

SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION  
REQUEST FOR SECOND EXTENSION OF ORDERS FOR INDIRECT TRANSFER OF  
FACILITY OPERATING LICENSES

DUE TO ENTERGY CORPORATION RESTRUCTURING

PILGRIM NUCLEAR POWER STATION; DOCKET NO. 50-293

INDIAN POINT NUCLEAR GENERATING UNIT NO.1; DOCKET NO. 50-003

INDIAN POINT NUCLEAR GENERATING UNIT NO. 2; DOCKET NOS. 50-247 AND 72-51

INDIAN POINT NUCLEAR GENERATING UNIT NO. 3; DOCKET NO. 50-286

JAMES A. FITZPATRICK NUCLEAR POWER PLANT; DOCKET NOS. 50-333 AND 72-12

VERMONT YANKEE NUCLEAR POWER STATION; DOCKET NOS. 50-271 AND 72-59

PALISADES NUCLEAR PLANT; DOCKET NOS. 50-255 AND 72-7

BIG ROCK POINT; DOCKET NOS. 50-155 AND 72-43

## 1.0 INTRODUCTION

By letter dated November 3, 2009,<sup>1</sup> as supplemented on December 10, 2009,<sup>2</sup> Entergy Nuclear Operations, Inc. (ENO) acting on behalf of itself and Entergy Nuclear Generation Company, Entergy Nuclear FitzPatrick, LLC, Entergy Nuclear Vermont Yankee, LLC, Entergy Nuclear Indian Point 2, LLC, Entergy Nuclear Indian Point 3, LLC, and EN-Palisades, LLC, (together, the "Applicants"), requested an extension of seven orders, issued by the NRC on July 28, 2008 (Transfer Orders),<sup>3</sup> consenting to an indirect transfer of control of the operating licenses held by the Applicants, which would be effected due to a corporate restructuring of Entergy Corporation and creation of a new holding company, Enexus Energy Corporation (Enexus) and several intermediate companies. Enexus would become the ultimate parent company of the NRC license holders. The Transfer Orders contained a clause stating:

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<sup>1</sup> Agencywide Document Access and Management System (ADAMS) Accession No. ML093100496

<sup>2</sup> ADAMS Accession No. ML093630884

<sup>3</sup> ADAMS Accession Nos. ML080990282, ML080940360, ML080940400, ML080940564, ML080940536, ML080940379, ML080940591

Should the proposed corporate restructuring and establishment of Enexus not be completed within one year from the date of this Order, this Order shall become null and void, provided, however, upon written application and good cause shown, such date may be extended by Order

The November 3, 2009, letter is the second request to extend the Transfer Orders. ENO requested the first extension by letters dated May 15, 2009<sup>4</sup>, and May 29, 2009<sup>5</sup>. By Order dated July 24, 2009<sup>6</sup>, the NRC determined that good cause had been shown to extend the effectiveness of the Transfer Orders, allowing for completion of the proposed indirect transfer on or before January 28, 2010.

Section IV of the July 24, 2009 Order, provides that "if the proposed corporate restructuring and establishment of Enexus Energy Corporation is not consummated by January 28, 2010, the Orders of July 28, 2008, shall become null and void, unless upon application and for good cause shown, such date is further extended by Order."

By letter dated November 3, 2009, as supplemented by letter dated December 10, 2009, (together, "Second Extension Request"), ENO submitted a request that the Orders dated July 24, 2009, be extended through August 1, 2010, in order to allow ample time for completion of the proposed restructuring.

