DEWEY & LEBOEUF

Dewey & LeBoeuf LLP
99 Washington Avenue
Suite 2020
Albany, NY 12210-2820

tel +1 518 626 9000
fax +1 518 626 9010
pgioia@dl.com

September 29, 2008

VIA HAND DELIVERY AND E-MAIL

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

Re: Case 08-E-0077 – Entergy Corporation, et al. - Joint Petition For a Declaratory Ruling Regarding a Corporate Reorganization, or, in the Alternative, an Order Approving the Transaction and an Order Approving Debt Financing

Dear Secretary Brilling:

On behalf of Entergy Nuclear FitzPatrick, LLC, Entergy Nuclear Indian Point 2, LLC, Entergy Nuclear Indian Point 3, LLC, Entergy Nuclear Operations, Inc., NewCo and Entergy Corporation (collectively, the "Petitioners"), enclosed for filing please find an original and five (5) copies of the Petitioners' Verified Reply Comments in accordance with the July 23, 2008 Ruling Concerning Discovery and Seeking Comments on a Proposed Process and Schedule and the August 14, 2008 Ruling on Discovery, Process, Schedule and Scope of Issues issued by Judges Lynch and Prestemon in the above-referenced matter.

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

Respectfully submitted,

Paul L. Gioia
Gregory G. Nickson

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

BEFORE THE
STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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

Case 08-E-0077

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PETITIONERS' VERIFIED REPLY COMMENTS

REDACTED PUBLIC VERSION

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

Dated: September 29, 2008

BEFORE THE
STATE OF NEW YORK
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In the Matter of the Petition Filed By Entergy Nuclear FitzPatrick, LLC, Entergy Nuclear Indian Point 2, LLC, Entergy Nuclear Indian Point 3, LLC, Entergy Nuclear Operations, Inc., NewCo and Entergy Corporation for a Declaratory Ruling Regarding a Corporate Reorganization or, in the Alternative, an Order Approving the Transaction and an Order Approving Debt Financings	Case 08-E-0077

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PETITIONERS' VERIFIED REPLY COMMENTS

REDACTED PUBLIC VERSION

On behalf of Entergy Nuclear FitzPatrick, LLC ("ENFP"), Entergy Nuclear Indian Point 2, LLC ("ENIP2"), Entergy Nuclear Indian Point 3, LLC ("ENIP3"), Entergy Nuclear Operations, Inc. ("ENO"), NewCo[1] and Entergy Corporation ("Entergy") (collectively, the "Petitioners"), the undersigned attorneys respectfully submit the following in reply to the comments submitted by the New York State Department of Public Service Staff ("Staff"), the New York State Attorney General's Office ("Attorney General"), Riverkeeper, Inc. ("Riverkeeper") and Westchester County pursuant to the July 23, 2008 Ruling Concerning Discovery and Seeking Comments on a Proposed Process and Schedule and the August 14, 2008

[1] Entergy has determined that NewCo will be named Enexus Energy Corporation ("Enexus"). NewCo will be referred to as Enexus throughout these comments. Additionally, Entergy has determined that ENO will be renamed EquaGen Nuclear, LLC ("EquaGen Nuclear").

Ruling on Discovery, Process, Schedule and Scope of Issues issued in the above-referenced matter.[2]

I. EXECUTIVE SUMMARY

Petitioners' Reply Comments make the following responses to the issues raised in the Initial Comments of other parties:

The Financial Status of Enexus and the New York Facilities

The information provided by the Petitioners demonstrates that Enexus and its operating companies will be financially sound and will have sufficient resources and access to the financial markets to ensure that their financial capabilities will be more than sufficient under all reasonably foreseeable circumstances, and importantly, the Corporate Reorganization will provide greater support to the New York facilities than exists today. Enexus' financial strength is supported by the very stable and robust cash flows provided by its operating companies and its demonstrated track record of high unit availability. In addition, as an independent company, Enexus will be able to direct its cash flow and financing capabilities to the needs of its operating companies and business opportunities without considering the substantial capital needs of Entergy. Enexus' financial position is further strengthened by up to $2.0 billion of secured debt capacity (including credit facilities that do not exist today). The operating companies, including

[2] This matter concerns the Petition filed by Petitioners on January 28, 2008 for a Declaratory Ruling Regarding a Corporate Reorganization or, in the Alternative, an Order Approving the Transaction and an Order Approving Debt Financings ("The Petition"). The Petition describes a series of corporate transactions that will result in the creation of a new holding company, Enexus, as the owner of Entergy's non-utility nuclear plants located in New York State (the "Corporate Reorganization"). Entergy's non-utility nuclear plants located in New York State include: James A. FitzPatrick Nuclear Power Plant ("FitzPatrick"), Indian Point Nuclear Generating Unit No. 2 ("IP2"), Indian Point Nuclear Generating Unit No. 3 ("IP3") and the retired Indian Point 1 Generating Plant ("IP1") (collectively, the "New York Facilities"). The Petition requests New York State Public Service Commission ("Commission") approval, without modification or condition, pursuant to New York Public Service Law ("PSL") Section 70 and any other statutory or regulatory provision deemed applicable, to consummate the Corporate Reorganization. The Petition also requests that the Commission issue an Order authorizing Enexus to enter into the debt financings that are described in detail by both the Petition and the information provided in this proceeding ("Debt Financings").

the New York Facilities, will have access to a $700 million Support Agreement with Enexus, which is substantially larger than the current support agreements.

Enexus is expected to achieve a BB credit rating, which is supported by strong financial metrics that are in certain respects equal to investment grade companies and exceed those of publicly traded merchant generation companies (See AG-20A (EN-81), Attachment 7, p. 10). The BB rating will not prevent Enexus from obtaining additional capital from external sources to make necessary investments in the New York Facilities. While Entergy has a BBB/Baa3 rating, it also has very significant capital needs of its regulated companies. Furthermore, the ability of Entergy to invest in the New York Facilities is subject to legal constraints including its fiduciary obligation to its shareholders and regulatory requirements related to its regulated utilities. Entergy's ability to invest in the New York Facilities is not determined by its bond rating, but by the same judgment Enexus would have to make: is the investment being made in a commercially viable operating company that will be able to continue to recover its costs (including cost of capital and required rate of return) in the competitive wholesale electricity market.

Reliability

The New York Facilities have a strong and consistent record of supporting the reliability of the bulk power electric system in New York State. Since Entergy acquired the ownership of the New York Facilities, the capacity factors of these facilities have exceeded 90%, a substantial increase from the capacity factors of New York nuclear plants prior to their acquisition by Entergy. The economic incentives for maintaining a high level of reliability provided by the competitive wholesale electricity market and the demonstrated operating performance of EquaGen, which will continue to operate the plants, provide strong assurance

that the New York Facilities will continue to support reliability in New York. Furthermore, concerns with respect to the maintenance of system reliability should a merchant generator, including one of the New York Facilities, retire from service are being addressed by the Commission and the New York Independent Operator ("NYISO") through the development of procedures for the timely development and implementation of regulated reliability solutions. Consequently, the maintenance of the reliability of the New York bulk power system should not be an issue in this proceeding.

Operation of the New York Facilities

Enexus and EquaGen will have the technical qualifications for managing, operating and maintaining the New York Facilities and will have the resources to continue to provide safe and reliable power to New York State. The various agreements that are being finalized between Entergy, EquaGen and Enexus (e.g., the Amended and Restated Operating Agreement and Shared Services Agreements) will allow for smooth transition of ownership. Neither the Amended and Restated Operating Agreement nor the Shared Services Agreements will prevent Enexus or EquaGen from performing the necessary functions needed to maintain the safe and reliable operation of the New York Facilities. These agreements, moreover, ensure that neither Enexus nor Entergy will have predominant control over EquaGen and that should a disagreement arise between the two owners, adequate procedures are in place to allow for an efficient resolution of the dispute. Enexus' projected cash flow, cash balance, access to secured financing and access to other forms of capital will be more than sufficient to cover future capital expenditures and operating expenses.

The same licensed operator, ENO (EquaGen Nuclear), and the same employees who operate the New York Facilities today will continue to operate the facilities following the

Corporate Reorganization. As a result, the New York Facilities will continue to operate in accordance with all existing environmental permits and the owners of the facilities will honor all arrangements and agreements currently in place.

