

**UNITED STATES OF AMERICA  
BEFORE THE  
NUCLEAR REGULATORY COMMISSION**

Entergy Nuclear Operations, Inc.  
(Application for Order Approving Indirect  
Transfer of Control of Licenses)

Pilgrim Nuclear Power Station  
Indian Point Nuclear Generating Unit No. 1  
Indian Point Nuclear Generating Unit No. 2  
Indian Point Nuclear Generating Unit No. 3  
James A. FitzPatrick Nuclear Power Plant  
Vermont Yankee Nuclear Power Station  
Palisades Nuclear Plant  
Big Rock Point

Docket No. 50-293  
Docket No. 50-003  
Docket No. 50-247  
Docket No. 50-286  
Docket Nos. 50-333 & 72-12  
Docket No. 50-271  
Docket Nos. 50-255 & 72-7  
Docket Nos. 50-155 & 72-43

**PETITION OF LOCALS 369 AND 590, UTILITY  
WORKERS UNION OF AMERICA, AFL-CIO FOR  
LEAVE TO INTERVENE; REQUEST FOR  
INITIATION OF HEARING PROCEDURES,  
PRELIMINARY STATEMENT OF CONTENTIONS,  
REQUEST FOR ISSUANCE OF PROTECTIVE  
ORDER(S) AND RELATED PRODUCTION OF  
DATA**

Pursuant to 10 C.F.R. §§ 2.309 and 2.390(b)(6) of the regulations of the United States Nuclear Regulatory Commission (“NRC”), and the NRC’s January 3, 2008, “Notice[s] of Consideration of Approval of Application Regarding Proposed Corporate Restructuring and Opportunity for a Hearing,” 73 Fed. Reg. 2948-58 (January 16, 2008),<sup>1</sup> Locals 369 and 590, Utility Workers Union of America, AFL-CIO (“UWUA Locals”) hereby respond to the July 30, 2007, “Application for Order Approving Indirect Transfer of Control of Licenses” (“Application”) submitted and initiating proceedings in the above-captioned docket by Entergy Nuclear Operations, Inc., *et al.*, as supplemented by

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<sup>1</sup> The Notices that have been issued are: (1) Palisades Nuclear Plant (73 Fed. Reg. 2948-50); James A Fitzpatrick Nuclear Power Plant (73 Fed. Reg. 2950-51); (3) Pilgrim Nuclear Power Station (73 Fed. Reg. 2951-53); (4) Vermont Yankee Nuclear Power Station (73 Fed. Reg. 2953-55); (5) Indian Point Nuclear

(i) the submission of supporting information on October 31, 2007; and (ii) the announcement of a new substantive proposal in a December 5, 2007 filing with the NRC (“December 5 Supplement”).<sup>2</sup>

As the union locals that represent the workforce at the Pilgrim Nuclear Power Station, UWUA Locals are vitally interested in the Commission’s evaluation of and ultimate decision concerning Applicants’ proposal. We are concerned that Applicants’ “indirect transfer” and the corporate restructuring it entails present the possibility of significant and adverse impacts on Pilgrim. UWUA Locals urge that the Commission conduct a thorough evaluation of the proposal and its implications.

In response to these filings, UWUA Locals (1) request that the NRC grant UWUA Locals leave to intervene with full rights as a party to each of the above-captioned proceedings; (2) ask that the Commission initiate evidentiary hearings with respect to Applicants’ Application; (3) present a preliminary list of contentions to be addressed at hearing; (4) request issuance of protective order(s) and the production to UWUA Locals of all data previously filed with the NRC under seal; and (5) request that they be given the opportunity to supplement the list of contentions presented here to address the information produced under the protective order(s).<sup>3</sup>

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Generating Unit Nos. 1, 2 and 3 (73 Fed. Reg. 2955-56); and (6) Big Rock Point (73 Fed. Reg. 2956-58).

<sup>2</sup> Entergy Nuclear Operations, Inc. states (July 30 Application at 1) that its Application (and the supplemental submissions) are 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 Entergy Nuclear Palisades, LLC (collectively, “Applicants”).

