

October 19, 2009

MEMORANDUM

TO: Joint Fiscal Committee
FROM: Richard H. Saudek

TRANSFER OF OWNERSHIP OF VERMONT YANKEE FROM ENTERGY TO ENEXUS:

THE DEPARTMENT OF PUBLIC SERVICE MEMORANDUM OF UNDERSTANDING

On October 6, 2009, a Memorandum of Understanding ("the MOU") was signed by the Vermont Department of Public Service ("the DPS") and the owners and operators of Vermont Yankee. In the MOU, the DPS changes its stance from opposition to support of a petition to allow transactions that would support the sale of Vermont Yankee by Entergy to a new company called Enexus. Enexus is a creation of Entergy; its stock would be issued to Entergy shareholders and then it would become an independent corporation that would own six merchant nuclear plants now owned by Entergy. The purchase of the plants by Enexus would be funded by billions of dollars raised through borrowing and bonding by Enexus.

The DPS' support is very significant in this case: the only parties other than the DPS and the two major Vermont utilities are the Town of Brattleboro and the Windham Planning Commission. The DPS is the only party that would be capable of presenting sophisticated opposition to the Entergy – Enexus plan.

In addition to the DPS, the MOU is signed by the following parties:

- “Enexus”: Enexus Energy Corporation, a recently-formed company that would own (through its subsidiaries) the six merchant nuclear plants, including Vermont Yankee, that are currently owned by subsidiaries of Entergy Corporation. Enexus’ headquarters would be in Mississippi.
- “ENVY”: Entergy Nuclear Vermont Yankee, LLC, the corporate subsidiary of Entergy Corporation that currently owns the Vermont Yankee nuclear power plant.
- “ENOI”: Entergy Nuclear Operations, Inc., the corporation that employs the personnel that operate VY and the other nuclear plants in the Entergy corporate family. ENOI also holds the operating licenses for those plants. Under the proposed reorganization, ENOI would become Equagen LLC and would be owned equally by Entergy and Enexus.

Background

Vermont law requires that the Public Service Board approve the transfer of control of a company owning or operating a power plant in Vermont and that it consent to the pledge of the plant and other assets to secure debt. In January 2008, ENVY and ENOI petitioned the PSB for authority to transfer control of the plant, to pledge assets (the plant, its contracts and related property) in connection with the issuance of debt, and to take other steps that would lead to the formation and financing of a new company, later named Enexus. Ownership of ENVY and the other Entergy subsidiaries that own merchant nuclear plants would be transferred to subsidiaries of Enexus.

(Entergy owns six operating merchant nuclear plants in four states – Vermont, New York [3 plants], Massachusetts and Michigan. New York is the only state other than Vermont that requires advance approval of these transactions.)

The PSB held hearings in late July 2009, at which the DPS opposed the contemplated transactions. In summary, the DPS’ concerns included that Enexus would carry too much debt and be rated below investment grade; that ENVY might not have sufficient working capital available to it for non-safety-related operating expenditures; and that the 50-50 ownership of

EquaGen LLC could lead to governance problems that might hamper it in serving the Enexus nuclear plants.

The MOU

1. Changes in the Enexus Financing Transactions

In August, after hearings had been completed, Entergy announced several changes in the Enexus financing and other transactions. They filed an amended petition in the New York case and filed an “informational copy” of the New York filing in the Vermont PSB case. The changes were taken into account by the DPS in its decision to sign the MOU and support the petition.

It appears that the “changes” represent the difference between the original plans for financing when the petitions were filed in January 2008 and the financing that emerged after details were worked out with the financial community. In other words, the original petitions contained financing plans that Entergy thought it could achieve in early 2008, but the revised plans reflect the realities of financing in a much changed financial environment. The result is a more conservative plan, with more safeguards for creditors.

One notable feature that was included in the original petitions and was continued in the changed plans is the provision by Enexus of a \$700 million “support agreement” that would be available to all six of the merchant nuclear plants for use in safety-related shutdowns. This money would be used as necessary by whatever plants needed it. It wouldn’t be earmarked for any one plant.

A chart showing the changes, prepared by Entergy and filed in New York, is attached to this memorandum. Among the changes from the original plan are the following:

- Reduction of long-term unsecured bonds from \$4.5 billion to \$3.5 billion. Most of this money will be used to pay Entergy for the merchant nuclear plants. In their New York filing, Entergy projected that the Enexus bonds would have an initial rating of no less than BB- from Standard & Poor's and Ba3 from Moody's, both of which are below investment grade and sometimes referred to as "junk bonds".
- Increase of an unrestricted cash balance from \$250 million to \$750 million. This will be available from the proceeds of the bonds after deduction of the payments to Entergy.
- A \$1.175 billion secured bank facility (a kind of line of credit) to provide Enexus with a source of capital for reliable operations. The facility is subject to certain conditions, including that Enexus retain half its earnings to apply toward its nuclear plants or to reduce its debt, rather than distribute it as dividends. The nuclear plants would presumably be the security for this line of credit.
- Enexus would issue of 80.1% of Enexus stock to existing Entergy shareholders and issuance of the remaining 19.9% in a trust for Entergy, to be later offered in exchange for Entergy stock. Entergy says that this arrangement has the effect of reducing the payment that Enexus has to make to Entergy at this time, thereby reducing the total amount of the bonds from \$4.5 billion to \$3.5 billion. Eventually, the Enexus stock will be distributed in exchange for Entergy stock at a ratio to be determined by Entergy.