The Decommissioning Trust Funds and Plans are Adequate and Reasonable

Following the Corporate Reorganization, the same entities responsible for decommissioning the New York Facilities today will retain that responsibility. The Nuclear Regulatory Commission ("NRC") will ensure that there is adequate decommissioning funding for each plant, in an amount adequate to protect health and safety. Currently, the NRC has determined that the funds are sufficient to meet the NRC's standards. However, should the NRC require additional funding, Enexus will have sufficient resources to satisfy the NRC's requirements. The Petitioners are also committed to restoring the Indian Point facilities to Greenfield status.

Alternative Conditions Proposed by Staff

The Alternative Conditions proposed by Staff: The achievement by Enexus of an investment grade credit rating, or the maintenance of a $1 billion trust fund to be used to address reliability and other non-safety related concerns, are unnecessary, unreasonable and unjustified. The conditions do not reflect a fair consideration of the adequate financial support that will be available to the New York Facilities and are not consistent with the Commission's policies with respect to the efficient operation of wholesale generators in the competitive wholesale electricity market.

Despite the stable and robust cash flows that the Enexus operating companies have achieved in the past and are expected to achieve in the future, the strong credit ratios for Enexus, and the significant liquidity position of the company, rating agencies have informed

Entergy and Enexus that it will not receive an investment grade rating. This is due in large part to the influence of event risk in the rating agency methodology. While the safety and operating performance of the nuclear industry have substantially improved in recent years, the rating agencies remain focused on the difficulties the nuclear industry has experienced in the past. The Petitioners have demonstrated, however, that there will be more than sufficient cash flow to support its operating companies under all reasonably expected circumstances and that it will have sufficient access to capital to support economically viable investments in its operating companies.

The alternative suggested by Staff, the maintenance of a $1 billion trust fund to address potential reliability needs, would impose an unnecessary, unreasonable and unjustified financial condition on Enexus. As noted, the Enexus operating companies have provided strong support for the reliability of the New York bulk power system through their efficient operation and high availability rates. Given Enexus' operating record and the market incentives for efficient operation there is every reason to conclude that the capacity factors of the New York Facilities will be maintained in the future. Investments to support reliable operation should be funded from the usual sources of capital, including cash flow from operations, cash on hand/working capital, available credit facilities, and secured financing authority, the total of which are expected to provide in excess of *** **BEGIN INFORMATION CLAIMED EXEMPT** *** [redacted] *** **END INFORMATION CLAIMED EXEMPT** ***. These sources of capital will be sufficient to meet Enexus' financial needs, without imposing the unjustified and enormous financial condition of an idle $1 billion trust fund, which would serve no useful purpose and would place Enexus and its operating companies at a severe and unfair competitive disadvantage with respect to other merchant generators. Further, Enexus is

committed, under the NRC approved $700 million Support Facility, to maintain its capital support of the operating facilities at levels the NRC deems appropriate.

II. RESPONSE TO STAFF'S INITIAL COMMENTS

The Petitioners' primary concern with Staff's Initial Comments is the alternative conditions they propose for approval of the Petition: i) achieving an investment grade rating; or ii) maintaining a $1 billion trust fund to remedy any reliability or other non-safety related concerns. Staff's proposed conditions are not supported by the information provided by the Petitioners in this proceeding and are not consistent with the Commission's policies with respect to the competitive electricity market in New York State and the lightened regulation of merchant generators.

A. Financial Status of Enexus and the New York Facilities

Staff states that Enexus' projected BB credit rating "is problematic for captive ratepayers" (Staff Comments, p. 8). Staff further states that "a non-investment grade company will have a much more limited ability to issue securities than an investment grade firm" (Staff Comments, p. 8).

<u>The Importance of Factors Other Than Credit Ratings in Raising Capital.</u>

Access to the financial markets is not premised on credit ratings alone. A key component in accessing financing markets is the credit quality of an issuer. Enexus has an excellent credit profile.

In referring to Enexus' BB rating, Staff provides a partial quotation of the Standard & Poor's description of a BB rated company (Staff Comments, p. 12). The full description (found on Standard & Poor's website) is as follows:

> An obligor rated 'BB' is less vulnerable in the near term than other lower-rated obligors. However, it faces major ongoing uncertainties and exposure to adverse business, financial, or economic conditions which could lead to the obligor's inadequate capacity or willingness to meet its financial commitments.

It is important to note that this is a general description of a BB rated company and not a specific reference to Enexus. Furthermore, this general description does not take into consideration Enexus' robust cash flow. The rating agencies general description of a BB/Ba rating are intended to help define differences in ratings, they do not capture the full picture of credit analysis and financial adequacy, which focuses on business sector and company specifics. A company's credit rating is only one factor to consider with respect to a company's financial strength. A company's ability to produce stable and predictable cash flow is an exceptionally important factor, as is the market value of a company's assets.

Enexus Will Have Sufficient Financial Strength and Resources

The financial information provided by Petitioners demonstrates that Enexus will have stable and robust cash flow from the competitive wholesale electricity markets that will more than enable it to meet all of its financial needs under any reasonably foreseeable set of circumstances. The pro forma financials from Enexus' Form 10 filing show for 2007 cash flow from operations for the merchant nuclear companies of $837.7 million and EBITDA (earnings before interest, taxes, depreciation and amortization and interest and dividend income) of $783.7 million. As is the case with all merchant generators, the financial position and access to the capital markets of Enexus will depend on the ability of the New York Facilities to earn revenues in the wholesale electricity market. The New York Facilities have demonstrated dramatic improvements in efficiency and availability since their acquisition, which has enhanced their robust cash flow. Furthermore, increasing fossil fuel prices and the potential imposition of

substantial costs on generators that emit CO_2, will further enhance the prospect for continued stable and robust cash flow for nuclear plants in the future.

Staff's assumption that a BB rated Enexus will not be able to provide sufficient financial support to the New York Facilities is not correct, and is not consistent with the information provided by Petitioners. As explained in our responses to information requests and in our Initial Comments, Enexus submitted projections to the NRC showing coverage of interest expense by cash flow (FFO/Interest) expected to be *** **BEGIN INFORMATION CLAIMED EXEMPT** *** [redacted] *** **END INFORMATION CLAIMED EXEMPT** *** (See AG-20A (EN-81), Attachment 7, p. 4).[3] Entergy has provided an updated forecast of *** **BEGIN INFORMATION CLAIMED EXEMPT** *** [redacted] *** **END INFORMATION CLAIMED EXEMPT** *** (See AG-20A (EN-81), Attachment 7, p. 4). In the forecast submitted to the NRC, cash flow to Debt (FFO/Debt) was anticipated to be *** **BEGIN INFORMATION CLAIMED EXEMPT** *** [redacted] *** **END INFORMATION CLAIMED EXEMPT** *** A more recent forecast indicates *** **BEGIN INFORMATION CLAIMED EXEMPT** *** [redacted] *** **END INFORMATION CLAIMED EXEMPT** *** Cash flow has been identified by the rating agencies as the single most important indication of a company's financial health, and Enexus will generate a high level of cash flow which is atypical of a non-investment grade company (See AG-20A (EN-81), Attachment 7, p. 10). Additionally, Enexus is expected to have a superior Debt/EBITDA credit ratio than the average of all operating companies that own nuclear facilities in the United States (See AG-20A (EN-81), Attachment 7, p. 6).

[3] Attached hereto as Exhibit A is Exhibit 2 referred to in the Pre-Filed Testimony of Susan Abbott filed in Docket 7404 before the Vermont Public Service Board, which was previously provided to the parties in response to AG-20A (EN-81).

In discussing Enexus' financial position, Staff also notes that Entergy informed the rating agencies that Enexus would have an initial negative equity position and projected a 0.7% equity ratio in 2010. (Staff Comments, p. 8). However, Staff's Comments do not recognize that these equity ratios are calculated based on historical book value of Enexus' assets, not market value. In the case of Enexus, the relevant measure of leverage is the ratio of debt to market value. (See AG-20A (EN-81), Attachment 7, p. 11). Based on Enexus' projected market value, the ratio of total debt to market value is expected to be in a range of 30-45% (See AG-20 (EN-28)).[4]

In addition, the Corporate Reorganization will allow the stable and robust cash flows from the New York Facilities to be available to be deployed by Enexus to support its operating companies and not to support Entergy's regulated utility capital needs, which are very substantial, nor the Entergy dividends to shareholders which in 2007 totaled $507 million.