<sup>3</sup> As explained *infra*, UWUA Locals seek the issuance of a protective order (and the related production of data under that order) so that they can assess all of the information offered by Applicants in support of their proposal. In seeking this relief and, if it is granted, receiving data under whatever protective order may be issued, UWUA Locals state expressly that they do not waive their rights to challenge the “protected” or “confidential” status of information produced pursuant to the protective order. *See* NRC Rule 2.390(b)(6), 10 CFR 2.390(b)(6).

## OVERVIEW

Applicants seek the Commission's consent to the indirect transfer of control of several nuclear plant licenses through "certain restructuring transactions that will involve the creation of new intermediary holding companies and/or changes in the intermediary holding companies for the ownership structure for the corporate entities that hold the NRC licenses" for (a) Pilgrim Nuclear Power Station; (b) Indian Point Nuclear Generating Unit Nos. 1, 2, and 3; (c) James A. FitzPatrick Nuclear Power Plant; (d) Vermont Yankee Nuclear Power Station; (e) Palisades Nuclear Plant; and (f) Big Rock Point. July 30 Application at 1.

The components of those "certain restructuring transactions" appear to be in flux. The December 5 Supplement, which does not state that it has been prepared or submitted in response to a directive or inquiry from the NRC, amounts to an announcement by Entergy Corporation's Board of Directors that the restructuring proposed in the July 30 Application is being (at least in part) abandoned, and that "the wholesale nuclear business segment should be organized under a holding company ... and that the shares of this company should be distributed directly to the shareholders of Entergy Corporation." December 5 Supplement at 2. So far as we can tell, this change in direction is premised entirely on that assertion. There is no substantive explanation offered as to why the structure presented in the July 30 Application has been (at least in part) abandoned, or why approval of the proposed new structure is considered to be a

better outcome. Instead, Applicants state that but for the proposed approval of a new holding company structure, its July 30 Application “remains the same.”<sup>4</sup>

UWUA Locals’ ability to analyze either the first or the second iteration of the proposed indirect transfer has been substantially hindered by Applicants’ submission of financial data on a confidential basis. From our perspective, the financial impacts of the proposal are of potentially enormous significance, but remain unknown. Moreover, Applicants’ recent decision to change the structure of their proposal further complicates efforts to understand what Applicants are proposing, and why they are seeking approval of the specific actions at issue.

Pursuant to NRC Rule 2.309, 10 C.F.R. § 2.309, and for the reasons enumerated *infra*, UWUA Locals seek leave to intervene on behalf of themselves and their members in each of the captioned proceedings.<sup>5</sup> UWUA Locals request that the NRC conduct an evidentiary hearings with respect to this matter. We believe it is essential that the Commission develop an evidentiary record concerning the potential impacts of this proposal on employees and customers.

In accordance with Rule 2.309(f), 10 C.F.R. § 2.309(f), UWUA Locals set forth below the contentions that they ask be set for hearing, and the bases for those

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<sup>4</sup> We assume that the information presented in the December 5 Supplement (including financial projections) renders moot the October 31 “Supplement.” The October 31 submission purports to contain information provided in response to an October 18, 2007, request by the NRC. (We say “purports” in that much of the supplemental information submitted by Applicants has been deemed by them to be confidential, has been submitted under seal, and is unavailable to the public.) Thus, the October 31 data appear to concern the financial impacts of a proposed corporate reorganization for which Applicants are no longer seeking approval.

<sup>5</sup> While UWUA Locals represent only employees at the Pilgrim Nuclear Power Station, the proposed restructuring appears to involve global, across-the-board changes to the organizational structure of all of the Entergy Nuclear plants. The NRC has issued separate Notices with respect to each of the potentially affected nuclear facility. Out of an abundance of caution, and because UWUA Locals do not know how the

contentions, as we currently understand them. Given that much of what Applicants have presented to the Commission remains under seal, however, UWUA Locals' comments are of necessity limited to the information on the public record and inferences based on that information. In order to facilitate review of the complete set of justifications for Applicants' proposal, UWUA Locals ask, pursuant to NRC Rule 2.390(b)(6), 10 C.F.R. § 2.390(b)(6), that the Commission issue protective orders in each of the captioned proceedings. The protective order(s) would enable UWUA Locals to have access to the data asserted by Applicants to be confidential.<sup>6</sup>

Following review of that information, and in accordance with NRC Rule 2.309(f)(v)(2)(i), 10 C.F.R. § 2.309(f)(v)(2)(i), UWUA Locals ask that they be permitted to submit new or amended contentions based upon review of this information.

