



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

October 29, 2009

Mr. Michael R. Kansler
President & CEO/CNO
Entergy Nuclear Operations, Inc.
1340 Echelon Parkway
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SUBJECT: REQUEST FOR THRESHOLD DETERMINATION UNDER 10 CFR 50.80 - BIG ROCK POINT, JAMES A. FITZPATRICK NUCLEAR POWER PLANT, INDIAN POINT NUCLEAR GENERATING UNIT NOS. 1, 2, AND 3, PALISADES NUCLEAR PLANT, PILGRIM NUCLEAR POWER STATION, AND VERMONT YANKEE NUCLEAR POWER STATION (TAC NOS. ME1896, ME1897, ME1898, ME1899, ME1900, ME1901, ME1902, AND ME1903)

Dear Mr. Kansler:

On July 28, 2008, the Nuclear Regulatory Commission (NRC) issued Orders consenting to the proposed restructuring of Entergy Corporation, the creation of Enexus Energy Corporation, and the resultant indirect license transfers of Big Rock Point, James A. FitzPatrick Nuclear Power Plant, Indian Point Nuclear Generating Unit Nos. 1, 2, and 3, Palisades Nuclear Plant, Pilgrim Nuclear Power Station, and Vermont Yankee Nuclear Power Station from Entergy Corporation to Enexus Energy Corporation. The Orders, which were effective for 1 year, were subsequently extended by Order dated July 24, 2009. The Orders will be effective through January 28, 2010.

Your letter dated August 18, 2009, identified changes to the corporate structure and financial arrangements relied upon by the staff in our original determination. You requested that the NRC staff make a threshold determination that the additional changes do not involve any license transfer that was not previously approved.

Following a review of the new information included in your letter dated August 18, 2009, the NRC staff concludes that the conversion of companies to limited liability companies, the proposed stock split-off, and the proposed changes to the previously approved corporate restructuring, do not involve any license transfer not already approved in the Orders issued on July 28, 2008, and extended for 6 months on July 24, 2009. Accordingly, prior NRC consent is not required to make the changes identified in the submittal of August 18, 2009. The NRC staff concludes that the corporate restructuring, conversion of companies and stock split-off will not affect the qualifications of the owners and operators of the above facilities, and that the corporate restructuring, conversion of companies and stock split-off otherwise appear to be consistent with applicable provisions of law, regulations and Orders issued by the Commission.

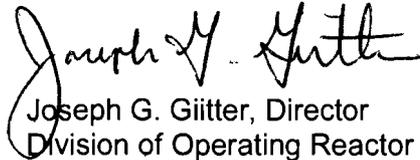
M. Kansler

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The NRC further concludes that the safety evaluation (SE) supporting the Orders of July 28, 2008, remains valid. The NRC staff's SE regarding the threshold determination is enclosed.

Please contact Douglas Pickett at 301-415-1364 or Douglas.Pickett@nrc.gov if you have any questions.

Sincerely,



Joseph G. Giitter, Director
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Docket Nos. 50-293
50-003, 50-247, 50-286, 72-51
50-333, 72-12
50-271, 72-59
50-255, 72-7
50-155, 72-43

Enclosure:
Safety Evaluation

cc w/encl: See next page

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cc: Big Rock Point ISFSI

Docket Nos. 50-155, 72-43

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION
CORPORATE RESTRUCTURING, CONVERSION OF COMPANIES AND STOCK SPLIT-OFF
BY ENERGY NUCLEAR OPERATIONS, INC AND SUBSIDIARIES

