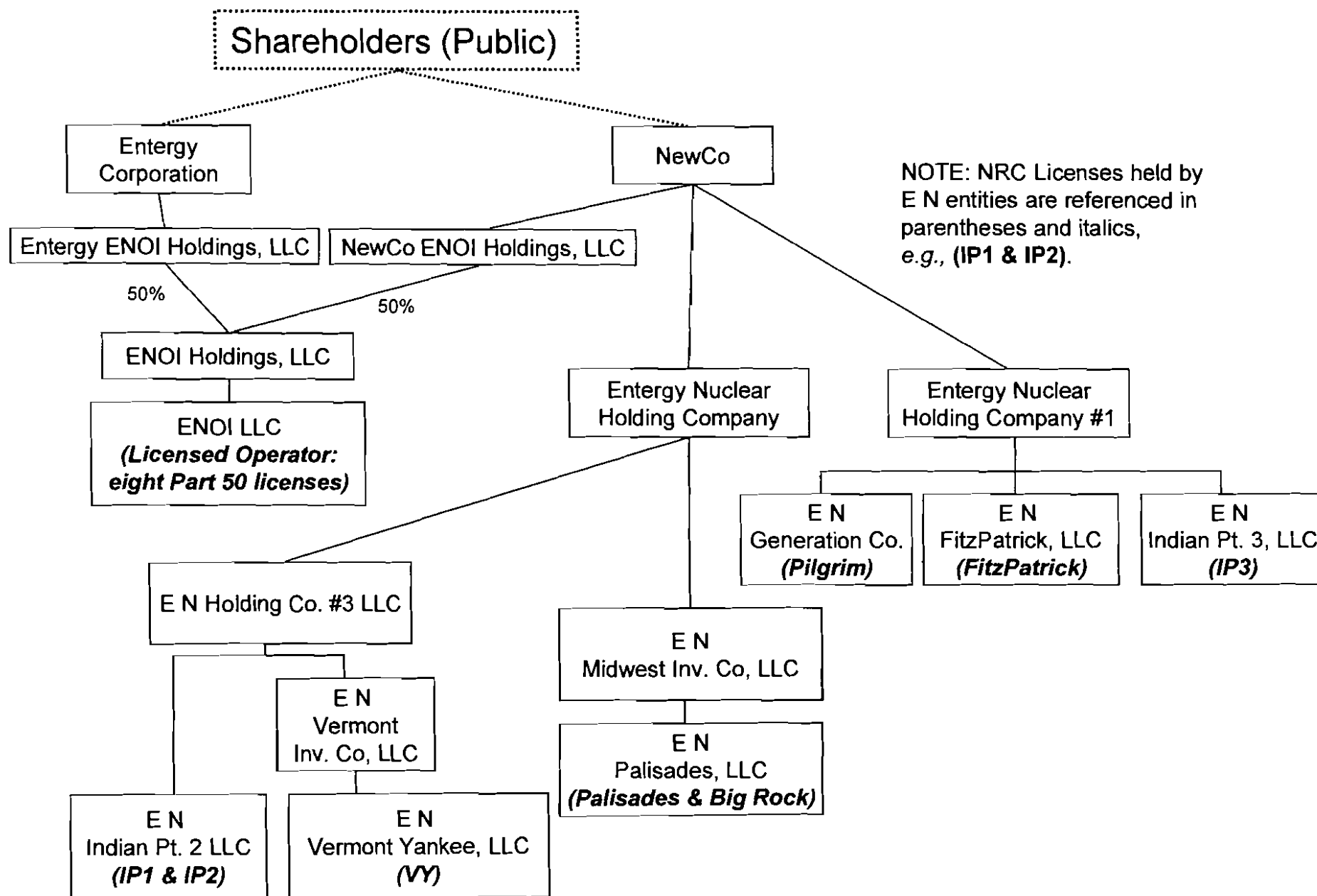


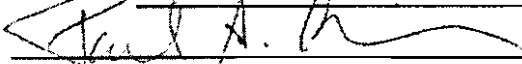
Figure 4: SIMPLIFIED ORGANIZATION CHART – POST REORGANIZATION



