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December 8, 2007

Mr. Michael Balduzzi  
Sr. Vice President, Regional Operations NE  
Entergy Nuclear Operations, Inc.  
440 Hamilton Avenue  
White Plains, NY 10601

**SUBJECT:    ADDITIONAL REVISIONS TO ORDER APPROVING TRANSFER OF LICENSE  
              AND SUPPORTING SAFETY EVALUATION REGARDING PALISADES  
              NUCLEAR PLANT (TAC NO. MD6411)**

Dear Sirs:

On April 6, 2007, the U.S. Nuclear Regulatory Commission (NRC) issued an Order (Agencywide Documents Access and Management System (ADAMS), Accession No. ML070780038) approving the transfer of Renewed Facility Operating License No. DPR-20 for Palisades Nuclear Plant, held by Consumers Energy Company, as owner, and Nuclear Management Company, LLC (NMC), as operator, to Entergy Nuclear Palisades, LLC (ENP), as owner, and Entergy Nuclear Operations, Inc. (ENO), as operator. The NRC staff's findings in this Order were supported by its safety evaluation (SE) dated April 6, 2007.

The NRC has determined that additional clarifications are necessary to the Order and SE. Administrative errors were noted on page 2, where “respectfully” has been changed to “respectively,” and on pages 3 and 4 of the Order, where “Entergy” has been changed to “ENP and ENO.” Pages 5 and 7 of the original SE are revised to include additional discussion of the financial qualifications of ENO to operate Palisades Nuclear Plant and to conform to the changes in the Order, discussed above. Pages 1, 2, and 10 of the original SE are revised to reflect the changes that have been made to the SE. Pagination of the SE has changed due to these revisions. For ease of understanding, the entire SE, as revised, is enclosed.

**NOTICE: Enclosure 3 contains Proprietary Information. Upon separation from Enclosure 3, this letter and Enclosures 1 and 2 are DECONTROLLED.**

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M. Balduzzi

- 2 -

We regret any inconvenience that this matter might have caused.

Sincerely,

*/RA/*

J. E. Dyer, Director  
Office of Nuclear Reactor Regulation

Docket Nos. 50-255, 72-7

Enclosures: 1. Pages 2, 3, and 4 of the Order  
2. Revised non-proprietary SE  
3. Revised proprietary SE (ENP and ENO only)

cc w/o Enclosure 3: See next page

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**ENCLOSURE 1**

Pages 2, 3, and 4 of the Order

March 1 and April 4, 2007 (hereinafter, the August 31 application and December 15, 2006, and March 1 and April 4, 2007, supplemental information will be referred to collectively as the “application”). The applicants also requested approval of a conforming license amendment that would replace references to Consumers and NMC in the license with references to ENP and ENO to reflect the transfer of ownership, and would revise paragraph 1.B in the license to be consistent with paragraph 2 regarding the disposition of the Provisional Operating License. No physical changes to the facilities or operational changes were proposed in the application. After completion of the proposed transfer, ENP and ENO would be the owner and operator, respectively, of the facility.

Approval of the transfer of the facility operating license and conforming license amendment is requested by the applicants pursuant to Sections 50.80 and 50.90 of Title 10 of the *Code of Federal Regulations* (10 CFR). Notice of the request for approval and opportunity for a hearing were published in the *Federal Register* on November 16, 2006 (71 FR 66805). No comments were received. A petition for leave to intervene pursuant to 10 CFR 2.309 was received on December 5, 2006, from the Van Buren County, Covert Township, Covert Public Schools, Van Buren County Intermediate School District, Van Buren County District Library, Lake Michigan College, and South Haven Hospitals. A second petition for leave to intervene pursuant to 10 CFR 2.309 was received on December 6, 2006, from Michigan Environmental Council and Public Interest Research Group. The petitions are under consideration by the Commission.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the application and other information before the Commission, and relying upon the representations and agreements contained in the application, the NRC staff has determined that ENP is qualified to hold the ownership interests

in the facility previously held by Consumers, and ENO is qualified to hold the operating authority under the license, and that the transfer of ownership interests and the operating interests in the facility to ENP and ENO, respectively, described in the application is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. The NRC staff has further found that the application for the proposed license amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations set forth in 10 CFR Chapter I; the facility will operate in conformity with the applications, the provisions of the Act, and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendment can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendment will not be inimical to the common defense and security or to the health and safety of the public; and the issuance of the proposed amendment will be in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied.