At the time of the spin-off from Entergy, Enexus expects to have approximately ***** BEGIN INFORMATION CLAIMED EXEMPT ***** [redacted] ***** END INFORMATION CLAIMED EXEMPT ***** It is important to note that no such dedicated financial support currently exists to directly support the Enexus facilities. The total of these potential sources of liquidity are expected to be in excess of ***** BEGIN INFORMATION CLAIMED EXEMPT ***** [redacted] ***** END INFORMATION CLAIMED EXEMPT *****

Finally, the $700 million Support Agreement, which was carefully reviewed and approved by the NRC in conjunction with its approval of the Corporate Reorganization and

[4] See Vermont Public Service Board, Docket 7404, Wanda Curry Pre-filed Testimony, p. 22. In response to AG-20 (EN-28) a link was provided to the Vermont Docket, through which the parties were able to access the pre-filed testimony of Wanda Curry.

which will be discussed further below, provides significantly increased financial support than the current support agreements for the New York Facilities. Contrary to the Staff's expressed concern that "the Support Agreement would not be available to remedy reliability or other non-safety related concerns" (Staff Comments, p. 11), the Support Agreement will be available for expenditures related to the reliable operation and other non-safety related concerns.

Entergy's BBB Rating

Entergy's ability to invest in the New York Facilities is governed by considerations other than its BBB/Baa3 rating. Entergy is subject to legal constraints, including its fiduciary obligation to its shareholders and regulatory requirements related to its utility companies. Entergy could make investments in the New York Facilities only to the extent that those facilities remained economically viable and able to recover their costs in the competitive wholesale electricity market. Entergy is prohibited by multiple state and Federal regulators from cross-subsidizing its merchant operations with cash flow from its regulated operations. If investments are to be made in the New York Facilities, whether by Entergy or Enexus after the Corporate Reorganization, the cost/benefit analysis is the same: can the operating company continue to recover its costs over time in the competitive wholesale electricity markets for the power generated, given expected conditions in those markets? If the answer is yes, the investment capital would be allocated by the owner (whether Entergy or Enexus) from its funds or raised in the capital markets.

While a borrower with a BBB/Baa3 rating would likely be able to borrow at lower interest rates than a BB rated company, substantial capital has been accessible for BB/Ba rated companies and there is no basis for Staff's apparent assumption that capital needed to make economic investments in Enexus' operating companies would not be available.

Form 10 Risk Factors

Staff also makes reference to several statements in the Enexus Form 10 with respect to the potential risks faced by Enexus (Staff Comments, pp. 9-10). The Form 10 is an SEC document, the basic purpose of which is to ensure that investors have full disclosure concerning a company associated with an investment in an issuer's securities. The SEC requires the Form 10 include a Risk Factor section that includes all possible risks that the company may encounter in the future. It is not reasonable to use selected statements from the Form 10 with respect to potential risks as the basis for assessing the financial condition of a company, particularly in light of the SEC requirement that the Form 10 not contain any mitigating language or assessment of the probability that a risk factor. Reasonable investment decisions are be based upon the totality of the disclosure document and not selected portions of the document. Reasonable investors will consider all of the financial information provided in the Form 10 and not focus solely on the worst case risk scenarios. Focusing solely on potential risks will necessarily create an unreasonably negative picture of most companies seeking public equity financing. The history and reasonable projections for the Enexus operating company are extremely positive, and will support the financing it is seeking. A significant measurement of Enexus' financial strength will be its dedicated cash flow from its operations as well as the ability to raise debt and equity in the financial markets, based on market conditions and the market analysis of all of the information in the Form 10, and not just the worst case risk scenarios. Similar risk factor language appears in SEC disclosure statements for most investment grade companies, especially those new to the public markets.

The ability of Enexus to access the capital and credit markets will depend primarily on the robust and stable cash flow from its operating companies, not its credit rating.

If investments in the operating companies are needed, the availability of credit and capital will depend on Enexus' ability to repay those investment from revenues earned in the competitive electricity market, not whether the parent company has a BB or BBB credit rating. In fact, the strong financial position of Enexus will be demonstrated by its ability to place its debt with sophisticated lenders who will not lend more capital to Enexus than they are confident is supported by Enexus' balance sheet and the value of its cash flow.

i. Sensitivity Studies

In connection with their consideration of the credit rating to be assigned to Enexus, the rating agencies requested financial projections over the next five years. The rating agencies also requested a number of sensitivity studies to examine the potential impact on the financial projections of changes in the assumptions used in the base case. Sensitivity studies requested included the following:

***** BEGIN INFORMATION CLAIMED EXEMPT *****

[redacted]

[redacted] *** **END INFORMATION CLAIMED EXEMPT** ***

All of the sensitivity studies indicated that a change in the base case assumptions would not cause significant financial stress for Enexus, except for the most extreme and most unlikely sensitivity study, the one that assumes that all six of Enexus' nuclear plants would operate at a *** **BEGIN INFORMATION CLAIMED EXEMPT** *** [redacted] *** **END INFORMATION CLAIMED EXEMPT** *** In its Initial Comments, Staff chose this most extreme and unlikely sensitivity study on which to base its recommendation for the imposition of conditions for the approval of the Petition.

Staff states in the *** **BEGIN INFORMATION CLAIMED EXEMPT** *** [redacted] *** **END INFORMATION CLAIMED EXEMPT** *** (Staff Comments, p. 13). Based on this assumption, Staff recommends that alternative conditions be imposed in order "to provide adequate assurance that Enexus can meet its financial obligations" (Staff Comments, p. 13). The information provided below demonstrates, however, that even under this unlikely scenario, Enexus would have sufficient resources to meet its financial needs.

First, as noted above, the *** **BEGIN INFORMATION CLAIMED EXEMPT** *** [redacted] *** **END INFORMATION CLAIMED EXEMPT** ***sensitivity study is not consistent with the actual operational experience of the New York Facilities and does not represent a reasonable projection of the availability rates of the Entergy operating companies.

As described in Petitioners' Initial Comments, the increased availability rate (i.e., reliability) of merchant generating plants is one of the clear successes of the competitive electricity market in New York State. The average availability rate for the New York Facilities over the past five years is between 93% and 94%. Furthermore, the forced outage rate (i.e., the percentage of time a unit is out of service for reasons other than a planned outage) for the New York Facilities over the past five years is between 2% and 3%. Consequently, the use of the *** **BEGIN INFORMATION CLAIMED EXEMPT** *** [redacted] *** **END INFORMATION CLAIMED EXEMPT** *** sensitivity as the basis of Staff's recommendation is particularly inappropriate and inconsistent with the actual operational experience of the New York Facilities over an extended period of time.

Second, even in the unlikely event that this scenario occurred, Enexus would have adequate financial resources to continue the safe and reliable operation of the New York Facilities. While it is unclear how the Staff arrived at the *** **BEGIN INFORMATION CLAIMED EXEMPT** *** [redacted] *** **END INFORMATION CLAIMED EXEMPT** *** their comments stated they relied on the *** **BEGIN INFORMATION CLAIMED EXEMPT** *** [redacted] *** **END INFORMATION CLAIMED EXEMPT** ***sensitivity. In the materials the Petitioners provided to Staff, this sensitivity *** **BEGIN INFORMATION CLAIMED EXEMPT** *** [redacted] *** **END INFORMATION CLAIMED EXEMPT** *** The amount of the revolving credit facilities assumed in the sensitivity totaled *** **BEGIN INFORMATION CLAIMED EXEMPT** *** $[redacted]

[redacted] ***

END INFORMATION CLAIMED EXEMPT ***

Also, contrary to Staff's assumptions, it is not anticipated that there would be covenants in the senior notes or credit facilities that would preclude Enexus from raising additional capital in the unsecured debt markets, equity markets under any reasonably expected circumstances. Consequently, despite the fact that the *** **BEGIN INFORMATION CLAIMED EXEMPT** *** [redacted] *** **END INFORMATION CLAIMED EXEMPT** *** sensitivity is extremely unlikely and inconsistent with the demonstrated operating experience of the New York Facilities, Entergy's other nuclear facilities and any reasonable projection of unit availability, Enexus would not experience the financial stress indicated in the sensitivity study because Enexus would have significantly more capital available than assumed in the study, and would not be barred from seeking additional funds in the capital markets. And, as noted, Enexus would not experience financial distress under any of the other more reasonable sensitivity studies, including *** **BEGIN INFORMATION CLAIMED EXEMPT** *** [redacted] *** **END INFORMATION CLAIMED EXEMPT** ***.