## Appendix C

**State Environmental Quality Review**  
**SHORT ENVIRONMENTAL ASSESSMENT FORM**  
 For UNLISTED ACTIONS Only

**PART I - PROJECT INFORMATION (To be completed by Applicant or Project Sponsor)**

<b>1. APPLICANT/SPONSOR</b> <small>Entergy Nuclear FitzPatrick, LLC, Entergy Nuclear Indian Point 2, LLC, Entergy Nuclear Indian Point 3, LLC, Entergy Nuclear Operations, Inc., NewCo and Entergy Corporation.</small>	<b>2. PROJECT NAME</b> See Attachment
<b>3. PROJECT LOCATION:</b> Municipality <u>See Attachment.</u> County <u>See Attachment.</u>	
<b>4. PRECISE LOCATION (Street address and road intersections, prominent landmarks, etc., or provide map)</b> See Attachment.	
<b>5. PROPOSED ACTION IS:</b> <input checked="" type="checkbox"/> New <input type="checkbox"/> Expansion <input type="checkbox"/>	
<b>6. DESCRIBE PROJECT BRIEFLY:</b> See Attachment.	
<b>7. AMOUNT OF LAND AFFECTED:</b> Initially <u>N/A</u> acres      Ultimately <u>N/A</u> acres	
<b>8. WILL PROPOSED ACTION COMPLY WITH EXISTING ZONING OR OTHER EXISTING LAND USE RESTRICTIONS?</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No      If No, describe briefly	
<b>9. WHAT IS PRESENT LAND USE IN VICINITY OF PROJECT?</b> <input type="checkbox"/> Residential <input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input type="checkbox"/> Agriculture <input type="checkbox"/> Park/Forest/Open Space <input type="checkbox"/> Other Describe: <u>N/A</u>	
<b>10. DOES ACTION INVOLVE A PERMIT APPROVAL, OR FUNDING, NOW OR ULTIMATELY FROM ANY OTHER GOVERNMENTAL AGENCY (FEDERAL, STATE OR LOCAL)?</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No      If Yes, list agency(s) name and permit/approvals: <u>See Attachment.</u>	
<b>11. DOES ANY ASPECT OF THE ACTION HAVE A CURRENTLY VALID PERMIT OR APPROVAL?</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No      If Yes, list agency(s) name and permit/approvals: <u>See Attachment.</u>	
<b>12. AS A RESULT OF PROPOSED ACTION WILL EXISTING PERMIT/APPROVAL REQUIRE MODIFICATION?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <u>N/A</u>	
I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE TO THE BEST OF MY KNOWLEDGE Applicant/sponsor name: <u>See Response to Question 1 (above)</u> Date: <u>01/28/2008</u> Signature:  <u>ASSISTANT SECRETARY</u>	

**If the action is in the Coastal Area, and you are a state agency, complete the Coastal Assessment Form before proceeding with this assessment**

**PART II - IMPACT ASSESSMENT (To be completed by Lead Agency)**

- A. DOES ACTION EXCEED ANY TYPE I THRESHOLD IN 6 NYCRR, PART 617.4? If yes, coordinate the review process and use the FULL EAF.  
☐ Yes ☐ No
- B. WILL ACTION RECEIVE COORDINATED REVIEW AS PROVIDED FOR UNLISTED ACTIONS IN 6 NYCRR, PART 617.6? If No, a negative declaration may be superseded by another involved agency.  
☐ Yes ☐ No
- C. COULD ACTION RESULT IN ANY ADVERSE EFFECTS ASSOCIATED WITH THE FOLLOWING: (Answers may be handwritten, if legible)
- C1. Existing air quality, surface or groundwater quality or quantity, noise levels, existing traffic pattern, solid waste production or disposal, potential for erosion, drainage or flooding problems? Explain briefly:
- C2. Aesthetic, agricultural, archaeological, historic, or other natural or cultural resources; or community or neighborhood character? Explain briefly:
- C3. Vegetation or fauna, fish, shellfish or wildlife species, significant habitats, or threatened or endangered species? Explain briefly:
- C4. A community's existing plans or goals as officially adopted, or a change in use or intensity of use of land or other natural resources? Explain briefly:
- C5. Growth, subsequent development, or related activities likely to be induced by the proposed action? Explain briefly:
- C6. Long term, short term, cumulative, or other effects not identified in C1-C5? Explain briefly:
- C7. Other impacts (including changes in use of either quantity or type of energy)? Explain briefly:
- D. WILL THE PROJECT HAVE AN IMPACT ON THE ENVIRONMENTAL CHARACTERISTICS THAT CAUSED THE ESTABLISHMENT OF A CRITICAL ENVIRONMENTAL AREA (CEA)?  
☐ Yes ☐ No If Yes, explain briefly:
- E. IS THERE, OR IS THERE LIKELY TO BE, CONTROVERSY RELATED TO POTENTIAL ADVERSE ENVIRONMENTAL IMPACTS?  
☐ Yes ☐ No If Yes, explain briefly:

