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NRC okays Entergy's nuclear spin-off

By Abby Luby

Public Service Commission review still pending

The Nuclear Regulatory Commission has approved an application by Entergy, the owner of the Indian Point Nuclear Power Plants, to spin off a new corporation that will oversee the Buchanan-based plants.

The NRC's nod to Entergy to transfer its operating license to Enexus Energy Corporation took place Monday.

Neil Sheehan, spokesman for the NRC, which is the federal oversight agency for nuclear power plants, said Entergy was able to prove that it had enough revenue to support the new company.

Entergy's application for the operating license transfer stated that there would be a \$700 million financial agreement between Entergy and the new company operating the plant. The application also said Entergy would have access to a line of credit worth \$1 billion.

But Westchester County, along with the state attorney general's office, has petitioned the Public Service Commission — which has yet to make a decision — against the spin off, countering that Entergy would no longer be responsible for legal agreements made when the plants were purchased in 2000 from the New York Power Authority.

"We believe the action by the NRC, though not unexpected, is premature, especially since the NRC has acknowledged that a petition is pending before the Public Service Commission," said Stewart Glass, senior assistant county attorney.

The spin off cannot proceed without the Public Service Commission's endorsement.

Glass is particularly concerned that when the plants close down, the

agreements on how they will be decommissioned will be ignored.

“We don’t want the minimum standard for decommissioning a plant,” she said. “We want what was promised - a return of the property to Greenfield condition [to the condition before the construction of the plant]. Entergy hasn’t given us a firm response that they will honor our agreement.”

If Entergy’s current license renewal applications to operate Indian Point for an additional 20 years are denied, the plants could be decommissioned as early as 2015.

NRC has yet to hold hearings on the plan, Sheehan noted, and said Monday’s decision could still be changed. He said the NRC is allowed to issue a decision on such matters even though hearing requests are pending. If the commission needs to change its decision and the license transfer is denied, it can be done retroactively.

Sheehan said the review of Entergy’s proposal for corporate restructuring took almost a year and the NRC was compelled to come to a timely decision.

“Were we to wait for a hearing on this to play out, that decision could be prolonged indefinitely. In this instance the regulations permit the staff to go ahead and do that with the understanding that a hearing is subsequently held and if any issues are brought to light that might alter that earlier decision, it can be changed retroactively.”

Entergy also had a revenue-sharing agreement with the New York Power Authority to the tune of \$432 million, stipulating that an annual payment of \$72 million was to be paid through 2014. The agreement was made as a condition of sale when NYPA sold a plant to Entergy. Entergy claims the agreement would no longer be viable once the spin off is approved because the name in the contract would be different.

“We believe that the payments would not be required under the new company when the plants are sold to Enexus,” said Entergy spokesman Jim Steets. “But we are prepared to sit down and discuss those things with the New York Power Authority.”

Christine Pritchard, spokesperson for NYPA, said they haven’t heard from Entergy about future discussions.

“If Entergy tries to evade the agreement, NYPA fully intends to protect its rights,” she said.

NYPA has publicly threatened to sue Entergy, according to published reports.

Although Entergy still needs approval for the spin off by the U.S.

Securities and Exchange Commission and state utility regulators in New York, Steets sees the NRC approval as key.

“It’s an important decision in that the NRC has validated our filings, indicating that we are covered financially and are capable of running the plants and accomplishing the eventual decommissioning,” he said.

Those objecting to Entergy’s corporate restructuring and actively petitioning the NRC include the Westchester Citizen’s Awareness Network, Rockland County Conservation Association, Promoting Health and Sustainable Energy, and the Sierra Club – North East Chapter. Joining those groups is Westchester Assemblyman Richard Brodsky (D-Greenburgh) who has long opposed the continued operation of Indian Point. Brodsky said he was not surprised that the NRC approved Entergy’s proposed spin off.

“The NRC is the hand maiden of Entergy and we are seeing this on so many other levels,” Brodsky said. “This is all part of the same attempt by Entergy to manipulate the law and essentially fail to meet its commitment to the public.”

But a spokesperson for Entergy Corporate headquarters in New Orleans, Mike Burns, said the company sees the spin off in a positive light.

“We are pleased with the NRC staff decision of the transfer of the license and we are looking forward to the completion of the spin-off process,” Burns said. “We strongly believe that this transfer process is going to benefit all stakeholders, all of the communities and all employees once it is completed.”

On Tuesday, Entergy reported higher earnings for its second-quarter profits and added to the report a statement about the approved spin-off of its merchant nuclear-power business. In the last year, Entergy’s net income rose 1.3 percent to \$271 million from \$267.6 million and its operating revenue rose to \$3.26 billion from \$2.77 billion.