B. Reliability

The Petitioners appreciate the Staff's concern with respect to system reliability, and the Commission's primary responsibility for resource adequacy in New York State. The Petitioners have demonstrated, however, that the Corporate Reorganization will have no adverse effect on electric system reliability in New York State. First, because there is every reason to have confidence that the New York Facilities will continue to make a substantial positive contribution to system reliability, based on the market incentives for efficient operation and their strong operating performance. As indicated, adequate resources will be available to support the operation of the New York Facilities. And, second, because if for any reason a determination is made to retire one or more of the New York Facilities and the retirement would adversely affect reliability, the Commission and the NYISO have established procedures for the planning and implementation of regulated reliability solutions in order to maintain reliability.

When the Commission determined that the divestiture of generating facilities is in the public interest it concluded that the public interest would be protected through a competitive electricity market and market incentives, including the public interest in resource adequacy. As noted above, the Commission's judgment has proven to be correct. The availability rates for generating plants have significantly improved since the initiation of a competitive wholesale electricity market in New York State, especially those of nuclear plants. Since these plants earn no revenues when they are idle and have no captive ratepayers to rely on, unit availability is a primary business objective. Experience has demonstrated that these market incentives work and there is no reasonable basis for concluding that the availability of merchant generators, including the New York Facilities, will decline in the future.

In addition, plant reliability for the Enexus operating companies is and will continue to be supported by a comprehensive asset management process. Unit Reliability Teams ("URTs") at each plant review equipment performance and determine shorter term maintenance needs, refueling outage plans, and long term capital investments. The URTs help develop five year and 15 year asset management plans for each plant. The asset management planning is included in the budget process to ensure that the projects necessary to maintain long-term reliability are funded and scheduled appropriately. The URTs are but one critical feature of a fleet-wide asset management process that Entergy uses today and Enexus and EquaGen will continue to employ in the future.

The Federal Energy Regulatory Commission ("FERC") and the Commission have anticipated the need to protect electric system reliability should the market not provide adequate resources as a result of either a lack of sufficient new entry or the retirement of existing generators. Pursuant to FERC direction, the NYISO has implemented a planning process, including a Comprehensive System Planning Process ("CSPP"). The CSPP includes a 10 year planning horizon over which potential reliability problems are identified. The traditionally regulated utilities, which continue to have a statutory responsibility to provide safe and adequate service, have assumed the responsibility of developing regulated backstop solutions to address all identified reliability needs.[5] These regulated reliability solutions can be in the form of new generation resources, support for existing generation resources that cease to be economic and are planning to retire, demand response programs, or enhancements to the transmission system. It is understood that regulated reliability solutions will require regulatory support given that the

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[5] See NYISO Open Access Transmission Tariff Attachment Y. Available at: http://www.nyiso.com/public/documents/tariffs/oatt.jsp

market has not provided adequate financial support for the resources needed to maintain reliability.

In its pending Electricity Resource Planning ("ERP") proceeding, the Commission is in the process of establishing the procedures under which it will determine whether the regulated backstop solution proposed by the designated regulated utilities or a proposed alternative regulated solution would best serve the public interest.[6] In its order in the ERP proceeding issued on December 24, 2007, the Commission stated:

> We also reiterate our often repeated policy, as a number of parties requested, supporting competitive markets and market mechanisms, where feasible, as the most efficient means to serve the public interest. As we have said, competitive markets wholesale and retail, where feasible, help ensure the provision of safe and adequate service at just and reasonable rates. Nevertheless, we acknowledge that markets are only one of the tools we can use to achieve the ends dictated by the PSL. We will utilize regulatory approaches, as we have in the recent past, should the market not address the energy needs and related public policy goals of the State, but such efforts must be judiciously used keeping in mind their impacts on both consumers and markets.[7]

In an earlier proceeding, the Commission adopted a requirement that lightly regulated merchant generators provide six months' notice of a proposed retirement to the Commission, the NYISO and the affected utility.[8] The Commission noted that these entities "will be involved in conducting an analysis of the impact of a retirement and in devising a

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6 Case 07-E-1507 - Proceeding on Motion of the Commission to Establish a Long-Range Electric Resource Plan and Infrastructure Planning Process, Case 06-M-1017 - Proceeding on Motion of the Commission as to Policies, Practices and Procedures for Utility Commodity Supply Service to Residential and Small Commercial and Industrial Customers - Phase II, Order Initiating Electricity Reliability and Infrastructure Planning (Dec. 24, 2007).

7 Id. at 4 (internal footnotes omitted).

8 Case 05-E-0889 - Proceeding on Motion of the Commission to Establish Policies and Procedures Regarding Generation Unit Retirements, Order Adopting Notice Requirements for Generation Unit Retirements (Dec. 20, 2005).

solution in the event the retirement adversely affects reliability."[9] The Commission further stated the six month notice period "equates with the minimum period that NYISO indicates as adequate to identify and resolve reliability concerns," and that a retirement notice requirement "should also be sufficiently straight forward to avoid adverse interference with competitive market operations and generator financial decisions."[10]

Both FERC and the Commission recognize that in a competitive market, circumstances may arise in which the public interest in electric system reliability may require regulatory intervention. They also recognize that the owners of merchant generating plants, which must recover their revenues from competitive markets and do not have the support of captive ratepayers, cannot be expected to continue to make investments in plants that are no longer economically viable in order to support system reliability. Under such circumstances, regulatory intervention will be required and both the NYISO and the Commission have developed the procedures necessary to protect reliability.

Staff's statements with respect to the need for Enexus to have funds available to remedy reliability concerns and their base load function, therefore, must be understood in the context of the competitive market and the status of the New York Facilities as merchant plants, now and after the Corporate Reorganization. To the extent that continuing the operations of these facilities is economic, there is every reasonable expectation that their cash flow, cash balance, and access to secured financing and their access to other forms of capital, all of which we estimate will be in excess of *** **BEGIN INFORMATION CLAIMED EXEMPT** *** [redacted] *** **END INFORMATION CLAIMED EXEMPT** *** and be more than sufficient to support the continued safe and reliable operation of Enexus' facilities. However, in the

[9] Id. at 16.

[10] Id. at 7.

extremely unlikely event that one or more of these facilities ceases to be economically viable and its retirement would pose a threat to system reliability, regulatory intervention would be warranted. As noted, the NYISO and the Commission have anticipated the need for such regulatory intervention.

Staff also expresses concern that "the Support Agreement would not be available to remedy reliability or other non-safety related concerns" (Staff Comments, p. 11). It is Enexus' intent that the Support Agreement will be available to support reliable operation and other non-safety related concerns, and that such utilization of the Support Agreement in connection with NRC requirements. The NRC has recognized the importance of non-safety related systems and the effect such systems can have on overall plant safety. The NRC regulations require that each holder of an operating license for a nuclear power plant monitor the performance and condition of structures, systems, or components to ensure that they are capable of fulfilling their intended functions. The scope of this program includes safety-related and non-safety related structures, systems and components (10 CFR § 50.65). Thus, the provision in the Support Agreement that states that Enexus will provide funds to its operating companies "necessary to pay Operating Expenses or meet NRC Requirements" includes funds to support non-safety structures, systems and components.

Consequently, the role that the New York Facilities play with respect to system reliability should not be a matter of concern in this proceeding, and does not provide support for Staff's proposed conditions.

C. Staff's Proposed Conditions

Each of the alternatives proposed by Staff would impose an unjustified and extraordinary condition on Enexus.

i. Investment Grade Bond Rating

As explained above, despite the stable and robust cash flow and overall strong credit profile of Enexus, it is not realistic to expect the credit rating agencies to provide an investment grade rating at this time due in large part to the influence of event risk in rating agency methodology.

This does not mean, however, that the financial condition of the New York Facilities after the reorganization will not be stronger than it is today. Enexus will have greater access to cash flow generated by the Enexus facilities, without diversion to meet Entergy's significant capital requirements, and up to $2.0 billion of secured debt (including credit facilities). In total, Enexus expects to have the ability to access in excess of *** **BEGIN INFORMATION CLAIMED EXEMPT** *** [redacted] *** **END INFORMATION CLAIMED EXEMPT** *** of financial resources to support the plants that it operates, including the New York Facilities. In addition, the operating companies will have a $700 million Support Agreement, which is significantly larger than those now in place and backed by a BB rated company, rather than unrated affiliates.