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Commission's review processes will proceed, we are requesting leave to intervene in each of the captioned proceedings.

<sup>6</sup> 10 CFR 2.390(b)(6) states:

Withholding from public inspection does not affect the right, if any, of persons properly and directly concerned to inspect the document. Either before a decision of the Commission on the matter of whether the information should be made publicly available or after a decision has been made that the information should be withheld from public disclosure, the Commission may require information claimed to be a trade secret or privileged or confidential commercial or financial information to be subject to inspection under a protective agreement by contractor personnel or government officials other than NRC officials, by the presiding officer in a proceeding, and under protective order by the parties to a proceeding. *In camera* sessions of hearings may be held when the information sought to be withheld is produced or offered in evidence. If the Commission subsequently determines that the information should be disclosed, the information and the transcript of such *in camera* session will be made publicly available.

## I. COMMUNICATIONS

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## II. PETITION TO INTERVENE

Local 369 is a roughly 3,100-member local union, the membership of which includes approximately 350 of the 550-employee workforce at Pilgrim Nuclear Power Station (“PNPS”). Local 590 is a 60-member local union representing professional engineers working at PNPS. The PNPS employees represented by Locals 369 and 590 have an obvious, direct, and substantial interest in Pilgrim’s safe operation. Based on the limited information made available to the public concerning Applicants’ proposal, it appears to UWUA Locals that approval of the proposed indirect transfer may have an adverse effect both on PNPS employees represented by UWUA Locals, and on citizens living in the communities surrounding the Plant.

As no other party can adequately protect the interests of Locals 369 and 590 and their members, their participation with full rights as parties in each of the captioned proceedings is required to protect their specific and substantial interests. *See* n.5, *supra*. Moreover, the participation of UWUA Locals in each of these proceedings will be in the public interest because their members have knowledge, information, and a perspective regarding the potential impact of the proposed transfer that cannot be provided by other

parties. For these reasons, UWUA Locals request leave to intervene with full rights as parties in each of the captioned proceedings.<sup>7</sup>

**A. Standing**

UWUA Locals have standing to intervene and a right to party status in these proceedings because, on their own behalf and on behalf of their members employed at PNPS, UWUA Locals have a substantial interest in the safe operation and good financial standing of PNPS. The members of Locals 369 and 590 are dedicated to and responsible for Pilgrim's safe operation. The interests of these workers in ensuring that Pilgrim is operated in a safe manner go beyond the workplace, as these same workers also live in the communities surrounding the Plant. As described in more detail below, a decision by the NRC to approve Applicants' proposed transfer may have a negative impact on the safe operation of PNPS, which would have a corresponding and adverse impact upon the surrounding community.

“[T]he Commission has long looked for guidance to judicial concepts of standing.” *Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), CLI-98-21, 48 N.R.C. 185, 195 (1998) *on remand*, 49 N.R.C. 238 (1999), *reconsideration denied*, 49 N.R.C. 375 (1999). The risk to the safe operation and reputation of PNPS presents a threatened injury to the organizational interests of UWUA Locals and to the interests of their members. Commission denial of the Application at issue will redress this threatened injury by maintaining the *status quo*. An organization may establish standing through “either immediate or threatened injury to its organizational interests, or to the interests of

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<sup>7</sup> In compliance with 10 C.F.R. § 2.309(d), this petition for leave to intervene includes the name, address, and telephone number of Local 369's agent and its attorneys, *see, supra*, on page 6

identified members.” *Ga. Inst. of Tech.*, (Georgia Tech Research Reactor), CLI-95-12, 42 NRC 111, 115 (1995); *see also Yankee*, CLI-98-21, 48 NRC at 194-95. An organization may attain standing through a member, or “representational standing,” by “demonstrat[ing] that the individual member has standing to participate, and has authorized the organization to represent his or her interests.” *Ga. Tech.*, CLI-95-12, 42 NRC at 115. The alleged injury in fact to the member must fall within the purposes of the organization. *Private Fuel Storage, LLC* (Independent Spent Fuel Storage Installation), CLI-98-13, 48 NRC 26, 33-34 (1998). As the unions representing many of the employees at PNPS, UWUA Locals have an organizational interest in protecting their members’ safety. Moreover, each individual member employed at PNPS has an interest in the safe operation of PNPS; UWUA Locals thus have representational standing through their members’ standing, which falls within the organizational purposes of UWUA Locals.