**PART III - DETERMINATION OF SIGNIFICANCE (To be completed by Agency)**

**INSTRUCTIONS:** For each adverse effect identified above, determine whether it is substantial, large, important or otherwise significant. Each effect should be assessed in connection with its (a) setting (i.e. urban or rural); (b) probability of occurring; (c) duration; (d) irreversibility; (e) geographic scope; and (f) magnitude. If necessary, add attachments or reference supporting materials. Ensure that explanations contain sufficient detail to show that all relevant adverse impacts have been identified and adequately addressed. If question D of Part II was checked yes, the determination of significance must evaluate the potential impact of the proposed action on the environmental characteristics of the CEA.

- ☐ Check this box if you have identified one or more potentially large or significant adverse impacts which **MAY** occur. Then proceed directly to the FULL EAF and/or prepare a positive declaration.
- ☐ Check this box if you have determined, based on the information and analysis above and any supporting documentation, that the proposed action **WILL NOT** result in any significant adverse environmental impacts **AND** provide, on attachments as necessary, the reasons supporting this determination.

01/28/2008

Name of Lead Agency

Date

Print or Type Name of Responsible Officer in Lead Agency

Title of Responsible Officer

Signature of Responsible Officer in Lead Agency

Signature of Preparer (if different from responsible officer)

**Reset**

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- \_\_\_\_\_

----- x

**ATTACHMENT TO SHORT ENVIRONMENTAL ASSESSMENT FORM**

**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**

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**I. Introduction**

The action at issue is New York State Public Service Commission ("Commission") approval, pursuant to Section 70 of the New York State Public Service Law, for Entergy Corporation 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, a newly formed holding company whose shares and ownership will be distributed directly to the shareholders of Entergy Corporation ("Corporate Reorganization"). As part of the Corporate Reorganization, Entergy Nuclear Operations, Inc. ("ENO") will be converted into a limited liability company and renamed ENOI LLC ("ENOI"), which through a series of corporate transactions will become a direct wholly-owned subsidiary of a newly formed holding company, ENOI Holdings, LLC, which in turn will be owned 50% (indirectly) by NewCo and 50% (indirectly) by Entergy Corporation.

**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, 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 Buchanan, New York. ENIP2 owns the Indian Point 2 Generating Plant ("IP2") and the retired Indian Point 1 Generating Plant ("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 Buchanan, 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, New York. ENO is licensed to operate and/or maintain FitzPatrick, IP1, IP2, and IP3 (collectively the "New York Facilities").

NewCo will be a corporation. NewCo will own nearly 5,000 megawatts of nuclear generation, most of which is located in the northeastern United States, including FitzPatrick, IP1, IP2, and IP3. NewCo will be headquartered in Jackson, Mississippi. The shares and ownership of NewCo will be distributed directly to the shareholders of Entergy Corporation. NewCo will thereafter be a separate publicly traded company.

ENOI Holdings, LLC will be a limited liability company. ENOI Holdings, LLC will be owned 50% by Entergy Corporation (indirectly) and 50% by NewCo (indirectly). As a result of a series of corporate transactions, ENOI Holdings, LLC will directly own ENO and will be converted into a limited liability company and renamed ENOI LLC ("ENOI").