The findings set forth above are supported by NRC safety evaluations dated April 6, 2007.

### III.

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Act, 42 U.S.C. Sections 2201(b), 2201(i), and 2234; and 10 CFR 50.80, IT IS HEREBY ORDERED that the transfer of the license, as described herein, to ENP and ENO is approved, subject to the following condition:

Prior to completion of the transfer of the license, ENP and ENO shall provide the Director of the Office of Nuclear Reactor Regulation satisfactory documentary

evidence that they have obtained the appropriate amount of insurance required of a licensee under 10 CFR Part 140 of the Commission's regulations.

IT IS FURTHER ORDERED that, consistent with 10 CFR 2.1315(b), the license amendment that makes changes, as indicated in Enclosure 2 to the cover letter forwarding this Order, to conform the license to reflect the subject direct license transfer is approved. The amendment shall be issued and made effective at the time the proposed direct license transfer is completed.

IT IS FURTHER ORDERED that ENP and ENO shall inform the Director of the Office of Nuclear Reactor Regulation in writing of the date of closing of the transfer of the Consumers and NMC interests in Palisades, at least 1 business day prior to closing. Should the transfer of the license not be completed within one year of this Order's date of issue, this Order shall become null and void, provided; however, that upon written application and for good cause shown, such date may be extended by order.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated August 31, 2006, as supplemented by letters dated December 15, 2006, and March 1 and April 4, 2007, and the non-proprietary safety evaluation dated April 6, 2007, which are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike, Room O-1 F21 (First Floor), Rockville, Maryland and accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to

**ENCLOSURE 2**

Revised non-proprietary SE

REVISED SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION |

RELATED TO DIRECT TRANSFER OF RENEWED OPERATING LICENSE

TO ENTERGY NUCLEAR PALISADES, LLC

AND ENTERGY NUCLEAR OPERATIONS, INC.

PALISADES NUCLEAR PLANT

DOCKET NOS. 50-255 AND 72-7

1.0 INTRODUCTION

By application dated August 31, 2006, as supplemented by letters dated December 15, 2006, and March 1 and April 4, 2007 (hereinafter, the August 31, 2006, application and the December 15, 2006, and March 1 and April 4, 2007, supplements will be referred to collectively as the "application"), Consumers Energy Company (Consumers), Nuclear Management Company, LLC (NMC), Entergy Nuclear Palisades, LLC (ENP), and Entergy Nuclear Operations, Inc. (ENO), requested approval by the Nuclear Regulatory Commission (NRC), pursuant to Section 50.80 of Title 10 of the *Code of Federal Regulations* (CFR), to the direct transfer of Renewed Facility Operating License No. DPR-20 for Palisades Nuclear Plant (Palisades) from Consumers, owner, and NMC, operator, to ENP as owner, and ENO as operator. The proposed direct transfer will be the result of the sale of Palisades as indicated by the execution of the Asset Sales Agreement (ASA) signed by Consumers and ENP on July 11, 2006. Upon closing of the sale, ownership, control and operation of Palisades would change from Consumers and NMC to ENP and ENO. Transfer of the license will also result in ENP being authorized pursuant to the general license in 10 CFR 72.210 to store spent fuel in the Independent Spent Fuel Storage Installation at Palisades (Docket No. 72-7). Closing of the sale cannot occur until all regulatory approvals are received.

The July 11, 2006 ASA also concerns the sale of the license for Big Rock Point Facility (Docket No. 50-155) and Big Rock Point Independent Spent Fuel Storage Installation (ISFSI) (Docket No. 72-043), from Consumers to ENP and ENO. An application for approval of that direct transfer was filed on October 31, 2006. While the license transfer of Big Rock Point Facility/Big Rock Point ISFSI are being executed by a separate Order, certain analyses in this safety evaluation (SE) took into account the transfer of all of the licenses: Palisades, Big Rock Point Facility/Big Rock Point ISFSI.