PILGRIM NUCLEAR POWER STATION

INDIAN POINT NUCLEAR GENERATING UNIT NOS. 1, 2 & 3

JAMES A. FITZPATRICK NUCLEAR POWER PLANT

VERMONT YANKEE NUCLEAR POWER STATION

PALISADES NUCLEAR PLANT

BIG ROCK POINT

DOCKET NOS. 50-293, 50-003, 50-247, 50-286, 72-51,

50-333, 72-59, 50-255, 72-7, 50-155, 72-43

1.0 INTRODUCTION

On July 28, 2008, the Nuclear Regulatory Commission (NRC) issued Orders (Agencywide Documents Access and Management System (ADAMS) Accession No. ML080940564, typical of seven plant-specific Orders associated with this action) consenting to the proposed restructuring of Entergy Corporation, the creation of Enexus Energy Corporation, and the resultant indirect license transfers of Big Rock Point, James A. FitzPatrick Nuclear Power Plant, Indian Point Nuclear Generating Unit Nos. 1, 2, and 3, Palisades Nuclear Plant, Pilgrim Nuclear Power Station, and Vermont Yankee Nuclear Power Station (together, Plants) from Entergy Corporation to Enexus Energy Corporation. The Orders, which were effective for 1 year, were subsequently extended by Order dated July 24, 2009 (ADAMS Accession No. ML091520154). The Orders will be effective through January 28, 2010.

By letter dated August 18, 2009 (ADAMS Accession No. ML092370203), 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 Entergy Nuclear Palisades, LLC (together, Applicants) who are the owners of the Plants, identified changes to the corporate structure and financial arrangements relied upon by the NRC staff in their original determination. The Applicants' letter of August 18, 2009, requested that the NRC make a threshold determination that the proposed changes do not involve any license transfer not already approved in the 2008 Orders.

Enclosure

2.0 BACKGROUND

On July 28, 2008, the NRC issued Orders consenting to the indirect license transfer of the Plants from Entergy Corporation to a newly created company, Enexus Energy Corporation (Enexus). On July 24, 2009, Entergy was granted a 6-month extension to the Orders to complete the corporate transaction. As of the date of this Safety Evaluation, ENO has not implemented the corporate transaction approved by the NRC on July 28, 2008.

3.0 EVALUATION

The NRC staff reviewed the conversion of companies to LLCs, the stock split-off, and the proposed changes to the corporate restructuring approved in the 2008 Orders to determine whether they involved any license transfer not previously approved. The regulation at 10 CFR 50.80(a) states:

No license for a production or utilization facility (including, but not limited to, permits under this part and part 52 of this chapter, and licenses under parts 50 and 52 of this chapter), 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 gives its consent in writing.

ENO's letter dated August 18, 2009, includes the following proposed changes: (1) Entergy Nuclear Generation Company, the owner of Pilgrim Nuclear Power Station, will convert to Enexus Nuclear Pilgrim, LLC, a Massachusetts limited liability company, by operation of law; (2) Entergy Equagen, Inc., will be converted from a Delaware corporation to become a Delaware limited liability company named Entergy Equagen Holdings, LLC and Enexus Nuclear Holding Company will make the same filing as Entergy Equagen, Inc. to become Enexus Nuclear Holding Company, LLC, both by operation of law; (3) Enexus Nuclear Holding Company #1, Enexus Nuclear Holding Company #3, LLC, and Enexus Nuclear Vermont Investment Company, LLC will be eliminated from the corporate structure as intermediary holding companies; and (4) Enexus Equagen, LLC will be renamed Enexus Equagen Holdings, LLC.

Changes (1) and (2) above involve corporations converting to limited liability companies by operation of law and without dissolving or creating companies in the process. These actions do not involve the dissolution of the company or the transfer of ownership and, thus, are not considered a transfer of control under 10 CFR 50.80. Regarding change (3) above, the removal of intermediary companies has not been considered a transfer, direct or indirect, under 10 CFR 50.80 on the grounds that the indirect control exercised by the parent company is not affected. Regarding change (4) above, the renaming of the proposed new parent company has no effect on the control of the licensee.

ENO also submitted a revision to the implementation of the previously approved transaction. ENO now states that 19.9% of Enexus shares will be split-off from Enexus into a separate trust. One day after the spin-off creates Enexus, the split-off of 19.9% of Enexus shares will be transferred by Entergy to a trust. The trust will hold the shares for the benefit of Entergy and its shareholders. The shares retained by the trust are expected to be offered for exchange of

Entergy shares of common stock within a period of up to 18 months after the spin-off. The 19.9% "split-off" of stock to a trust does not create a transfer of ownership, as the beneficiaries of the trust are the same owners approved in the 2008 Orders and, within a period up to 18 months, the shares will be offered for exchange for Entergy shares of common stock.