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 will have no negative impact on the New York ratepayers. ENIP2, ENIP3, ENFP, and ENOI (as converted and renamed) will continue to own and operate the New York Facilities. Additionally, no new entity that owns or controls generation assets is being brought into the organizational structure. Therefore, the Corporate Reorganization will have no adverse effect on market concentration in New York and does not raise horizontal market power concerns. In addition, vertical market

power can not be exercised because ENFP, ENIP2, ENIP3, ENO, NewCo and Entergy Corporation (collectively "Petitioners") do not exercise control over delivery facility assets, or inputs into the production of generation supply, within New York markets. The Petitioner do not provide retail services in New York.<sup>1</sup> As a result, those avenues of undue exercise of market power are foreclosed and the Corporate Reorganization does not pose the potential for adverse impacts to New York ratepayers.

The Corporate Reorganization is fully consistent with the continued ownership and safe and secure 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. This will enhance their ability to effectively participate in the competitive wholesale energy markets in New York State, which will ultimately benefit the New York consumers served by those markets.

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.

### **III. 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. The proposed action at issue is merely a change in corporate ownership and structure at the parent holding company level.

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<sup>1</sup> Entergy Solution Ltd currently an affiliate of Entergy Corporation, was authorized as an energy service company by the Commission on July 7, 2005. Entergy Solutions Ltd markets power to a limited number of large commercial and industrial customers. Following the Corporate Reorganization, Entergy Solutions Ltd will be affiliated with NewCo.

**NYS DEPARTMENT OF STATE**

# NOTICE OF PROPOSED RULE MAKING

**Submitting Agency: PUBLIC SERVICE COMMISSION**

TEXT/SUBSTANCE AND ATTACHMENTS: ☐ E-MAIL ([nysregister@dos.state.ny.us](mailto:nysregister@dos.state.ny.us))  
☐ DISK

NOTE: Typing and submission instructions are at the end of this form. Please be sure to COMPLETE ALL ITEMS. Incomplete forms and nonscannable text attachments will be cause for rejection of this notice.

**1. A. Proposed action:**

The Public Service Commission ("Commission") is considering whether to approve, reject or modify, in whole or in part, a petition by 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 and Entergy Corporation (collectively the "Petitioners") seeking a declaratory ruling that the Commission need not review under Public Service Law ("PSL") Section 70 a corporate reorganization resulting, *inter alia*, in Entergy Corporation transferring its indirect ownership interest in ENFP, ENIP2 and ENIP3 to NewCo, a newly formed holding company whose shares and ownership will be distributed directly to the shareholders of Entergy Corporation ("Corporate Reorganization"). In the alternative, the Petitioners request an Order authorizing the Petitioners to consummate the Corporate Reorganization, without modification or condition pursuant to PSL Section 70. The Petitioners also request an Order, pursuant to PSL Section 69, authorizing NewCo to enter into debt financings with the flexibility to modify, without prior approval, the financing terms, including but not limited to the payment terms, the financing entities and the amount of financing, up to \$4.5 billion in Senior Notes and \$2.0 billion in a Senior Revolving Credit Facility and/or a Term LC facility. Petitioners also seek authorization to enter into Hedging Arrangements specifically meant to support collateral needs arising from hedging contracts. The Commission may consider all other related matters.

- B. ☐ This is a consensus rule making. A statement is attached setting forth the agency's determination that no person is likely to object to the rule as written [SAPA § 202(1)(b)(i)].
- C. ☐ This rule was previously proposed as a consensus rule making under I.D. No. \_\_\_\_\_. Attached is a brief description of the objection that caused/is causing the prior notice to be withdrawn [SAPA § 202(1)(e)].
- D. ☐ This rule is proposed pursuant to [SAPA § 207(3)], 5-Year Review of Existing Rules (see also item 16).



**2. Statutory authority under which rule is proposed:**

Sections 69 and 70 of the Public Service Law.

**3. Subject of the rule:**

A corporate reorganization and debt financings.

**4. Purpose of the rule:**

To determine whether to: 1) issue a declaratory ruling determining that it need not review the Corporate Reorganization or, in the alternative, authorize the Petitioners to consummate the Corporate Reorganization, without modification or condition; and 2) authorize NewCo to enter into debt financings of up to \$4.5 billion in Senior Notes and \$2.0 billion in a Senior Secured Credit Facility and/or a Term LC facility, and enter into other Hedging Arrangements.