The application also requested a conforming amendment to reflect the transfer of ownership and operating authority for Palisades to ENP and ENO. References to Consumers and NMC would be deleted from the license, other than reference to past ownership. The supplemental information to the application did not expand the scope of the application as originally notified in the *Federal Register*.

NOTE: OMITTED TEXT INDICATED BY BRACKETS ON PAGE 4 IS PROPRIETARY INFORMATION.

The SE has been revised to include additional discussion of the financial qualifications of ENO to operate Palisades and to correct administrative errors, where “Entergy” has been changed to “ENP and ENO” when appropriate.

## 2.0 BACKGROUND

Palisades is a 2,565 megawatt thermal pressurized-water reactor located near South Haven, Michigan. Palisades was issued its original provisional operating license on March 24, 1971, and, therefore, the operating license was to expire on March 31, 2011. On March 22, 2005, the licensee filed An Application for License Renewal. The Application for License Renewal was approved by the NRC on January 17, 2007, and the renewed operating license will now expire on March 24, 2031.

Upon consummation of the sale pursuant to the ASA (and subject to NRC approval), ENP would assume title to Palisades. ENO would operate and maintain Palisades as agent for ENP, pursuant to the Operating Agreement For Palisades Nuclear Power Station, between ENP and ENO. ENP, a Delaware Limited Liability Company, is a newly formed, indirect wholly-owned subsidiary of Entergy Corporation (Entergy), and a direct wholly-owned subsidiary of Entergy Nuclear Midwest Investment Company, LLC. ENP’s principal place of business will be Covert, Michigan. ENO, a Delaware Corporation, is an indirect wholly-owned subsidiary of Entergy, and a direct wholly-owned subsidiary of Entergy Nuclear Holding #2. ENO’s principal place of business is located in Jackson, Mississippi.

Consumers has entered into a power purchase agreement with ENP under which Consumers is obligated to purchase 100 percent of Palisades total energy and capacity from ENP for 15 years from the closing date of the sale of Palisades. According to the application, at the closing, Consumers will transfer assets of the qualified Decommission Trust Fund to a trust fund established by ENP in an amount that will meet the NRC funding requirements, but no less than \$250 million.

According to the application, the principal officers of ENP and the principal officers and directors of ENO are all American citizens.

## 3.0 REGULATORY EVALUATION

The applicants’ request for the approval of the direct transfer of the license for Palisades discussed in this SE, is made pursuant to 10 CFR 50.80. Section 50.80(a) states “No license for a production utilization facility, or any right thereunder, shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, unless the Commission shall give its consent in writing.”

In addition, the requirements of 10 CFR 50.80(b) and (c) apply. Section 50.80(b) states that an applicant for a license transfer shall include as much information described in 10 CFR 50.33 and 10 CFR 50.34 of this part “with respect to the identity and technical and financial qualifications of the proposed transferee as would be required by those sections if the applicant were for an initial license. . . .” Section 50.80(c) states that “the Commission will approve the application for the transfer of a license, if the Commission determines: (1) That the proposed transferee is qualified to be the holder of the license; and (2) That transfer of the license is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.”

#### 4.0 FINANCIAL QUALIFICATIONS

##### 4.1 Qualifications

Section 50.33(f) of 10 CFR states “Except for an electric utility applicant for a license to operate a utilization facility of the type described in 10 CFR 50.21(b) or 10 CFR 50.22, information sufficient to demonstrate to the Commission the financial qualifications of the applicant to carry out, in accordance with the regulations of this chapter, the activities for which the permit or license is sought.”

Section 50.2 of 10 CFR states that an electric utility is “any entity that generates or distributes electricity and which recovers the cost of this electricity, either directly or indirectly, through rates established by the entity itself or by a separate regulatory authority.”

The NRC staff finds that neither ENP nor ENO qualify as an “electric utility,” as defined in 10 CFR 50.2, because most of its electricity prices, used to recover costs, will not be set by a separate regulatory authority or by the entity itself. Thus, the NRC staff has determined that ENP must meet the financial qualifications requirements for a non-electric utility pursuant to 10 CFR 50.33(f). Because ENP is not an electric utility and is thus subject to a full financial qualification review, it must provide the following information; pursuant to 10 CFR 50.33(f)(2).