***B. Alternative Request For Discretionary Intervention***

If it is determined that UWUA Locals lack standing, UWUA Locals request that the Commission nonetheless exercise its discretion and permit the Locals to intervene in the captioned matters. We understand that such discretion can be exercised where the Commission (or presiding officer) finds that “at least one requestor/petitioner has established standing and at least one admissible contention has been admitted so that a hearing will be held.” 10 C.F.R. § 2.309(e). As described above, UWUA Locals have a unique perspective and unique experiences, which will allow them to “assist in developing a sound record.” *Id.* § 2.309(e)(1)(i). The “nature and extent of [UWUA Locals’] property, financial or other interests in the proceeding” and “the possible effect of any decision or order that may be issued in the proceeding on [UWUA Locals’]



interest” are significant, as set out above. *Id.* § 2.309(e)(1)(ii)-(iii). There are no means other than intervention by which UWUA Locals’ interests can be protected, because it is in these proceedings that the decision will be made as to whether Applicants will be permitted to carry out the proposed transfer. There are no other existing parties of whom UWUA Locals are aware, nor is there any potential party who could represent UWUA Locals’ unique interests. UWUA Locals’ participation will not “inappropriately broaden the issues or delay the proceeding.” *Id.* § 2.309(e)(2)(iii). UWUA Locals’ interest in safety is an appropriate consideration in these proceedings. *Id.* § 2.309(e)(2).

***C. Contentions To Be Raised At Hearings By UWUA Locals***

In general, UWUA Locals contend that approval of the proposed indirect transfer would contravene the Congressional statement of purpose in the Atomic Energy Act, 42 U.S.C. § 2011, because its implementation could involve a significant increase in the likelihood or consequences of an accident. The NRC must always consider the public safety in its decision-making. “The... utilization of source, byproduct, and special nuclear material must be regulated in the national interest and in order to... protect the health and safety of the public.” 42 U.S.C. § 2012(d). More specifically, UWUA Locals intend to pursue at hearings the following specific contentions:

1. UWUA Locals contend that the Application should not be approved because it contains contradictory statements concerning whether implementation of the proposed restructuring will be accompanied by operational changes at Pilgrim.

Applicants state that “[t]here will be no physical changes to the Facilities and no changes in the officers, personnel, or day-to-day operations of the Facilities in connection with the indirect transfer of control.” July 30 Application at 5. However, no such commitment is included in Applicants’ table of commitments. Furthermore, Applicants

make statements that are contrary to this assertion, pointing out elsewhere in the July 30 Application that approval of the proposed transfer will allow the Applicants to “own and operate the company’s nuclear plants with more clarity.” *Id.* at 2. Applicants nowhere explain what impact its proposal will have on the operation of Pilgrim (or other components of its nuclear fleet), how approval of the transfer will provide “clarity,” or what operational confusion currently exists at Pilgrim (or elsewhere) for which “clarity” is needed. To the extent that the provision of “clarity” will involve a change in Pilgrim operations, the two quoted statements are contradictory. Any changes in Pilgrim operations, including staffing changes, should be thoroughly disclosed, and evaluated by the NRC to ensure that there are no negative impacts on safety. *E.g.*, 10 C.F.R. §§ 50.54 and 50.92.

2. UWUA Locals contend that the Application should not be approved because Applicants’ claims as to benefits are neither supported nor self-evident.

The December 5 Supplement states (Transmittal at page 2 of 6) that the Board of Directors of Entergy Corporation has determined that “the wholesale nuclear business segment should be organized under a holding company (... “NewCo”) and that the shares of this company should be distributed directly to the shareholders of Entergy Corporation.” Applicants nowhere explain why this structure is superior to the proposed structure set forth in their July 30 Application, let alone why either arrangement is superior to the *status quo*.