**5. Public Hearings (check box and complete as applicable):**

☐ A public hearing is not scheduled. (SKIP TO ITEM 8)

☐ A public hearing is required by law and is scheduled below.

☐ A public hearing is not required by law, but is scheduled below.

Time:

Date:

Location:

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**6. Interpreter services (check only if a public hearing is scheduled):**

☐ Interpreter services will be made available to hearing impaired persons, at no charge, upon written request to the agency contact designated in this notice.

**7. Accessibility (check appropriate box if a public hearing is scheduled):**

☐ All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

☐ Attached is a list of public hearing locations that are **not** reasonably accessible to persons with a mobility impairment. An optional explanation is submitted regarding the nonaccessibility of one or more hearing sites.

**8. Terms of rule (SELECT ONE SECTION):**

A. ☐ The full text of the rule is attached since it is under 2,000 words.

B. ☐ A summary of the rule is attached since the full text of the rule is over 2,000 words.

☐ Full text is posted at the following State website: \_\_\_\_\_.

☐ Full text is not posted on a State website.

☐ Full text is not posted on a State website; this is a consensus rule or a rule defined in SAPA § 102(2)(a)(ii).

C. ☐ Pursuant to SAPA § 202(7)(b), the agency elects to print a description of the subject, purpose and substance of the rule as defined in SAPA § 102(2)(a)(ii) [Rate Making].

**9. The text of the rule and any required statements and analyses may be obtained from:**

Agency Contact: ☐  
Agency Name: New York State Public Service Commission  
Office Address: Three Empire State Plaza  
Albany, New York 12223  
Telephone: ☐ Email: ☐

**10. Submit data, views or arguments to (complete only if different than previously named agency contact):**

Agency Contact: Hon. Jaclyn Brilling, Secretary  
Agency Name: New York State Public Service Commission  
Office Address: Three Empire State Plaza  
Albany, New York 12223  
Telephone: (518) 474-6530 Email: ☐

**11. Public comment will be received until:**

☐ 45 days after publication of this notice (MINIMUM public comment period when full text is attached because it is under 2000 words or full text of rule has been posted on a State website or the rule is a consensus rule or a rule defined under SAPA § 102(2)(a)(ii) [Rate Making]).

☐ 60 days after publication of this notice (MINIMUM public comment period when full text is not attached or full text is not posted on a State website or the rule is not a consensus rule or a rule defined under SAPA § 102(2)(a)(ii) [Rate Making]).

☐ 5 days after the last scheduled public hearing required by statute (MINIMUM, with required hearing). This box may not be checked and the minimum 60-day comment period applies if full text is not attached or text is not posted on a State website or the rule is not a consensus rule or a rule defined under SAPA § 102(2)(a)(ii) [Rate Making]).

☐ Other (specify): \_\_\_\_\_.

12. A prior emergency rule making for this action was previously published in the \_\_\_\_\_ issue of the *Register*, I.D. No. \_\_\_\_\_.

13. Expiration date (check only if applicable):

☐ This proposal will not expire in 365 days because it is for a “rate making” as defined in SAPA § 102(2)(a)(ii).

14. Additional matter required by statute:

☐ Yes (include material required by statute).

☐ No additional material required by statute.

15. **Regulatory Agenda (The Division of Housing and Community Renewal; Workers’ Compensation Board; and the departments of Agriculture and Markets, Banking, Education, Environmental Conservation, Family Assistance, Health, Insurance, Labor, Motor Vehicles and State and other department specified by the Governor or his designee must complete this item. If your agency has an optional agenda published, that should also be indicated below):**

☐ This action was a Regulatory Agenda item in the first January issue of the \_\_\_\_\_ (year) *Register*.

☐ This action was a Regulatory Agenda item in the last June issue of the \_\_\_\_\_ (year) *Register*.

☐ This action was not under consideration at the time this agency’s Regulatory Agenda was submitted for publication in the *Register*.

☐ Not applicable.