Information that demonstrates that ENP possesses or has reasonable assurance of obtaining the necessary funds to cover estimated operating costs for the period of the license and shall submit estimates for the total annual operating costs for the first 5 years of facility operations and indicate the source(s) of funds to cover these costs.

In addition, because ENP is a newly formed entity, it must provide the following information pursuant to 10 CFR 50.33(f)(3) that shows:

- a) the legal and financial relationship ENP has or proposes to have with its stockholders or owners,
- b) its financial ability to meet any contractual obligations to any entity which they have incurred or propose to incur, and
- c) any other information considered necessary by the NRC staff to enable it to determine the applicant’s financial qualification.

This information will demonstrate how ENP meets the requirements of 10 CFR 50.33(f) and 50.80(b). Also, 10 CFR 50.33(k)(1) requires that ENP provide information described in 10 CFR 50.75 indicating reasonable assurance that funds will be available to decommission the facility.

The NRC staff evaluated the financial qualifications of ENP consistent with the guidance in NUREG-1577, Rev 1. The NRC staff reviewed the financial projections for reasonableness of estimated operating costs, financial projections and underlying assumptions, and sensitivity of revenue projection to plant capacity. The NRC staff also evaluated the financial condition of ENP’s parent organization as it relates to its obligations to ENP.

In accordance with 10 CFR 50.33(f)(2), ENP provided in the application, the projected income statements for the full 5 year period from 2007 to 2011, and included year 2012. Most of Palisades' revenue will be generated through its power contract with Consumers. Consumers has entered into a 15 year power contract purchase agreement with ENP, in which it commits to purchase all of the output from Palisades. However, starting in fiscal year (FY) 2011, approximately 4 percent of revenue is expected to come from market power sales. The NRC staff notes that in addition to the revenue from power sales and market power sales included below, ENP will have access to an established line of credit of \$25 million from Entergy or another affiliate company.

**Entergy Nuclear Palisades LLC**  
**Summary of**  
**PROJECTED INCOME STATEMENT**  
*(In \$ millions)*

	<u>FY2007*</u>	<u>FY2008</u>	<u>FY2009</u>	<u>FY2010</u>	<u>FY2011</u>	<u>FY2012</u>
TOTAL REVENUE:	\$[ ]	\$[ ]	\$[ ]	\$[ ]	\$[ ]	\$[ ]
Total Operating Expense:	\$[ ]	\$[ ]	\$[ ]	\$[ ]	\$[ ]	\$[ ]
Operating Income:	\$[ ]	\$[ ]	\$[ ]	\$[ ]	\$[ ]	\$[ ]
Other Income/Expense Tax	\$[ ]	\$[ ]	\$[ ]	\$[ ]	\$[ ]	\$[ ]
NET INCOME AFTER TAX	\$[ ]	\$[ ]	\$[ ]	\$[ ]	\$[ ]	\$[ ]

\* FY2007 assumes a March 2007 closing date.

The NRC staff tested the sensitivity of the financial information in the above Projected Income Statement by analyzing two scenarios that change the assumptions for revenue. The NRC staff notes that if prices per megawatt hour were to drop by an average of 10.0 percent, the average net effect on the 6 years of Net Income is a drop from the projected average of \$[ ] to a possible \$[ ]. Similarly, if an average historical capacity factor of 88.0 percent is assumed instead of the projected average capacity factor of [ ] percent, then the average net effect on the 6 years of Net Income is a drop to a possible \$[ ]. The NRC staff considers that the impact on Net Income under each of the two scenarios is sufficiently reasonable as to provide assurance of adequate funding to recover costs of operations.

ENP is a newly formed entity, and either through a parent or affiliate company, will provide the funds to purchase Palisades. Entergy, the parent company, has unconditionally guaranteed payment of the purchase price under the Asset Sales Agreement. ENO was formed in February 2000, and employs approximately 3300 people. At the closing of the purchase, Palisades and the Big Rock ISFSI will be the only assets on ENP's balance sheet. Total Operating Expense, listed above, also contains an average annual expense of approximately \$[ ] towards maintaining the Big Rock ISFSI. The Big Rock ISFSI SE contains a separate analysis under a separate Order.