Based on the information provided by the Applicants above, the NRC staff finds that the removal of intermediary companies, conversion of companies to limited liability companies, by operation of law, and the 19.9% "split-off" of stock to a trust does not involve any license transfer not already approved in the 2008 Orders. Accordingly, prior NRC consent is not required to make the changes identified in the August 18, 2009, submittal. Nonetheless, the NRC staff analyzed the effect of the transactions on the Applicants' financial qualifications, decommissioning funding assurance, technical qualifications, and status with respect to any foreign control or domination to confirm that the Orders approved on July 28, 2008, were not materially affected by the above stated changes.

3.1 Financial Qualifications

The Applicants stated that the proposed transactions will have the following effects: (1) reduction of initial long term bonds from \$4.5 billion to \$3.5 billion and (2) increase of initial unrestricted cash balances at Enexus from \$250 million to \$750 million.

The changes identified by the Applicants above are consistent with the NRC staff's earlier finding in the 2008 Orders that Enexus is financially qualified.

3.2 Decommissioning Funding Assurance

The Applicants currently provide decommissioning funding assurance for the Plants through the allowable funding mechanisms outlined in 10 CFR 50.75(e). In a separate proceeding, pursuant to the 2009 Biennial Decommissioning Report submitted by Entergy on March 30, 2009 (ADAMS Accession No. ML090920576), the NRC staff reviewed the financial assurance for decommissioning provided by the Plants. Based on its review, the NRC staff projected a potential shortfall at the time of permanent termination of operations in the decommissioning funding assurance provided for Indian Point Nuclear Generating Plant Unit No. 2, Vermont Yankee Nuclear Power Station, and Palisades Nuclear Plant. The staff will resolve the shortfalls in a separate proceeding, pursuant to the Decommissioning Funding Assurance Plans submitted by Entergy to the NRC on August 13, 2009 (ADAMS Accession No. ML092260720).

The decision criterion applied to an indirect license transfer is whether the transfer will affect the licensee's existing financial qualifications. The NRC staff finds the proposed changes submitted by the Applicant on August 18, 2009, will not affect the amounts of the potential shortfalls in decommissioning funding assurance for the above-listed units.

3.3 Management and Technical Qualifications

The NRC staff is not aware of anything to indicate that there have been, or will be in the future, any material effects on the manner in which the Plants are operated or the identity, organization, management and technical qualification of the Applicants as the Plants' licensees as a result of the corporate restructuring, conversion of companies and stock split-off.

3.4 Foreign Ownership, Control, or Domination

Section 103d of the Atomic Energy Act prohibits the Commission 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 staff did not find that the Applicants will be owned, controlled, or dominated by any alien, foreign corporation, or foreign government, within the meaning of the Atomic Energy Act of 1954, as amended, by reason of the proposed restructuring, as provided in the NRC safety evaluation, dated July 28, 2008. As a result, the NRC staff does not know or have reason to believe that, as a result of the corporate restructuring, conversion of companies or stock split-off to a trust, the Applicants or any companies within the corporate structure will be owned, controlled, or dominated by a foreign person or entity.

4.0 CONCLUSION

In view of the foregoing, the NRC staff concludes that the conversion of companies to LLCs, the stock split-off, and the proposed changes to the previously approved corporate restructuring, as described by the Applicants, do not involve any license transfer not already approved in the Orders issued on July 28, 2008, and extended for 6 months on July 24, 2009. Accordingly, prior NRC consent is not required to make the changes identified in the August 18, 2009, submittal. The NRC staff concludes that the corporate restructuring, conversion of companies and stock split-off will not affect the qualifications of the Applicants as the holder of licenses of the Plants, and that the corporate restructuring, conversion of companies and stock split-off otherwise appear to be consistent with applicable provisions of law, regulations and Orders issued by the Commission.

Principal Contributor: Aaron L. Szabo

Date: October 29, 2009

M. Kansler

- 2 -

The NRC further concludes that the safety evaluation (SE) supporting the Orders of July 28, 2008, remains valid. The NRC staff's SE regarding the threshold determination is enclosed.

Please contact Douglas Pickett at 301-415-1364 or Douglas.Pickett@nrc.gov if you have any questions.

Sincerely,

/RA/

Joseph G. Giitter, Director
Division of Operating Reactor Licensing
Office of Nuclear Reactor Regulation

Docket Nos. 50-293
50-003, 50-247, 50-286, 72-51
50-333, 72-12
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Enclosure:
Safety Evaluation

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