16. **5-Year Review of Existing Rules (ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS)**

**This rule is proposed pursuant to SAPA § 207 (item 1D applies) (check applicable boxes):**

☐ Attached is a statement setting forth a reasoned justification for modification of the rule. Where appropriate, include a decision of the degree to which changes in technology, economic conditions or other factors in the area affected by the rule necessitate changes in the rule.

☐ Attached is an assessment of public comments received by the agency in response to the listing of the rule in the regulatory agenda.

☐ An assessment of public comments is not attached because no comments were

received.

☐ Not applicable.

**17. Regulatory Impact Statement (RIS)**

**(SELECT AND COMPLETE ONE: ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS, EXCLUDING SUMMARIES OF STUDIES, REPORTS OR ANALYSES [Needs and Benefits]):**

A. The attached RIS contains:

☐ The full text of the RIS.

☐ A summary of the RIS.

☐ A consolidated RIS, because this rule is one of a series of closely related and simultaneously proposed rules or is virtually identical to rules proposed during the same year.

B. A RIS is **not attached**, because this rule is:

☐ subject to a consolidated RIS printed in the *Register* under I.D. No.: \_\_\_\_\_; issue date: \_\_\_\_\_.

☐ exempt, as defined in SAPA § 102(2)(a)(ii) [Rate Making].

☐ exempt, as defined in SAPA § 102(11) [Consensus Rule Making].

C. ☐ A **statement is attached** claiming exemption pursuant to SAPA § 202-a (technical amendment).

**18. Regulatory Flexibility Analysis (RFA) for small businesses and local governments (SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS):**

A. The attached RFA contains:

☐ The full text of the RFA.

☐ A summary of the RFA.

☐ A consolidated RFA, because this rule is one of a series of closely related rules.

B. ☐ A **statement is attached** explaining why a RFA is not required. This statement is in scanner format and explains the agency's finding that the rule will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments and the reason(s) upon which the finding was made,

including any measures used to determine that the rule will not impose such adverse economic impacts or compliance requirements.

C. A RFA is **not attached**, because this rule:

☐ Is subject to a consolidated RFA printed in the *Register* under I.D. No.: \_\_\_\_\_; issue date: \_\_\_\_\_.

☐ Is exempt, as defined in SAPA § 102(2)(a)(ii) [Rate Making].

☐ Is exempt, as defined in SAPA § 102(11) [Consensus Rule Making].

**19. Rural Area Flexibility Analysis (RAFA)**  
**(SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS):**

A. The attached RAFA contains:

☐ The full text of the RAFA.

☐ A summary of the RAFA.

☐ A consolidated RAFA, because this rule is one of a series of closely related rules.

B. ☐ A **statement is attached** explaining why a RAFA is not required. This statement is in scanner format and explains the agency's finding that the rule will not impose any adverse impact on rural areas or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas and the reason(s) upon which the finding was made, including any measures used to determine that the rule will not impose such adverse economic impacts or compliance requirements.

C. A RAFA is **not attached**, because this rule:

☐ Is subject to a consolidated RAFA printed in the *Register* under I.D. No.: \_\_\_\_\_; issue date: \_\_\_\_\_.

☐ Is exempt, as defined in SAPA § 102(2)(a)(ii) [Rate Making].

☐ Is exempt, as defined in SAPA § 102(11) [Consensus Rule Making].

**20. Job Impact Statement (JIS)**  
**(SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS):**

A. The attached JIS contains:

☐ The full text of the JIS.

- ☐ A summary of the JIS.
- ☐ A consolidated JIS, because this rule is one of a series of closely related rules.
- B. ☐ A **statement is attached** explaining why a JIS is not required. This statement is in scanner format and explains the agency's finding that the rule will not have a substantial adverse impact on jobs and employment opportunities (as apparent from its nature and purpose) and explains the agency's finding that the rule will have a positive impact or no impact on jobs and employment opportunities; except when it is evident from the subject matter of the rule that it could only have a positive impact or no impact on jobs and employment opportunities, the statement shall include a summary of the information and methodology underlying that determination.
- ☐ A JIS/Request for Assistance [SAPA § 201-a(2)(c)] is attached.
- C. A JIS is **not attached**, because this rule:
  - ☐ is subject to a consolidated JIS printed in the *Register* under I.D. No.: \_\_\_\_\_; issue date: \_\_\_\_\_.
  - ☐ is exempt, as defined in SAPA § 102(2)(a)(ii) [Rate Making].
  - ☐ is proposed by the State Comptroller or Attorney General.