As required by 10 CFR 50.33(f)(3), the application states that ENP and ENO are indirect, wholly-owned subsidiaries of Entergy, which is headquartered in New Orleans, Louisiana. Entergy is a U.S. based global energy company composed of power production facilities, distribution operations and related diversified services. Entergy owns, manages or invests in power plants that generate nearly 30,000 megawatts of electricity. Through its various subsidiaries (both regulated and non-regulated), Entergy owns and operates 10 nuclear power plants at 8 sites. These are:

- Arkansas Nuclear One, Units 1 & 2
- Grand Gulf Nuclear Station
- River Bend Station
- Waterford 3 Nuclear Power Station
- Pilgrim Nuclear Power Station
- Indian Point Energy Center Generating Units 2 & 3
- James A. FitzPatrick Nuclear Power Station
- Vermont Yankee

The NRC staff notes that ENO also provides management support to the Cooper Nuclear Station. As of June 30, 2006, Entergy had total assets of \$30.6 billion.

According to the application, an Operating Agreement was entered into on March 29, 2007, between ENO and ENP. Under the Operating Agreement, ENP delegated to ENO certain operating responsibilities for Palisades, consistent with ENP's obligations and responsibilities. Among the obligations and responsibilities, ENO and ENP agree that ENO shall act as the agent of ENP to take all actions necessary to make capital improvements and to operate Palisades. ENP grants ENO the authority to take on all such actions, on ENP's behalf, necessary to obtain and maintain all licenses and permits issued by the NRC relating to Palisades and necessary to comply with all applicable regulations of the NRC and other government bodies having jurisdiction over any aspects of the cost of operation, cost of capital improvements, making of capital improvements and operation of Palisades.

According to the Operating Agreement, all costs incurred by ENO relating to decommissioning of Palisades or Big Rock ISFSI, shall be considered costs of operation or costs of capital improvements. In addition, to induce third parties to contract with ENO with regard to the performance of ENO's obligations and responsibilities, ENP agrees to be bound by the terms of all contracts executed by ENO in accordance with its agency authority without limitations, to the same extent as if ENP were an original signatory to such contracts.

As stated in the Operating Agreement, in consideration of the services rendered by ENO, ENP agrees to pay all the costs of operation and all the costs of capital improvements. ENP at all times shall be the owner of Palisades, and will be entitled to all of the capacity and energy sales revenue. No disagreement or dispute between ENO and ENP, concerning any matter, shall delay or withhold payment due. Therefore, all of ENO's operating revenues are directly and wholly derived by payments from ENP, and that ENP's payments shall pay for all the cost of operation and all the cost of capital improvements toward Palisades and the Big Rock ISFSI.

The Operating Agreement becomes effective with the closing of the sale and completion of the direct transfer of the licenses. The Operating Agreement will remain in effect until Palisades and the Big Rock ISFSI have been retired and decommissioned in accordance with all applicable regulatory and governmental requirements.

Based on the information in the application for the transfer, the other documents cited above, and the evaluation above, the NRC staff finds that ENP's Projected Income Statement shows that the anticipated revenues from sales of energy and capacity from Palisades provide reasonable assurance of an adequate source of funds to meet Palisades' anticipated expenses, as well as the yearly operating expense for the Big Rock ISFSI, during the required five year period covered by the six year projections. The NRC staff also finds that ENO is financially qualified to be the operator of Palisades and the Big Rock ISFSI to the extent proposed in the Operating Agreement. The NRC staff finds that no further financial qualifications analysis or review is necessary.

Accordingly, the NRC staff has determined that ENP and ENO have provided information sufficient to demonstrate that ENP and ENO possess or have reasonable assurance of obtaining the funding necessary to cover estimated operation costs for the period of the license, pursuant to 10 CFR 50.33(f).

#### 4.2 Decommissioning Funding Assurance

The NRC has determined that the requirements to provide reasonable assurance of decommissioning funding are necessary to ensure the adequate protection of public health and safety. The regulation at 10 CFR 50.33(k) requires that an applicant for an operating license for a utilization facility contain information to demonstrate how reasonable assurance will be provided and that funds will be available to decommission the facility.