Consequently, the imposition of a condition that Enexus achieve an investment grade rating is both infeasible and unwarranted.

ii. Maintenance of a $1 Billion Trust Fund

The alternative condition proposed by Staff, the maintenance by Enexus of a $1 billion "trust fund set aside to remedy reliability or other non-safety related concerns at the nuclear plants" is equally unwarranted.

First, as discussed above, Enexus will have more than sufficient resources to address its operational needs under any reasonable set of circumstances. To the extent that the

plants remain economically viable, Enexus' expected cash flow, unrestricted cash balance, and access to secured financing and access to other forms of capital all of which are expected to total greater than *** **BEGIN INFORMATION CLAIMED EXEMPT** *** [redacted] *** **END INFORMATION CLAIMED EXEMPT** ***, will support their continued safe and reliable operation. To the extent that additional capital resources are needed to invest in an operating company, there is no reasonable basis for concluding that Enexus would be unable to obtain the needed capital from the equity and debt markets, provided that the operating company remained economically viable. As noted above, even under the *** **BEGIN INFORMATION CLAIMED EXEMPT** *** [redacted] *** **END INFORMATION CLAIMED EXEMPT** *** sensitivity, Enexus would have resources to satisfy financing needs. In the unlikely event that a determination was made to retire an operating company and it was needed for reliability, regulatory intervention would be appropriate, or it would be decommissioned in an orderly fashion. In either case, the retention of a $1 billion trust fund is unnecessary and unwarranted.

Second, Staff's recommendation does not address the cost of maintaining a $1 billion trust fund. It is clear, however, that the carrying cost of a $1 billion trust fund would be extraordinarily high. In fact, we estimate that the carrying cost would be significantly more than $1 billion because Enexus would be forced to borrow this money at a rate in excess of 8%, or even be forced to raise equity to fund such an account, and would be forced to invest in a trust fund account at a significantly lower interest rate. And importantly, Enexus would forego the opportunity to earn adequate returns on this capital. Consequently, the actual cost would be significantly higher than $1 billion referenced by the Staff. Furthermore, the requirement to maintain a $1 billion trust fund to address reliability concerns would impose on Enexus an

unrealistic and extraordinary financial condition, not borne by its competitors in the wholesale electricity markets. This condition would place the New York Facilities at a significant competitive disadvantage with competing generators and would be fundamentally inconsistent with Commission policies favoring a competitive wholesale electricity market and the lightened regulation of merchant generators.

Third, it is Enexus' intention to obtain a revolving credit facility in the amount of ***** BEGIN INFORMATION CLAIMED EXEMPT ***** [redacted] ***** END INFORMATION CLAIMED EXEMPT ***** This significantly increases the capital available to Enexus to address the concerns identified by Staff.

Fourth, the credit facilities will include financial covenants that are intended to support the creditworthiness of Enexus. The credit facilities will contain covenants that ***** BEGIN INFORMATION CLAIMED EXEMPT ***** [redacted] ***** END INFORMATION CLAIMED EXEMPT *****

Fifth, the requirement to maintain a $1 billion trust fund might even precipitate the very reliability problem that Staff seeks to protect against. Simply stated, Staff's proposal

would add $1 billion to the working capital associated with continued operation of the New York Facilities – a significant annual fixed cost (and opportunity cost given up) that might only be avoided by retiring the units. When market revenues are adequate to support continued operation but for this onerous requirement, the trust fund could actually cause the units to be retired prematurely, and cause the very reliability problem about which Staff is concerned. Thus, Staff's recommendation is not only unreasonable and unnecessary, it would be counter-productive.

III. ENEXUS AND EQUAGEN HAVE THE INCENTIVE AND THE ABILITY TO ADEQUATELY OWN AND OPERATE THE NEW YORK FACILITIES

The Attorney General, Riverkeeper and Westchester County raise several arguments regarding Enexus' and EquaGen's ability to own and operate the New York Facilities. Specifically, they argue that the Corporate Reorganization would be a detriment to the New York Facilities as it would adversely affect the safe and reliable operation of the plants and would prevent certain capital investments, would cut-off access to Entergy's resources, would alter prior commitments the Petitioners have made to New York State and the host communities.

A. The Operating Agreement, Shared Services Agreements and Other Related Agreements Will Allow for the Safe and Reliable Operation of the New York Facilities.

The Attorney General argues that the proposed Amended and Restated Operating Agreement and the Shared Services Agreements are not in the best interests of New York. Specifically, the Attorney General claims that Entergy's predominant control over the New York Facilities will put the plants at risk (Attorney General Comments, p. 26), that Entergy's 50% ownership interest in EquaGen gives Entergy the ability to stalemate EquaGen decisions and force time-wasting arbitration (Attorney General Comments, p. 26), that under the Shared Services Agreements, Entergy would have the core capabilities for day-to-day operation thereby

leaving Entergy holding all the service capability cards, which would force Enexus into accept Entergy's proposals or invoke cumbersome dispute resolution (Attorney General Comments, p. 27), and that the Shared Services Agreements would allow Entergy to extract unjustified premiums from Enexus as the cost allocation under the agreements favors Entergy (Attorney General Comments, p. 23).

Entergy's 50% ownership interest in EquaGen will not cause any harm to the New York Facilities. Entergy is not a party to the Amended and Restated Operating Agreement and has no say in the day-to-day operation decisions made by Enexus and EquaGen Nuclear under that agreement. The Amended and Restated Operating Agreement provides EquaGen Nuclear predominantly the same authority and responsibility as ENO has today as the existing operator of the New York Facilities. This means that Chief Executive Officer of EquaGen Nuclear, Michael R. Kansler, will have the authority at all times, as is the case currently, to take any actions necessary to carry out EquaGen Nuclear's responsibilities as the operator under the NRC operating licenses, including any actions and/or expenditure of funds necessary to protect the public health and safety, to maintain safe, operating or shutdown conditions at each plant, and to comply with NRC orders and requirements.

The only actions that require both Entergy and EquaGen to agree (without recourse to a dispute resolution mechanism) are actions that are made at the joint venture level (i.e., at EquaGen) that affect the fundamental economic rights of the co-owners of EquaGen in the joint venture such as, the admission of additional co-owners to EquaGen, the imposition of mandatory capital contributions from Entergy and EquaGen, the sale of EquaGen to a third party or its liquidation. These decisions will require unanimity, and the failure to agree on such matters means the "status quo pro ante" will prevail.

For significant matters at the joint venture level that do not require the consent of Enexus and Entergy (as described above), the failure of Entergy and Enexus to agree will trigger dispute resolution provisions intended to ensure that the business of the joint venture can proceed. Significant matters at the joint venture level that would be subject to dispute resolution would include matters, such as, approval of the EquaGen business plan or annual budget, variation or termination of material contracts, significant expenditures, incurring significant indebtedness, commencement of litigation, major regulatory filings, distributions, redemptions and selection of accountants and auditors. It is important to note the "significant matters" subject to the dispute resolution do not apply to day-to-day actions taken by EquaGen Nuclear under the terms of the Amended and Restated Operating Agreement.

Under the Amended and Restated Operating Agreement, EquaGen cannot unilaterally determine a reduction in spending or budgets, or cancel or enter into contracts that affect Enexus without its consent. Any matter that would potentially put the plants at risk is subject to the dispute resolution provision.

Furthermore, the division of responsibilities under the Shared Services Agreements will have no adverse effect on Enexus. First, all the site employees at the regulated plants will remain EOI employees and the site employees at the merchant plants would remain ENO (EquaGen Nuclear) employees. This means that the core engineering expertise for each nuclear plant (both regulated and merchant) reside at the individual plant sites.

Second, when dividing responsibilities between the parties, the Petitioners carefully analyzed the corporate functions of the responsibilities to ensure that each organization would either have, or have access to the employees necessary to continue to operate the New York Facilities safely and reliably.

Thus, should EquaGen completely separate from Entergy at some time in the future, Entergy would retain the expertise to support its nuclear plants and Enexus, through EquaGen Nuclear, would retain the expertise necessary to support its nuclear plants. Furthermore, should Enexus determine to drop some of the services performed by Entergy, those services are readily available in the market.