The public version of Applicants’ support for their proposal consists largely of platitudes. For example, Applicants state (July 30 Application at 2) that the proposed structure will “enhance their ability to attract capital.” (This statement apparently applies equally whether the original proposal or the most recent proposal is adopted.) Applicants

provide no evidence that they currently face an inability to “attract capital,” or that approval of the Application will lower Pilgrim’s capital costs going forward.

Applicants contend without explanation that they

believe that the organization of a separate and integrated intermediate holding company system will clarify responsibilities within the Entergy Corporation system, facilitate capital formation, enhance the ability to retain and recruit qualified personnel and highlight growth opportunities for this important segment of Entergy Corporations’ business.

July 30 Application at 3. While these goals sound good, there is nothing offered in the Application in support of any of these promised benefits. Applicants offer no testimony, let alone any presentation from an Entergy official or expert analyst explaining how or why the significant organizational changes proposed in this proceeding will lead to the promised results. So far as UWUA Locals are aware (and based on the “public” versions of the NRC submissions), Applicants offer no internal analyses or studies of, for example, the current lack of clarity as to “responsibilities within the Entergy Corporation system” or why the twice-proposed organizational changes will achieve any of the stated objectives.

In the absence of any such evidence, UWUA Locals question whether approval of the proposed transaction will in fact have benefits to Pilgrim operations or, at a minimum, benefits that outweigh potential detriments. UWUA Locals seek a hearing and discovery rights in order to pursue these concerns.

3. UWUA Locals contend that the Application should not be approved because the proposed “NewCo” structure admits the possibility of managerial conflict, yet does not explain how any disputes will be resolved.

The December 5 Supplement states (at page 3 of 6) that under the latest organizational proposal, Entergy Nuclear Operations, Inc. (“ENO”) “will be owned by a parent company referred to ... as ENOI Holdings, LLC, which in turn will be owned 50% by Entergy Corporation and 50% by NewCo.” The equally shared ownership structure raises questions about what will happen in the event of a disagreement. Applicants’ answer is that we can figure this out later. The December 5 Supplement states:

ENO will establish clear lines of authority to carry out its duties as an operator, and dispute resolution mechanisms will be established in the event of any disagreement among the two 50% owners of ENOI Holdings, LLC.

*Id.* The Commission should require the submission and review of any such dispute resolution mechanisms before permitting the proposed transaction to go forward.

Applicants also suggest that the current absence of these “mechanisms” is not a cause for concern in that “ENO shall have the authority at all to times to take any actions necessary ...” It is not clear where or how these lines of authority are to be established; the documents under which the proposed transaction will be implemented do not appear to be a part of the Application. Moreover, if ENO is to have all necessary “authority,” then the nature and scope of the ownership control contemplated by the proposed transaction has not been explained with sufficient “clarity.”

4. UWUA Locals contend that the Application should not be approved because the financial impacts of the NewCo proposal are unknown.

As part of the proposed arrangements, NewCo will take on certain obligations under a “Support Agreement” included as part of the Application. More specifically, our

understanding is that once the proposed transaction is approved and completed, a set of financial guarantees (Schedule A to Attachment 5) will be terminated, to be replaced by financial guarantees under the Support Agreement. UWUA Locals do not know how Applicants intend to fund NewCo, though there are indications in Company-prepared presentations that somewhere in the neighborhood of \$5 billion will be raised through a debt offering.<sup>8</sup> UWUA Locals are concerned (though, again, there is no testimony or publicly-available data) that Entergy's operating nuclear plants, including Pilgrim, will be responsible for paying an allocated share of debt service in connection with this (or some other) offering. Assuming this is correct, UWUA Locals have no way of knowing how substantial an impact this will have on Pilgrim staffing or operations, or whether (and, if so, when and how) there will be offsetting financial benefits.

Similarly, the creation of NewCo and related structural changes may result in an increase in corporate overheads and the allocation of those overheads to the operating nuclear plants. Review of the relevant financial statements may provide information on any such impact. However, at the moment, UWUA Locals have no access to these data, and no way to know whether there are corporate overhead increases that may impact Pilgrim's finances and, by extension, its staffing and operations.