Consumers maintains Qualified and Non-qualified Decommissioning Trust Funds for the decommissioning of Palisades. At the closing of sale, Consumers will transfer assets of the Qualified Funds to a trust established by ENP. As of the date of this application, Consumers states that the value of the Qualified Decommissioning Trust is approximately \$366 million. At the closing Consumers will either transfer the entire balance of the Qualified Fund, or a lesser amount if certain Internal Revenue Service (IRS) private letter rulings are obtained, prior to closing. Consumers estimates that the amount transferred to ENO will, in no event, be less than \$250 million.

Consumers further estimates that the amount needed to meet the NRC minimum funding requirement would be \$201 million. If their estimate is correct, then the \$250 million to be contributed to the Decommissioning Trust to be held by ENP would exceed the NRC minimum funding requirements in 10 CFR 50.75. However, the staff has performed an independent calculation and estimates the Minimum Decommissioning Funding amount is \$218 million. Consumers has stated that, should the credited value of the funds transferred at closing not meet the NRC minimum funding requirement, ENP will provide the additional amount through a parent company guarantee that will meet the requirements of 10 CFR 50.75.

Upon closing, the decommissioning trust funds will be held in a Decommissioning Trust established and maintained by ENP. The funds will be segregated from ENP's other assets and will be outside of ENP administrative control. The trust will provide:

- 1.) No funds may be distributed from the trust transfers, other than for ordinary administrative expenses, unless the Trustee first gives 30 business days prior written notice to the Director, Office of Nuclear Reactor Regulation, with no NRC objection. 10 CFR 50.75(h)(1)(iv)

- 2.) The funds will be invested in accordance with the “prudent investor” standard as specified in 18 CFR 35.32(a)(3) of the Federal Energy Regulatory Commission’s regulations. 10 CFR 50.75(h)(1)(i)
- 3.) No material amendments will be made to the trust agreement without 30 business days prior written request to the Director, Office of Nuclear Reactor Regulation, with no NRC objection. 10 CFR 50.75(h)(1)(iii)
- 4.) Investments in the securities or other obligations of Entergy, ENO, or ENP, or their affiliates, successors or assigns, shall be strictly prohibited. 10 CFR 50.75(h)(1)(i)(A)
- 5.) Except for investments tied to market indexes or other non-nuclear sector mutual funds, investments of the decommissioning funds in any entity owning one or more nuclear power plants is prohibited. 10 CFR 50.75(h)(1)(i)(A)

The staff notes that the foregoing trust provisions are regulatory requirements that must be complied with, notwithstanding ENP’s commitments. The NRC does not need to recognize the distinction between Qualified and Non-qualified decommissioning trust funds, because this distinction is regulated by the IRS. However, NRC regulations require that a minimum decommissioning funding amount be maintained as specified under 10 CFR 50.75.

The staff’s independent calculation takes into consideration the license renewal for Palisades that was granted prior to the completion of this direct transfer, thus adding an additional twenty years of accruing interest. Thus, the minimum decommissioning funding amount required by 10 CFR 50.75 that ENP shall be required to have in its decommissioning trust is \$218 million. Since the amount of the decommissioning trust funds to be transferred will be no less than \$250 million, the NRC staff finds that there is reasonable assurance that funds will be available for decommissioning pursuant to 10 CFR 50.75.

#### 4.3 Antitrust Review and Existing Antitrust Conditions

The Atomic Energy Act of 1954 as amended (AEA) does not require or authorize antitrust reviews of post-operating license transfer applications. *Kansas Gas and Electric Co., et al.* (Wolf Creek Generating Station, Unit 1), CLI-99-19, 49 NRC 441 (1999). The application here postdates the issuance of the operating license for the unit under consideration, and therefore no antitrust review is required or authorized. The NRC staff notes that there are no existing antitrust license conditions in the subject license. Accordingly, there are no antitrust-related issues to resolve with respect to proposed conforming license amendments.