Additionally, any contention that the Shared Services Agreements would allow Entergy to extract unjustified premiums from Enexus ignores the requirements of the FERC and the associated codes of conduct that exist today. The FERC has reviewed and made a clear determination in the June 12, 2008 Order Authorizing the Disposition of Jurisdictional Facilities that no cross subsidization of the non-utility wholesale nuclear business is contained in the proposed transaction. Cross subsidization is clearly prohibited by FERC requirements and the proposed transaction has been approved by FERC. Further, the ownership interest structure of Entergy and Enexus in EquaGen, and the corresponding shared-service arrangements result in significant and meaningful benefits that would not be available to either company without participation in the joint venture. These include the economic benefits and economies of scale of operating each company's nuclear facilities as part of a larger fleet of nuclear facilities capitalizing on the resources and skills of its two owners to market nuclear-related services to third parties.

B. Enexus Will Have Sufficient Funds for Capital Expenses

The Attorney General, Riverkeeper and Westchester County all claim that the Petitioners' proposals are deficient because they do not address the need for upcoming capital expenses and Enexus' financial ability to cover these expenses. Specifically, the parties identify

the potential need for a closed-cycle cooling system and the replacement of reactor pressure vessel heads and nozzles at the Indian Point Facilities.

First, the need for a closed-cycle cooling system has not yet been determined. While the New York State Department of Environmental Conservation issued a draft State Pollutant Discharge Elimination System ("SPDES") permit that required the Indian Point Facilities to install a closed-cycle cooling system if the operating licenses are renewed for an additional twenty year term, Entergy has challenged the draft permit in an administrative proceeding that is still ongoing.

Second, Entergy's projected cash flows and access to capital will provide adequate resources to cover capital improvements, as discussed above (See AG-18 (EN-18SS) including attachments thereto). As noted above, if the investment is economically viable, the Petitioners have or will be able to obtain the necessary resources.

C. The New York Facilities Do Not Currently Have Access to Entergy's Full Resources.

The Attorney General claims that the Corporate Reorganization will significantly reduce the New York Facilities access to financial resources by creating a barrier between the plants and Entergy's $25 billion of resources the plants might be able to call on today (Attorney General Comments, pp. 19-20). Additionally, the Attorney General argues that Enexus' income would be much less reliable than Entergy's income because Enexus would be dependent on a single vulnerable revenue source and would have no transmission, distribution, captive customers, or regulators to fall back on for revenue (Attorney General Comments, pp. 24-25).

As stated on numerous occasions in this proceeding, the New York Facilities do not currently have access to Entergy's resources and will not have access to them in the future. Entergy may make investments in the New York Facilities to the extent it determines that such

investments are in the company's best interests. However, as noted above, Entergy's Annual Report indicates regulated-utility companies will have to make significant capital expenditures to meet generation-resource needs.[11]

The only other source of funds for Entergy's subsidiaries is debt raised in the financial markets. However, there are legal restrictions on Entergy's ability to borrow funds and how they may be used.[12] These restrictions are specifically designed to "prevent public utilities from borrowing substantial amounts of monies and using the proceeds to finance non-utility businesses."[13] In addition, retail regulatory jurisdictions place restrictions on the regulated utilities' ability to issue securities or otherwise encumber its assets for the benefit of an affiliate. Further, pursuant to settlement agreements entered into with certain of the retail regulators of the regulated utilities, Entergy must give first priority in allocating resources to the capital requirements of the regulated utilities.

The assertions made by the Attorney General clearly do not take into consideration the reality of how a regulated utility business must function within a regulatory environment. Assets and operations of a regulated utility cannot be sold or disposed of in the way the Attorney General has stated. The scenario suggested by the Attorney General would face significant regulatory barriers and complicated jurisdictional requirements.

Thus, contrary to the Attorney General's contention, Entergy's non-utility nuclear plants, including the New York Facilities, do not currently rely on the income, cash flow or

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[11] In addition, due to the recent hurricanes, Entergy's regulated utilities have incurred an approximate ***BEGIN INFORMATION CLAIMED EXEMPT*** [redacted] ***END INFORMATION CLAIMED EXEMPT*** in storm costs, which would further affect Entergy's ability to invest in its non-utility nuclear plants.

[12] Section 204 of the Federal Power Act, the FERC requires that regulated public utilities seeking authorization to issue debt that is secured by an asset of a regulated utility must use the proceeds of the debt for utility purposes. Westar Energy, Inc., 102 FERC 61,186 at 22, order on reh'g, 104 FERC ¶ 61,018 (2003).

[13] Id.

financial resources of Entergy's regulated utilities to support their operation or to secure debt on their behalf.

D. All Prior Commitments Will Be Honored

The Attorney General argues that the Petitioners have used the Corporate Reorganization to review and revisit financial commitments to various New York host communities (Attorney General Comments, p. 8). Westchester County also questions the Petitioners' commitment to honor their prior agreements with the county (Westchester County Comments, pp. 6-9).

In prior pleadings and in responses to information requests, the Petitioners have consistently confirmed that they will honor all prior commitments. The same licensed operator, ENO (EquaGen Nuclear), and the same employees who operate the New York Facilities today will continue to operate the stations following the Corporate Reorganization. As a result, the New York Facilities will continue to operate in accordance with all existing environmental permits and the owners of the facilities will honor all arrangements and agreements currently in place. To be clear, this includes all conditions contained in prior Commission orders, all environmental permits (e.g., SPDES permits), all Payment in Lieu of Tax agreements, all arrangements the Petitioners currently have with local host communities (e.g., Westchester County, Oswego County and the Town of Scriba) and all commitments contained in Michael Kansler's[14] (the then Senior Vice President and Chief Operating Officer of Entergy Nuclear Northeast and Entergy Nuclear Operations) March 16, 2001 letter to Alan D. Scheinkman (the then attorney for Westchester County) ("Kansler Letter").

[14] After the Corporate Reorganization, Michael Kansler will be Chief Executive Officer of EquaGen Nuclear.

IV. THE DECOMMISSIONING TRUST FUNDS AND DECOMMISSIONING PLANS ARE ADEQUATE AND REASONABLE

Several of the commentators claim that the Corporate Reorganization would negatively impact the decommissioning of the New York Facilities. Their claims can be summarized into the following arguments: Enexus does not have sufficient resources to fulfill its decommissioning obligations and Enexus is attempting (or will attempt) to avoid its decommissioning commitments.

The Petitioners fully addressed Enexus' ability to decommission the New York Facilities in their Initial Comments. As stated therein, decommissioning is within the jurisdiction of the NRC and the NRC will ensure that each NRC licensee provides adequate assurance of decommissioning funding in an amount adequate to ensure the protection of public health and safety. In that regard, nuclear decommissioning trust funds ("NDTs") are maintained by ENIP2 for IP1 and IP2, and ENIP3 and ENFP rely upon NDTs maintained by NYPA for IP3 and FitzPatrick. The NDTs are maintained as segregated accounts outside the administrative control of ENIP2, ENIP3, and ENFP and the NRC periodically reviews these accounts to ensure they are adequately funded. Following the Corporate Reorganization, the existing NDT arrangements would remain in place unchanged.

Importantly, the NDTs are currently not being funded. Rather, the NRC has determined that based on a maximum real growth rate of 2% (as specified in 10 CFR § 50.75), the NDTs are at sufficient levels to support the decommissioning of the New York Facilities. While recent events in the financial markets may have diminished the value of the NDTs, fluctuations in the market value of securities are to be expected and the effect on the NDTs will be the same regardless of who owns the funds. Should the NRC determine the NDTs need

further funding, Enexus' projected cash flow will provide more than adequate funds to satisfy the NRC's requirements.

Moreover, the Petitioners are not attempting to avoid any of their decommissioning responsibilities. As noted, the decommissioning responsibilities for IP1 and IP2 reside with the owner of the plants, ENIP2, and the decommissioning responsibilities for IP3 and FitzPatrick currently reside with NYPA. The decommissioning responsibilities will remain with these entities following the Corporate Reorganization. The responsibility to decommission the New York Facilities rests with the companies that directly own the plants, not Entergy, and the same will hold true for Enexus.