In addition, we note that Applicants' filing refers (at page 7, emphasis added) to

*pro forma* Projected Income Statements for the six year period from January 1, 2007 through December 31, 2012 for each of the licensed owners of the Facilities and Entergy Nuclear Finance Holding, LLC... provided in a

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<sup>8</sup> An Attachment to this pleading is an excerpt from a November 6, 2007, presentation by Entergy Chairman and Chief Financial Officer J. Wayne Leonard (entitled "Einstein's Theory") to the Edison Electric Institute Financial Conference. The excerpt includes a flowchart (and related set of notes) entitled "How It Will Be Accomplished – The Transaction Flow," that includes reference to \$4.5 billion in SpinCo debt, along with \$0.5 billion in "Working Cash."

separately bound proprietary addendum as Attachment 3A. In addition, a sensitivity analysis of these projections (reflecting a 10% reduction in projected revenue) is provided in Attachment 3A. ENO requests that Attachment 3A be withheld from public disclosure, as described in the Affidavits provided in Attachment 4. Redacted versions of these balance sheets, suitable for public disclosure, are provided as Attachment 3.

As Attachment 3A has been “withheld from public disclosure,” UWUA Locals do not know the basis for the potential for a “10% reduction in projected revenue.” Even more important, UWUA Locals have no way of knowing whether approval of the proposed transfer could have a negative impact on projected revenues. However, given Applicants’ statement in the filing, we urge that the Commission make the information in Attachment 3A available to the public and, in any event, scrutinize closely Applicants’ financial forecasts.

### **CONCLUSION**

For the foregoing reasons, UWUA Locals respectfully request that the Commission: (a) grant Locals 369 and 590 leave to intervene in each of the captioned proceedings; (b) initiate hearing procedures; (c) issue the requested protective order(s); (d) require Applicants to disclose confidential information pursuant to those order(s); (e) grant UWUA Locals the opportunity to review these data and raise new or amended contentions on the basis of that review; and (f) take any other actions consistent with the requests contained herein.

Respectfully submitted,

*/s/ Scott H. Strauss*

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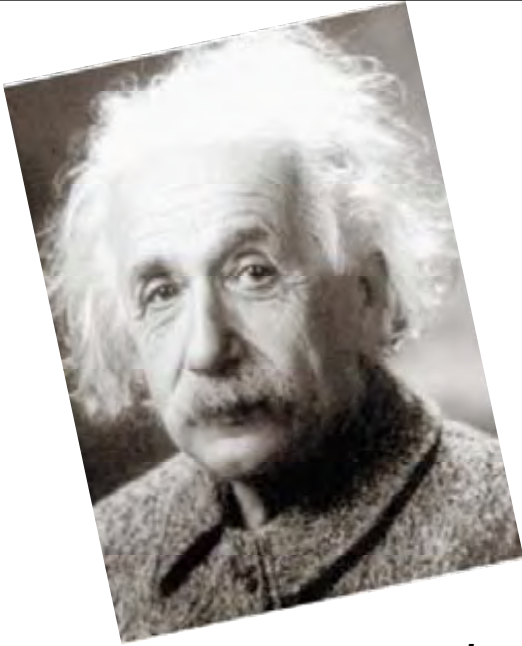
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February 5, 2008