## 2.0 BASIS FOR THE EXTENSION REQUEST

According to the Second Extension Request, diligent efforts have been made to obtain the required State and Federal regulatory approvals, and many of the required approvals have been obtained. As discussed in ENO's letter dated August 18, 2009, "Update Regarding Status and Request for Threshold Determination Under 10 CFR 50.80"<sup>7</sup>, ENO states that it remains confident that it will receive all of the required approvals for the transaction. However, proceedings are ongoing before the New York State Public Service Commission (PSC) and the State of Vermont Public Service Board (PSB), and the New York PSC may not complete its regulatory approval process in time for completion of the restructuring and establishment of Enexus before January 28, 2010, as required by the July 24, 2009, extension Order. An amended petition has been submitted to the New York PSC that includes several enhancements to the transaction. In Vermont, Entergy Nuclear Vermont Yankee, LLC (ENVY), ENO, and Enexus have entered into a Memorandum of Understanding (MOU) with the Vermont Department of Public Service. The MOU must be approved by the Vermont PSB and this approval is expected to be issued in the near future.

The Applicants state that they are optimistic that they may be able to close the Enexus transaction by the end of January 2010 but remain concerned that the transaction may not be completed by January 28, 2010, as required by the current Orders. Moreover, beginning in early 2010, there are certain "blackout periods" imposed by Federal regulations in connection with efforts to finalize the audited 2009 annual financial results for Entergy Corporation. Once

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<sup>4</sup> ADAMS Accession No. ML091420271

<sup>5</sup> ADAMS Accession No. ML091600059

<sup>6</sup> ADAMS Accession No. ML091520154

<sup>7</sup> ADAMS Accession No. ML092370203

such blackout periods begin, limitations on access to the financial markets would likely delay completion of the transaction until the June or July 2010 time frame.

## 2.1 Conclusion as to Good Cause

The NRC staff concludes that the Applicants have demonstrated that the reasons for the delay (i.e., the need to obtain State approvals and the possibility of limited access to financial markets) establish good cause for the extension of the Transfer Orders.

## 3.0 FINANCIAL QUALIFICATIONS

The Second Extension Request contained new information with respect to the indirect transfers of the licenses. In an indirect license transfer, the NRC staff determines whether the proposed shift in ultimate corporate control will affect the licensees' existing financial and technical qualifications.

In the Second Extension Request, the applicant provided 5-year projected income statements for the period from FY 2010 to FY 2014 for each of the 7 licenses involved in the indirect transfers. The previous projections had been for the period from FY 2007 to FY 2012. The updated projections show that revenues will exceed operating and maintenance expenses for each of the licensees. Based upon the revenues and expenses submitted in the Second Extension Request, the NRC staff finds that there are no material changes to the financial qualifications of the licensees. Therefore, the finding made in the Transfer Orders, that the indirect transfers of control of the licenses will not affect financial qualifications of the licensees is still valid.

## 3.1 Decommissioning Funding Assurance

On October 29, 2009,<sup>8</sup> in response to an NRC staff request for additional information related to the biennial decommissioning fund status report submitted pursuant to Title 10 of the *Code of Federal Regulations* Section 50.75(f), Entergy submitted its plan to address a projected shortfall in decommissioning funding for ENVY. The plan included the addition of a parent company guarantee from Entergy, which will terminate 3 days after the indirect transfer of the ENVY license to Enexus. ENVY committed to replace the parent guarantee from Entergy with another financial instrument, if necessary, within 2 days after the indirect transfer to Enexus is completed. The staff determined that the amount of the parent guarantee provided adequate decommissioning funding assurance.

Based upon the decommissioning funding assurance statements submitted in the Second Request for Extension, the NRC staff finds the proposed restructuring and indirect license transfers will not affect the adequacy of decommissioning funding assurance.

## 4.0 CONCLUSION

The conditions under which the NRC issued the July 28, 2008, Transfer Orders have not changed significantly. The technical qualifications of the new organization and other bases for approving the transfers remain intact and the various inter-company contractual arrangements

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<sup>8</sup> ADAMS Accession No. ML092870647

and financial support described in the application and supplemental information submitted to support the NRC staff's review and issuance of its Safety Evaluation, remain valid and fully support the staff's findings. As such, the current conditions continue to support the staff's findings regarding the technical and financial qualifications of the affected licensees.

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Date: January 22, 2010