#### 4.4 Foreign Ownership, Control, or Domination

Sections 103d and 104d of the AEA prohibit the NRC from issuing a license for a nuclear power plant to “any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government.” The NRC’s regulation, 10 CFR 50.38, contains language to implement this prohibition. As stated in the application, ENP and ENO are not directly or indirectly owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government. In seeking to become

the licensed owner and operator of Palisades, ENP and ENO are not acting as agents or representatives of another entity.

The application states that all of the directors of Entergy, ENO, and ENP are United States citizens and all the principal officers of ENP are United States citizens.

In light of the above, the NRC staff does not know or have reason to believe that Entergy, ENO, and ENP is owned, controlled or dominated by an alien, a foreign corporation, or a foreign government.

#### 4.5 Nuclear Insurance and Indemnity

The provisions of the Price-Anderson Act (Section 170 of the AEA) and the Commission's regulations at 10 CFR Part 140 require that the current indemnity agreement be modified to reflect ENP and ENO as the new licensees of Palisades.

In accordance with the Price-Anderson Act, ENP and ENO will be required to provide primary insurance and participate in the secondary retrospective insurance pool. They will also be required to maintain property insurance as specified in 10 CFR 50.54(w). Information provided in the application demonstrates that ENP and ENO will be able to satisfy applicable insurance requirements of the NRC and the Price-Anderson Act.

Consistent with NRC practice, the NRC staff will require ENP and ENO to provide satisfactory documentary evidence that they have obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations, prior to the issuance of the amended license. Because the issuance of the amended licenses are directly tied to completion of the proposed direct license transfer, the order approving the transfer will be conditioned as follows:

Prior to completion of the transfer of the license, ENP and ENO shall provide the Director of the Office of Nuclear Reactor Regulation satisfactory documentary evidence that they have obtained the appropriate amount of insurance required of a licensee under 10 CFR Part 140 of the Commission's regulations.

#### 4.6 Interveners

During the preparation of this SE, NRC staff became aware of two petitions requesting leave to intervene filed with the Commission. The first petition is from Van Buren County, Covert Township, Covert Public Schools, Van Buren County Intermediate School District, Van Buren County District Library, Lake Michigan College, and South Haven Hospitals. The second petition is from Michigan Environmental Council and Public Interest Research Group. The staff has made a review of these petitions as they relate to the financial qualifications of ENP and ENO. The NRC staff has found no information that would cause it to change the conclusions contained herein.

#### 5.0 TECHNICAL QUALIFICATIONS

The purpose for the technical evaluation is to ensure that the proposed corporate management

is involved with, informed of, and dedicated to the safe operation of the plant; that sufficient, qualified technical resources will be provided to support safe plant operation and maintenance; and to evaluate proposed changes to the operating organization that may occur as a result of the license transfer.

The NRC staff used the following regulations and guidance during its evaluation of the technical qualification: 10 CFR 50.40(b), "Common Standards;" 10 CFR 50.80, "Transfer of Licenses;" and NUREG-0800, Standard Review Plan (SRP), Section 13.1.1, "Management and Technical Support Organization," and Sections 13.1.2 - 13.1.3, "Operating Organizations."

#### 5.1 Management and Technical Support Organization

The NRC staff reviewed the application to determine the acceptability of the proposed corporate management and technical support organization. The NRC staff evaluated the application using the applicable acceptance criteria contained in SRP Section 13.1.1, "Management and Technical Support Organization."

In the application, the applicants stated, "The existing plant staff is technically qualified within existing plan procedures and applicable regulations, and will remain qualified after the transfer." In addition, the applicants stated, "All Palisades employees employed immediately prior to the closing would be offered employment with ENO at the Palisades Facility. Thus, no changes to the technical qualifications of the operating organization are expected."

The applicants further stated, "The organizational structure provides for the integrated management of activities that support the operation and maintenance of Palisades. Clear management control, clear lines of authority and effective communications exist between the organizational units involved in management, operations, and technical support for operation of Palisades."

Based on the application, the applicants have shown and described the organizations for managing and providing technical support to the Palisades staff that will be equivalent to the current qualifications of the Consumers management and technical support organization, regarding which there are no deficiencies of which the NRC staff is aware. Accordingly, the NRC staff concludes that the proposed ENP organization for managing, and its means of providing technical support for the continued operation of Palisades under both normal and off-normal conditions are in accordance with SRP Section 13.1.1, "Management and Technical Organization."