**AGENCY CERTIFICATION (To be completed by the person who PREPARED the notice).**

I have reviewed this form and the information submitted with it. The information contained in this notice is correct to the best of my knowledge.

I have reviewed Article 2 of SAPA and Parts 260 through 263 of 19 NYCRR and I hereby certify that this notice complies with all applicable provisions.

Name \_\_\_\_\_ Signature \_\_\_\_\_  
 Address \_\_\_\_\_  
 Telephone \_\_\_\_\_ E-Mail \_\_\_\_\_  
 Date \_\_\_\_\_

Please read before submitting this notice:

1. Except for this form itself, all text must be typed in scannable format as described in the Department of State's Register procedures manual, *Rule Making in New York*.
2. **Collate the original notice and attachments as:** (1) form; (2) text or summary of rule; and, **if any**, (3) regulatory impact statement, (4) regulatory flexibility analysis for small

businesses and local governments, (5) rural area flexibility analysis, (6) job impact statement. Submit the originals, as collated **and ONE copy of that collated set.**

3. **Mail or hand deliver hard copy of rule making package to:** Department of State, Division of Administrative Rules, 41 State Street, Suite 330, Albany, NY 12231-0001.
4. **E-mail text/substance and attachments to:** [nysregister@dos.state.ny.us](mailto:nysregister@dos.state.ny.us) or attach a disk containing the text/substance and required material.

### **Substance of Proposed Rule**

On January 28, 2008, a petition was filed by 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 and Entergy Corporation (collectively the "Petitioners") seeking a declaratory ruling that the New York State Public Service Commission ("Commission") need not review under Public Service Law ("PSL") Section 70 a corporate reorganization resulting, *inter alia*, in Entergy Corporation transferring its indirect ownership interest in ENFP, ENIP2 and ENIP3 to NewCo, a newly formed holding company whose shares and ownership will be distributed directly to the shareholders of Entergy Corporation ("Corporate Reorganization"). In the alternative, the Petitioners request an Order authorizing the Petitioners to consummate the Corporate Reorganization, without modification or condition pursuant to PSL Section 70. The Petitioners also seek authorization for NewCo to enter into debt financings, pursuant to PSL Section 69, with the flexibility to modify, without prior approval, the financing terms, including but not limited to the payment terms, the financing entities and the amount of financing, up to \$4.5 billion in Senior Notes and \$2.0 billion in a Senior Secured Credit Facility and/or a Term LC facility. The Petitioners also seek authorization to enter into Hedging Arrangements specifically meant to support collateral needs arising from hedging contracts.

ENFP, a Delaware limited liability company, owns the James A. FitzPatrick Nuclear Power Plant ("FitzPatrick").

ENIP2, a Delaware limited liability company, owns the Indian Point 2 Generating Plant ("IP2") and the retired Indian Point 1 Generating Plant ("IP1").

ENIP3, a Delaware limited liability company owns the Indian Point Nuclear Generating Unit No. 3 ("IP3").

ENO, a Delaware corporation, is licensed to operate and/or maintain FitzPatrick, IP1, IP2, and IP3 (collectively the "New York Facilities").

NewCo will be a corporation, the shares and ownership of which will be distributed directly to the shareholders of Entergy Corporation. NewCo will, therefore, be publicly owned and controlled.

ENOI Holdings, LLC will be a limited liability company. ENOI Holdings, LLC will be owned 50% by Entergy Corporation (indirectly) and 50% by NewCo (indirectly). As a result of a series of corporate transactions, ENOI Holdings, LLC will directly own ENO and will be converted into a limited liability company and renamed ENOI LLC ("ENOI").

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 Petitioners state that NewCo and ENOI have the financial, managerial and technological



capabilities to own, control and operate the New York Facilities and will continue to generate high-quality, safe and reliable electricity for the New York electricity market and New York consumers. The Corporate Reorganization, debt financings and related matters are, therefore, in the public interest.