The New York Public Service Commission reopened its case to consider the changes and expects to reach a final decision by January. The New York Commission staff, which serves roughly the function of the Vermont DPS, supports approval of the petition, but asks that the approval be conditioned on Enexus' obtaining an investment grade rating (BBB- from S&P, Baa3 from Moody's) or maintaining \$1 billion in trust to apply to reliability and other non-safety-related problems at the plants.

2. Vermont-Specific Changes

In addition to the overall changes in the deal, the parties to the MOU agreed on the following Vermont-specific changes:

- A \$100 million "Working Capital Facility" will be available to ENVY from another Enexus subsidiary. This operates as a line of credit from which Vermont Yankee can borrow "for cost-justified and economic non-safety related projects for VY Station such as critical reliability projects." The line of credit would be available until VY is

fully decommissioned. This replaces two present lines of credit of \$35 million and \$20 million from Entergy subsidiaries that are more restricted in the uses to which their proceeds can be put.

- A change in the terms governing a \$60 million letter of credit that will be arranged with a financial institution to provide bridge money to VY between shutdown and decommissioning. The main difference is that any money left over may be applied toward decommissioning costs.
- If by 2014, Enexus fails to achieve a rating at least one notch below investment grade, it will arrange for another \$50 million letter of credit that will be usable by VY for generating operations.
- A provision governing Equagen LLC aimed at making sure that Equagen Nuclear LLC will not be hampered in performing services for the six nuclear plants to be owned by Enexus.
- Increased reporting requirements to the DPS.

3. Summary and Comments

The basic plan hasn't changed. It continues to be a way to transfer Entergy's merchant nuclear plants to a new company and to generate enough money through loans and bonds to pay Entergy a price for the plants that recognizes their current value. The changes in details of the plan are in some ways positive, but they don't answer many of the questions that have been raised.

Positive

The new financial structure is somewhat more conservative than the original. The bonding obligations will be reduced and there will be more money available to the company for operations and contingencies. Restrictions imposed by the lenders will assure that much of the proceeds from plant operations will remain in Enexus rather than being distributed to shareholders. The placement of about 20% of the Enexus stock in trust for Entergy lessens the immediate financial burdens somewhat.

In Vermont, more credit would be available for funds to run Vermont Yankee and it is likely that some more money would be available to apply to decommissioning expenses.

Negative

Enexus will still be below investment grade, making it weaker than Entergy, which is investment grade. The likelihood that Enexus might default on its financial obligations or go bankrupt is greater than that of Entergy. All the nuclear assets, including Vermont Yankee and its contracts and other property, will be pledged as collateral for secured loans. At present, they are owned by Entergy free and clear.

Decommissioning Questions

The questions surrounding decommissioning continue to be unresolved. In the context of the planned sale to Enexus, they take on added significance because Enexus will be weaker than Entergy and its assets will be pledged to creditors. If, as ENVY vice president Jay Thayer has frequently said, the NRC will pursue companies up the corporate ladder from ENVY if ENVY's decommissioning fund turns out to be inadequate, Enexus' available assets are likely to be much less than those of Entergy.

	Original Petition	Amended Petition
1. Long-Term Bonds	\$4.5 billion	\$3.5 billion
2. Proven Ability of Enexus to Raise Capital	Yet to be established and terms for secured bank facility not determined	<ul style="list-style-type: none"> • \$1.175 billion Secured Bank Facility signed with a consortium of 14 banks under the most challenging financial market conditions in decades • Secured Bank Facility requires at least 50% of consolidated net income of Enexus be retained, re-invested or used to reduce debt rather than for dividends • Secured Bank Facility allows additional secured and unsecured debt for reliability investments and other purposes
3. Minimum Liquidity Commitment	None	\$350 million
4. Initial Unrestricted Cash Balance	\$250 million	\$750 million
5. Enexus' Share Distribution	100% distributed to Entergy shareholders in a tax-free reorganization	100% distributed or transferred in a tax-free reorganization with approximately 80.1% distributed to Entergy shareholders and the balance transferred to a trust for Entergy, giving Entergy an interest in Enexus' financial success and facilitating in part other financial enhancements
6. Secured Financing Authority	Entire \$2.0 billion of authorized secured financing authority to be used for revolving credit facility and collateral support credit facility	\$2.0 billion of secured financing authority used for \$1.175 billion Secured Bank Facility with \$825 million reserved; up to \$500 million of shorter-term unsecured borrowings used to free up secured financing authority
7. Power Sales Contracts with Financial Counterparties That Do Not Require Cash or Letters of Credit for Collateral Support	Proposed	Executed
8. Funding for Greenfield Decommissioning	No specific proposal	Backstop Site Restoration Trust to fund Indian Point site restoration costs not projected to be covered by surplus Nuclear Decommissioning Trust funds
9. Support Agreements	<ul style="list-style-type: none"> • Enexus: \$700 million allowing each facility to draw upon the income produced by the other facilities 	Same improvements as in the original Petition