As stated above, ENIP2 and ENIP3 reaffirm their commitments contained in the Kansler Letter. Westchester County, however, argues that the Petitioners are attempting to renege on their commitment to limit SAFESTOR to a reasonable period. This simply is not the case. As explained in response to information request WC-37 (EN-142), the NRC's regulations permit decommissioning to extend to 60 years after permanent cessation of operations of a nuclear plant, or longer if approved by the Commission. 10 CFR § 50.82(a)(3). The NRC has explained that this amount of SAFSTOR results in a significant reduction in the volume of contaminated waste because of the decay of the radioactive nuclide that has the most effect on decontamination efforts, Cobalt-60. 50 Fed. Reg. 5600, 5604 (Feb. 11, 1985). The NRC stated that the purpose of its decommissioning rules, including the allowable 60-year period, "is to assure that decommissioning will be carried out with minimal impact on public and occupational heath and safety and the environment." 53 Fed. Reg. 24018, 24019 (June 27, 1988). The actual SAFSTOR period will be as approved by the NRC, in a manner to minimize the impact on public health and safety.

ENIP2 and ENIP3 also reaffirm their commitment to restore the Indian Point sites to Greenfield status. Westchester County erroneously states that Entergy's decision regarding restoring the Indian Point sites to Greenfield status will be based on economics (WC Comments, p. 9). Westchester County distorts Entergy's response to information request WC-37 (EN-142) to reach this conclusion. The response to WC-37 (EN-142) provided a list of several factors the Petitioners will consider when determining when to commence decommissioning activities. Economics was one of ten factors listed, but that response did not address the Petitioners' commitment to greenfielding, but rather addressed the appropriate time to begin decommissioning activities. As previously stated, ENIP2 and ENIP3 commit to restoring the Indian Point plants to Greenfield status at the end of the decommissioning process.

Finally, there is absolutely no basis for the Attorney General's claim that Entergy has a poor track record of protecting decommissioning funds and that it is reasonable to assume that Enexus will resist efforts to increase monies deposited in the decommissioning funds and return the site to an unrestricted-use Greenfield. (Attorney General Comments, pp. 40-41). The Attorney General's allegation that Entergy attempted "to withdraw money from the Vermont Yankee decommissioning trust fund for unauthorized purposes" is false, and its implication that NRC's review of Entergy's "Proposed Spent Fuel Management Program" relates to "current plant operating obligations" is misleading. The NRC review does not involve spent fuel management during plant operations, but rather it is a review of Entergy's plans for how it would manage spent fuel *during* the decommissioning of Vermont Yankee. To be clear, Entergy has not sought to divert any decommissioning trust funds for spent fuel management during plant operation. During plant operations, Entergy has used operating revenues or other intra-company resources to fund the licensing and construction of on-site spent fuel storage facilities at Vermont Yankee

as well as it its other operating plants. This is also true with respect to all incremental expenses for dry storage systems for spent fuel moved to on-site storage during plant operations.

It is not possible to decommission a nuclear plant without removing spent fuel from the spent fuel pool and arranging for the spent fuel to either be transferred to the Department of Energy for disposal or transferred to some form of on-site or off-site storage. Thus, the NRC's rules for plants in their last five years of operations (notwithstanding a pending license renewal) must not only provide details regarding their decommissioning plans, but also regarding their plans for the management of spent nuclear fuel during decommissioning. 10 CFR §§ 50.54(bb) & 50.75(f)(2). The NRC review referenced by the Attorney General is an assessment of Entergy's plans for accomplishing the site specific decommissioning of Vermont Yankee, including the required management of spent fuel, based upon an assumption that Vermont Yankee were to shutdown at the end of its current operating life, even though Entergy actually plans that Vermont Yankee will operate for twenty more years once license renewal is approved.

Entergy never proposed that funds be diverted from the decommissioning trust funds to fund spent fuel management during decommissioning. But rather, Entergy has simply sought to demonstrate to NRC that even if Vermont Yankee were to shut down at the end of its current licensed operating life, there would be adequate funds available in the decommissioning trust funds to both safely maintain the plant in a shutdown condition and maintain spent fuel safely until decommissioning can eventually be completed. Entergy continues to work with NRC to comply fully with the applicable NRC regulations, and it also continues to fund spent fuel management activities during operations from plant operating revenues or other intra-company resources.

V. THE COMMISSION SHOULD NOT ATTEMPT TO ASSERT JURISDICTION OVER THE NYPA VALUE SHARING AGREEMENTS

Despite the fact that by entering into a Resolution of Dispute Over Application of VSAs to Certain Facts, ENIP3, ENFP and the New York Power Authority ("NYPA") have resolved their differences with respect to the Value Sharing Agreements ("VSAs"), the Attorney General contends that the Commission should assert authority to review any change in the VSAs. Because the VSAs are subject to Commission authority, the Attorney General argues, the Commission should ensure that they are honored and require the parties to notify the Commission before any proposed change in the VSAs. Despite the Attorney General's arguments to the contrary, the Commission should not attempt to impose such a condition.

As noted in the July 23, 2008 Ruling Concerning Discovery and Seeking Comments on a Proposed Process and Schedule, "it is undeniably true that the Commission does not regulate [NYPA] and has no jurisdiction to abrogate or modify a contract freely entered into by that entity."[15] In addition, interference with commercial transactions by the Commission would be inconsistent with Commission policy and would set a very bad precedent. Parties subject to the Commission's jurisdiction, which includes virtually all participants in the wholesale electricity market, should be free to enter into commercial agreements with NYPA (and LIPA) without concern that the Commission will attempt to exercise its jurisdiction to modify the terms of a contract negotiated between two sophisticated parties. Parties would be less likely to negotiate with NYPA, ENFP and/or ENIP3 if there was a possibility that a legal

[15] Case 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, Ruling Concerning Discovery and Seeking Comments on a Proposed Process and Schedule at 11 (July 23, 2008).

and enforceable contract was modified after its execution. Accordingly, the Commission should decline to adopt the Attorney General's proposed condition regarding the VSAs.

VI. THE DECOMMISSIONING COST STUDIES SHOULD RETAIN THEIR CONFIDENTIAL STATUS

The Attorney General, Westchester County and Riverkeeper all argue that the decommissioning cost studies provided by the Petitioners in response to information request AG-13 (EN-13) do not qualify as a trade secret pursuant to the Commission's regulations or Information Claimed Exempt pursuant to the June 17, 2008 Procedural Ruling and General Protective Order. The parties contend that there is no basis for withholding the documents as the decommissioning cost analysis for the Vermont Yankee nuclear power plant was provided to the NRC and is a publicly available document. The Attorney General also claims the Pilgrim study was also on file with the NRC. Contending that the other studies appear to be substantially similar to the Vermont Yankee study, the parties do not believe that there is any basis for withholding the other documents from public disclosure. The Attorney General further argues that Petitioners' September 9, 2008 letter to Administrative Law Judges Lynch and Prestemon should be stricken as it attempted to offer additional justifications for withholding the decommissioning cost studies from public disclosure.

For the reasons stated in Petitioners' June 2, 2008 letter to Administrative Law Judge Lynch and September 9, 2008 letter to Administrative Law Judges Lynch and Prestemon, the Petitioners continue to maintain that the studies (except for the Vermont Yankee study) qualify as Information Claimed Exempt. Furthermore, the September 9, 2008 letter should not be stricken as it does not contain new justification for withholding the documents from public disclosure but rather provides clarification of the justifications offered in the June 2, 2008 letter and responds to the factually incorrect contentions of the Attorney General.

The September 9, 2008 letter also distinguishes the difference between the Vermont Yankee study and the other studies. As noted in the September 9, 2008 letter, the Vermont Yankee decommissioning cost analysis was prepared in accordance with the NRC's regulations and the other studies were prepared for internal purposes only. That is an important distinction because the cost estimates prepared for the NRC are based on NRC guidelines and assumptions contained in the NRC's regulations and utilize NRC approved methods of calculations. In contrast, the decommissioning cost estimates prepared for internal purposes are based on different assumptions and are not constrained by the NRC's approved methods of calculation. The public NRC studies are the ones that are the basis for the NRC's determination of whether or not decommissioning is adequately funded and, therefore, are the ones that are of relevance to the public. Entergy's internal conjecture on decommissioning costs is not the basis upon which governmental action will be taken on funding decommissioning.

Another important distinction is that the decommissioning cost studies prepared for the NRC involve one scenario, while the decommissioning cost studies prepared for internal purposes involve multiple scenarios. The multiple scenarios allow the Petitioners to analyze the decommissioning alternatives and make internal business decisions with regard to decommissioning.