#### 5.2 Operating Organization

The NRC staff reviewed the application to determine the acceptability of the ENO operating organization. The Palisades operating organization was determined to be acceptable during its initial licensing review (provisional operating license issued March 24, 1971). Subsequent safety-related changes to the operating organizations were evaluated with an appropriate methodology. Therefore, the existing operating organizations remain acceptable. The NRC staff's review then focused on evaluating any changes to the operating organizations proposed as a result of the transfer. The NRC staff evaluated the application using the applicable acceptance criteria contained in SRP Section 13.1.2 - 13.1.3, "Operating Organization."

In its application, the applicants indicated that the only change to the organizational structure would be, "...the senior officer at the site would report to the Senior Vice President and Chief Operating Officer of ENO, rather than to the Chief Nuclear Officer of NMC." The applicants also stated, "The operation and performance of all Entergy nuclear plants are reviewed on a regular basis (approximately five times per year) by the Entergy Nuclear Committee." This committee reviews the performance of all Entergy's nuclear plants and provides summaries to the Entergy Board of Directors to ensure that the best practices from Entergy's other plants are implemented at all Entergy plants. The applicants also indicated that management and employees participate in Entergy peer groups that have representatives from all the Entergy Nuclear South and Entergy Nuclear Northeast plants. Peer groups meet regularly to discuss and recommend the incorporation of industry best practices throughout the Entergy system.

Since the operating organizations and personnel now responsible for the operation and maintenance of Palisades will be essentially unaffected by this transfer to ENO, the NRC staff concludes that ENO onsite organizations established to operate and maintain Palisades under both normal and off-normal conditions are in accordance with SRP Section 13.1.2 - 13.1.3, "Operating Organization."

### 5.3 Technical Conclusion

The applicants have described the ENP corporate level management and technical support organization and the ENO onsite operating organization that will be responsible for the operation and maintenance of Palisades after the transfer of licensed operating authority to ENP and ENO. The NRC staff concludes that ENP will have an acceptable corporate organization, onsite organization, and adequate resources to provide technical support for the safe operation of the plants under both normal and off-normal conditions after the transfer of licensed operating authority from NMC to ENP. The application adequately addresses the relevant requirements of 10 CFR 50.40 (b) and 10 CFR 50.80.

Accordingly, in light of the foregoing evaluation, the NRC staff concludes that ENP and ENO will be technically qualified to hold the operating authority under the Palisades license.

## 6.0 CONFORMING AMENDMENTS

### 6.1 Introduction

As stated previously, ENP and ENO requested approval of a proposed conforming amendment to Facility Operating License No. DPR-20 for Palisades Nuclear Plant. No physical or operating changes to the facilities are requested.

### 6.2 Discussion

The changes to be made to the licenses are indicated in the conforming amendment in Enclosure 2 to the cover letter forwarding the NRC staff's order regarding the subject transfer. The changes do no more than accurately reflect the approved transfer action. The amendments involve no safety questions and are administrative in nature. Accordingly, the proposed amendments are acceptable.

### 6.3 State Consultation

In accordance with the Commission's regulations, the Michigan State official was notified of the proposed issuance of the amendment. The State official had no comment.

### 6.4 Conclusion With Respect to the Conforming Amendment

The Commission has concluded, based on the considerations discussed above, that: (1) there is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) such activities will be conducted in compliance with the Commission's regulations, and (3) the issuance of the amendment will not be inimical to the common defense and security or to the health and safety of the public.

### 7.0 ENVIRONMENTAL CONSIDERATION

The subject application is for approval of a transfer of license issued by the NRC and approval of conforming amendment. Accordingly, the actions involved meet the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(21). Pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with approval of the application.

### 8.0 CONCLUSION

In view of the foregoing, the NRC staff finds that, subject to the condition discussed herein, ENP is qualified to own, and ENO is qualified to hold the operating authority under the 10 CFR Part 50 license for Palisades, to the extent proposed in the application, and that the direct transfer of the license to ENP and ENO are otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

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Date: April 6, 2007, as revised on

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Palisades Nuclear Plant

cc: (w/o Enclosure 3)

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