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**Attachment**





# ***Einstein's Theory***

***42<sup>nd</sup> Edison Electric Institute  
Financial Conference***

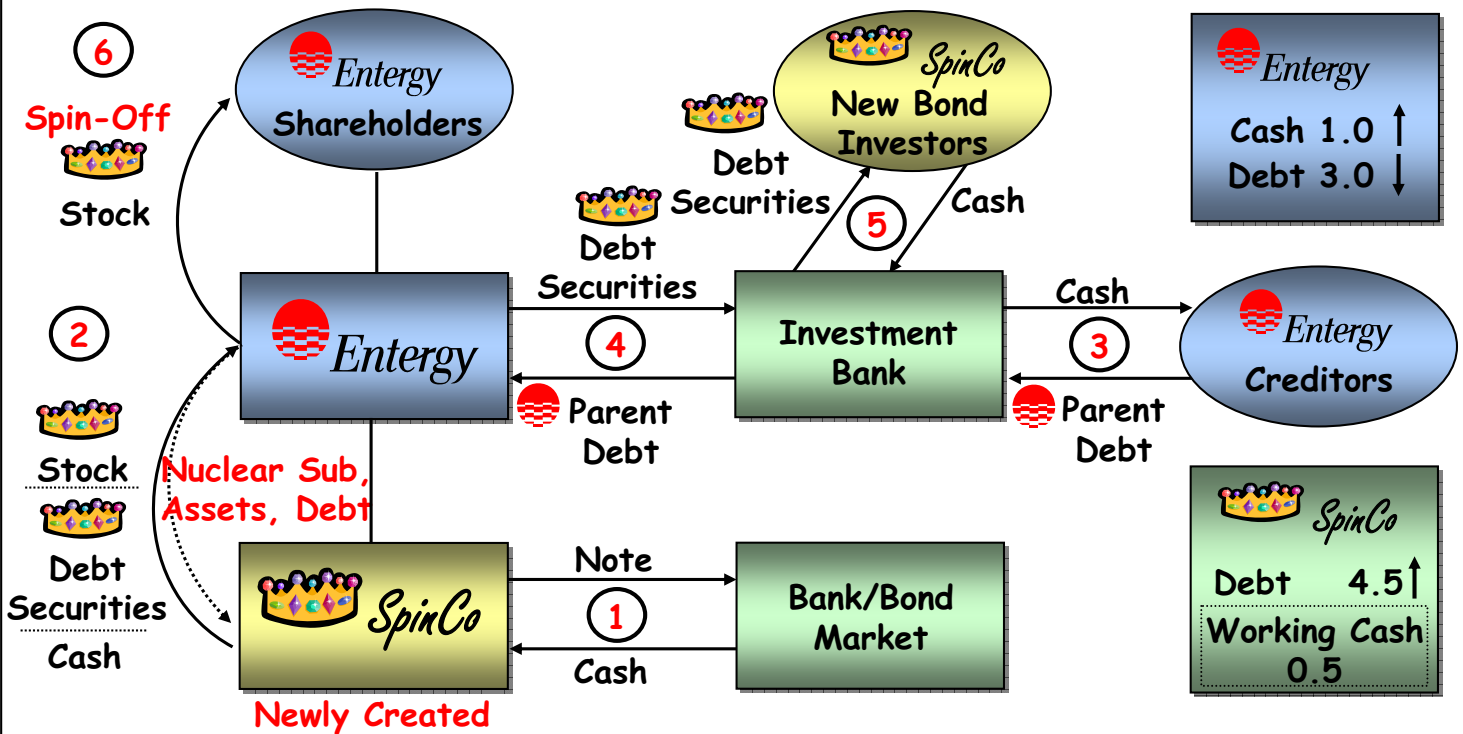
**J. Wayne Leonard  
Chairman and Chief Executive Officer  
November 6, 2007**



# How It Will Be Accomplished – The Transaction Flow

Transaction Overview; \$B

*Illustrative*



\*Amount subject to market terms and conditions

## How It Will Be Accomplished – The Transaction Steps

### Transaction Steps

*Illustrative*

- 1 SpinCo receives cash for a note and uses cash to repay intercompany debt previously incurred by the non-utility nuclear business
- 2 Entergy contributes its non-utility nuclear assets (stock of subsidiaries and/or assets) to SpinCo in exchange for:
  - All of SpinCo's common stock
  - SpinCo's debt securities
- 3 Investment bank purchases Entergy debt securities for its own account
- 4 Entergy enters into a debt-for-debt swap with an investment banker, acting as principal, not Entergy's agent
- 5 Investment bank sells SpinCo debt securities for its own account
- 6 Entergy spins off all the SpinCo common stock by making a pro-rata dividend distribution of such stock to its shareholders

## CERTIFICATE OF SERVICE

I hereby certify that I have on this 5<sup>th</sup> day of February, 2008, caused the foregoing document to be served electronically to all parties on the lists compiled by the Office of the Secretary in these proceedings and to be sent by first-class mail, properly stamped and addressed, to the Applicant and to all participants pursuant to 10 C.F.R. §2.305 as follows:

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