The Attorney General is also incorrect that the decommissioning analysis provided in response to AG-13 (EN-13) for the Pilgrim plant was filed with the NRC. That study, like the other studies (except the Vermont Yankee study) was prepared for internal purposes. However, since responding to the Attorney General's initial request, other documents were developed for submittal to the NRC in response to regulatory requirements (10 CFR §

50.75(f)(3)) associated with pre-shutdown planning and financial assurance.[16] Specifically, Entergy has submitted to the NRC a "Preliminary Decommissioning Cost Analysis for the Pilgrim Nuclear Power Station" at the end of July 2008 and is intending to submit similar documents to the NRC for Indian Point 1 and 2 in the near future.

As noted, unlike the internal studies, the NRC submittals address only one scenario; the scenario selected to demonstrate financial assurance under the NRC's requirements. Therefore, the study provided in response to AG-13 (EN-13) for the Pilgrim plant and the study filed with the NRC utilize different scenarios and were prepared for different purposes. The internal study evaluated a *** **BEGIN INFORMATION CLAIMED EXEMPT** *** [redacted] *** **END INFORMATION CLAIMED EXEMPT** *** and was used by the company to generate additional scenarios and to support its Asset Retirement Obligation studies. While the 2008 NRC study evaluated a 2012 shutdown and associated spent fuel management plan. The 2008 NRC study also contained financial assurance information as related to the NRC's regulation on funding and fund earnings.

Finally, the Petitioners hereby confirm that with the link to the 2008 NRC study for the Pilgrim plant, they have provided all decommissioning cost analyses responsive to AG-13 (EN-13).

VII. THE PROPOSALS BEFORE THE COMMISSION ARE SUFFICENT FOR THE COMMISSION TO RENDER A DECISION

The Attorney General claims that the terms of the Corporate Reorganization and the Debt Financings are a work in progress and cannot be fully evaluated now (Attorney General Comments, p. 36). Likewise, Westchester County expresses concern that most of the agreements

[16] The July 2008 study can be accessed through the following link: http://adamswebsearch2.nrc.gov/idmws/doccontent.dll?library=PU_ADAMS^PBNTAD01&ID=082250088

and economic conditions, including the allocation of debt among the entities that hold the licenses for the New York plants will not be determined until after the PSC decides to grant its approval (Westchester County Comments, p. 13). The Petition requested the Commission authorize the Corporate Reorganization, which involves transferring Entergy's non-utility nuclear plants to Enexus and the formation of a joint venture (EquaGen) between Enexus and Entergy that will be responsible for the operation of the nuclear facilities. The Petition also requested authorization for Enexus to enter into the following debt financings: i) up to $4.5 billion in Senior Notes; ii) up to $2.0 billion in a Senior Revolving Credit Facility and/or Term LC facility; and iii) Hedging Arrangements (given the nature of the Hedging Arrangements, Petitioners are unable to specify an "up to" amount). No documents the Petitioners have produced to date (e.g., discovery responses and Enexus' Form 10, including any amendments thereto) materially alter this basic form of the Corporate Reorganization or the amount or type of Debt Financings that the Petitioners have requested the Commission authorize. Instead, the documents produced to date merely provide greater detail on how the debt will be structured. Moreover, the final terms of reorganization and financing transactions are routinely finalized after regulatory approval has been obtained.[17] The Commission, therefore, has the information it needs to approve the Corporate Reorganization and complete its public interest analysis.

There is no basis for the Attorney General's and Westchester County's concern that the Petitioners may change the terms of the Corporate Reorganization and Debt Financings at will if the Commission approves the proposed Corporate Reorganization. The Petitioners are

[17] See, e.g., Case 06-W-0490 - Joint Petition of Thames Water Aqua Holdings GmbH, Thames Water Aqua US Holdings, Inc. and Long Island Water Corp. for approval of the Merger of Thames Water Aqua US Holdings, Inc. with and into American Water Works Co., Inc and the subsequent sale of the shares of Common Stock of American Water Works Co, Inc., Order Authorizing Reorganization and Associated Transactions (July 26, 2007) (S-1 Registration Statement relating to the initial public offering of the shares of American Water Works Company Inc. declared effective by the SEC on April 22, 2008).

bound by the Commission's orders and will not make any changes to the transaction that would be in violation of any Commission order that approves the instant Petition. Petitioners, thus, cannot change at will the terms of the Corporate Reorganization and Debt Financings.

VIII. PSL SECTIONS 69 AND 70 STANDARD OF REVIEW

For the reasons set forth in the Petitioners' Initial Comments, standards of review in this proceeding suggested by the Attorney General, Westchester County and Riverkeeper are incorrect.

IX. CONCLUSION

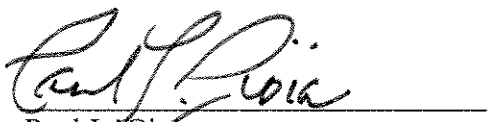
Based on the foregoing, the Petitioners respectfully submit that the Corporate Reorganization meets the public interest standard of PSL Section 70 because it satisfies all of the public interest considerations identified in the Commission's Order. The unreasonable, unjustified and unprecedented conditions proposed by Staff are inconsistent with Commission policies and are not necessary for the Corporate Reorganization to meet the Commission's public interest standard. Likewise, the Attorney General's, Westchester County's and Riverkeeper's claims that Enexus is not qualified and does not have adequate resources to own and operate the New York Facilities safely and reliably are incorrect and unsupported by the information provided in this proceeding.

The Corporate Reorganization provides positive benefits. Following the Corporate Reorganization, Enexus' proposed capital structure and projected cash flows will support the continued safe and reliable operation of the New York Facilities, Enexus will have sufficient resources to decommission the New York Facilities, and Enexus and EquaGen will have adequate arrangements in place for managing, operating and maintaining the New York Facilities.

Moreover, the Debt Financings are necessary and reasonable pursuant to PSL Section 69. The Debt Financings will be on commercially reasonably terms and the debt will be placed with sophisticated lenders. Enexus will use the Debt Financings to create an independent, stand-alone company that owns Entergy's non-utility nuclear plants, including the New York Facilities by reducing, retiring or paying off certain Entergy debt and capital interests associated with these assets, as well as to provide working capital to Enexus as the owner of the assets.

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

Dated: September 29, 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

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

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

Case 08-E- 0077

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VERIFICATION

STATE OF LOUISIANA)
)ss:.
PARISH OF ORLEANS)

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

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

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

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

Walter C. Ferguson

Sworn to and subscribed before me
this 29 day of September, 2008.

MARCUS V. BROWN
NOTARY PUBLIC (Bar # 18817)
For the State of Louisiana
Commission Issued For Life

Notary Public

EXHIBIT A

Company	Credit Rating S&P	Moodys	Fitch	FFO/Debt	FFO/Int.	Debt/EBITDA
Exelon Generation	BBB+	A3	BBB+	39.8%	4.1x	1.8x
TVA	AAA	Aaa		8.0	2.3	8.2
Florida P&L	A	A1	A	40.7	8.7	2.3
Constellation Energy	BBB+	Baa1	BBB+	16.8	3.5	4.0
Arizona P.S.	BBB-	Baa2	BBB-	18.3	4.5	4.1
PSEG Power (1)	BBB	Baa1	BBB+	36.8	7.0	2.0
Progress Energy	BBB+	Baa2	BBB	16.4	3.8	4.4
NRG(2)	B+	Ba3	B	18.1	3.2	3.9
PPL Energy Supply(3)	BBB+	Baa2	BBB	21.6	5.0	4.2
Pacific G&E	BBB+	A3	BBB+	32.4	3.2	2.4
Southern Cal. Ed.	A+	A2		22.0	3.9	3.0
Indiana/Mich. Pwr.	BBB	Baa2	BBB	17.7	4.1	5.6
Ameren UE	BBB-	Baa2	BBB+	19.8	4.5	3.9
Detroit Edison	BBB	Baa1	BBB	19.6	4.8	3.3
South Carolina E&G	A-	Baa1		20.5	4.6	3.4
Nebraska PPD	AA+	Aa1		8.6	2.9	9.2
Omaha PPD	AA+	Aa1		12.6	3.8	8.5

Enexus [redacted]

(1) PSEG Power is the parent of PSEG Nuclear which is the company cited in Mr. Parker's testimony.

(2) NRG is a co-owner of the South Texas Nuclear Operating Company which is the company cited in Mr. Parker's testimony. The South Texas Nuclear Operating Company provides operating services to the South Texas Nuclear Project which is also co-owned by NRG.

(3) PPL Energy Supply is the parent of PPL Susquehanna, LLC which is the company cited in Mr. Parker's testimony.