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Stage set for battle over Indian Point spin-off plan

By Abby Luby

Entergy wants to create new holding company

A plan by Entergy, owner of the Indian Point Nuclear Power Plants in Buchanan, to create a new holding company that would oversee its day-to-day plant operations has met with opposition from local government officials and citizen watchdog groups.

Entergy applied last November to set up a holding company called Enexus Energy Corporation. The spin-off would oversee operations at the Indian Point plants and Entergy's Fitzpatrick nuclear plant in Oswego County. The utility corporation filed the required paperwork with New York State's Public Service Commission (PSC) which announced in May that it will review Entergy's application over the next two months. In a release the PSC said that, "Enexus plans to issue up to \$6.5 billion in debt in connection with this transaction."

That Enexus will be a limited liability corporation with a large amount of debt was a red flag for Westchester County, state Attorney General Andrew Cuomo and the environmental group Riverkeeper, all of whom filed objections with the PSC. Their main concern was having a local power plant run by a company in such debt, especially if Enexus is several corporate layers removed from its parent company, Entergy.

"If something happened today at the Indian Point or the Fitzpatrick plants we feel we can pierce the corporate veil," said Stewart Glass, an assistant Westchester County attorney who works on energy issues. "By spinning off to a new entity, Entergy will give itself an additional distance from the potential liability and we would be going after a new company that only has two basic sources of income, the power generated by the plants and the management fees for the operation of the plants."

Alex Schott, spokesman for Entergy Corporation in its New Orleans headquarters, confirmed that Enexus would operate independently from Entergy.

"Cash will not be pulled out of Entergy Corporation to cover Enexus' operating costs," he said. "Once Enexus is up and running it will be an independent

company from Entergy with its own separate sources of internal funding. For example, it will sell the power from its own plants and use that revenue for its own corporate purposes.”

Schott also said the while Enexus would hold the owner’s license, another company called EquaGen would hold the operating license.

“That could be a big problem,” said Rockland County attorney Susan Shapiro, a member of the Westchester Citizen’s Awareness Network that wants to close Indian Point. “It’s an additional corporate layer. We want the company that holds the license to be the company that is operating the plant. We don’t want it to be two separate companies.”

The Nuclear Regulatory Commission, the federal oversight agency for nuclear power plants, is also reviewing Entergy’s spin-off plan.

“We are still reviewing it and haven’t determined whether that approach [of two separate companies] would be acceptable,” said Neil Sheehan, spokesperson for the NRC.

Shapiro is also concerned about who would pay for an unexpected accident or unplanned shut down.

“Right now there are about seven layers of corporate protection and the spin off will create about six more layers,” she said. “If there is a natural or manmade disaster they could claim bankruptcy and avoid paying for any damages, like Entergy did after Hurricane Katrina.”

Entergy New Orleans, a LLC whose parent company is Entergy Corporation, suffered about \$475 million worth of damages from Hurricane Katrina in August 2006. The company declared bankruptcy just three weeks later and sought a federal bailout asking for \$592 million.

But the federal government balked and told Entergy it was unfair to use taxpayer money for a bailout. Entergy New Orleans threatened to pass storm-related expenses to its ratepayers, planning to raise rates as much as 140 percent. Entergy Corporation, whose current annual revenues exceed \$11 billion, received an initial \$171 million in aid in May 2007 and then exited bankruptcy.

In April, Cuomo filed a 156-page letter to the PSC urging them to reject Entergy’s plan. Among Cuomo’s concerns is the projected inability of the new company to pay for the mammoth costs incurred with aging plants such as Indian Point, and the costs to cover the eventual closing and decommissioning the plant, including disassembling the plant and handling the on-site radioactive spent fuel.

However, Schott said that the new company will be able to handle large costs. “They will build on the reputation Entergy has established over the last decade of managing nuclear plants safely, efficiently and profitably,” he said. “Its growth is expected through the expansion of service offerings such as plant relicensing and decommissioning and other ancillary nuclear services.”

Westchester County objected to the spinoff, contending it is not in the public interest. Glass said that decommissioning funds overseen by the NRC might

not be enough to close and clean up the plant site.

“We are concerned if the funds become insufficient, who is going to end up paying that difference?” he said.

Sheehan said that the NRC would continue to look at the financial status of the plant owner.

“We look at two main things: if the new owners would have the financial wherewithal to safely operate the plant and safely decommission the plant,” he said.

According to a report by Entergy on its decommission funds, since December 2007, \$271 million was in the fund for Indian Point Unit 1, \$468 million for Unit 2 and \$347 million for Unit 3. Sheehan said even if Enexus claimed bankruptcy, it would have to keep contributing to the fund.

“If there is insufficient funding we would go after the parent company on that account,” he said.

Last year Entergy applied for a new operating license that would keep Unit 2 and Unit 3 reactors running until 2033 and 2035. Unit 1 has been closed since 1974. Sheehan said Entergy would amend its license to reflect corporate restructuring and the name on the license would change on all key documents.

“This is a direct transfer – it’s not Entergy selling the plant to another corporation,” said Sheehan. “This is an internal restructuring and the [NRC’s] review is not as detailed as if the plant was changing hands.”

Entergy sees the spinoff favoring the re-licensing process.

“There is nothing in this action that would deter or detract from our license renewal efforts,” said Schott. “If anything, Enexus will have even more incentive to pursue renewal of the licenses since the merchant nuclear plants are its primary assets.”

Supporting Cuomo’s request for a PSC hearing on the Entergy spin-off is Riverkeeper, who in its April 17 letter to the PSC attacked Entergy for pursuing financial gain for its stockholders.

Riverkeeper contends Entergy’s primary purpose in pursuing is the “maximization of financial benefits to the parent company’s shareholder, at the expense of New York ratepayers.” Also Riverkeeper said the reorganization request should include an environmental review.

Glass said Westchester County is concerned that any agreements it has with Entergy regarding Indian Point won’t be upheld, including the agreement not store any nuclear fuel on site that hasn’t originated from Indian Point, he said.

“They also agreed that when the plant closed they would restore it to a green space and not entomb it – cover it over with concrete - like they did in Chernobyl,” he said.

Schott said that all prior agreements would be honored by the spin-off company.