

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7404

Petition of Entergy Nuclear Vermont Yankee, LLC, and)
Entergy Nuclear Operations, Inc., for Approval of an)
Indirect Transfer of Control of Each Company, Consent)
to Pledge of Assets, Guarantees and Assignments of)
Contracts by Entergy Nuclear Vermont Yankee, LLC,)
and Amendment to the CPG of Entergy Nuclear)
Operations, Inc., to Reflect a Name Change,)
Replacement of \$60 Million Guarantee with \$60 Million)
Letter of Credit and Substitution of \$700 Million)
Support Agreement for Two Inter-Company Credit)
Facilities)

Hearings at
Montpelier, Vermont
July 29 and 30, 2008

Order entered: 6/24/2010

PRESENT: James Volz, Chairman
David C. Coen, Board Member
John D. Burke, Board Member

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I. INTRODUCTION

Entergy Nuclear Vermont Yankee, LLC ("EVY"), Entergy Nuclear Operations, Inc. ("ENO") and Enexus Energy Corporation ("Enexus"), for themselves and on behalf of Entergy Corporation ("Entergy"), Entergy EquaGen Holdings LLC, Enexus EquaGen Holdings, LLC, and EquaGen LLC (collectively, "Petitioners") seek regulatory approvals in connection with several proposed actions detailed below (the "Proposed Actions"). The Proposed Actions all relate to a contemplated distribution to stockholders of Entergy (the "Spin-off") of shares of common stock of Enexus, a new corporation whose principal assets will consist of the ownership through subsidiaries of six merchant nuclear plants, including the Vermont Yankee Nuclear Power Station in Vernon, Vermont ("VY Station").

In connection with the Spin-off, Enexus will acquire an indirect controlling interest in EVY, the direct owner of VY Station, and in ENO, the operator of VY Station. Following the Spin-off, common shares of Enexus will be traded in public markets, and EVY will no longer be indirectly controlled by Entergy as Enexus will become EVY's ultimate parent holding company in place of Entergy. In this Order, the Vermont Public Service Board ("Board") finds that the Petitioners have not shown that the Proposed Actions, and in particular the acquisition of control of EVY by Enexus, will promote the public good.

II. PROCEDURAL HISTORY

EVY and ENO, for themselves and on behalf of certain affiliates, filed a petition with the Board on January 28, 2008, seeking approval of the Proposed Actions pursuant to 30 V.S.A. §§ 107, 108, 231 and 232. The petition was amended on October 26, 2009, to add Enexus as a petitioner.

The Board held a prehearing conference on February 29, 2008. On March 7, 2008, the Board issued an Order containing a Prehearing Conference Memorandum and Schedule. The schedule was later amended pursuant to an Order of May 19, 2008. Public hearings were held in Vernon, Vermont, on April 8, 2008, and via Vermont Interactive Television on April 10, 2008.

Motions to intervene were filed by the International Brotherhood of Electrical Workers Local Union No. 300 ("IBEW"), Central Vermont Public Service Corporation ("CVPS"), Green Mountain Power Corporation ("GMP"), the Windham Regional Commission, the Town of Brattleboro, and Utility Workers Union of America, AFL-CIO ("UWUA"). In our Order of March 24, 2008, we granted the motions to intervene filed by IBEW, CVPS, GMP, the Windham Regional Commission and the Town of Brattleboro.¹

Direct and rebuttal testimony was prefiled by the Petitioners, the Vermont Department of Public Service ("Department") and jointly by Central Vermont Public Service Corporation ("CVPS") and Green Mountain Power Corporation ("GMP"). Technical hearings were held on July 29 and 30, 2008, at which witnesses for the Petitioners, the Department and CVPS/GMP testified.

The Petitioners filed an initial brief and proposal for decision on August 12, 2008, and a Reply Brief on August 20, 2008.² The Department also filed an initial brief on August 12, 2008, and a reply brief on August 20, 2008 in which it, at that time, recommended that we deny the petition because it did not believe that the Petitioners had met the statutory requirements for

1. In that Order and our subsequent Order of April 9, 2008, we concluded that the UWUA had not demonstrated a substantial interest that may be affected by the outcome of this proceeding. The UWUA subsequently filed a motion on April 17, 2008, asking us to reconsider our decision or, in the alternative, to allow the unions to participate as *amicus curiae*. In our Order of May 5, 2008, we concluded that the UWUA had provided no basis for changing our decision denying their request to intervene but granted the unions' request to participate as *amicus curiae*. One of the two locals represented by the UWUA, Local 369, later gave the Board notice of its withdrawal as *amicus curiae*.

2. The Petitioners maintain that Enexus will be a financially strong parent for EVY that will benefit from favorable cash flows in the future, especially because of anticipated power needs in northeastern markets and the projected lower costs of operation of merchant nuclear plants relative to plants relying on natural gas for fuel. The Petitioners regard the support arrangements for EVY that will be in place following the "spin-off" of Enexus as a clear improvement over existing financial support agreements among Entergy and its other subsidiaries and EVY. The Petitioners also assert that EVY's ownership by a parent corporation that is focused on the wholesale sale of nuclear power should provide benefits for EVY that it would not necessarily realize as part of a regulated utility business.

approval of the Proposed Actions.³ CVPS and GMP jointly filed an initial brief on August 13, 2008, and a reply brief on August 20, 2008, in which they recommended approval of the Proposed Actions.⁴ IBEW filed an initial brief on August 13, 2008, and a reply brief on August 20, 2008, in which it proposed conditions to address perceived deficiencies of the Proposed Actions. Neither the Windham Regional Commission nor the Town of Brattleboro took a formal position on the Proposed Actions.

On February 17, 2009, IBEW filed a memorandum of agreement between it and the Petitioners, and the IBEW provided a statement of support for the petition.⁵ On October 8, 2009, the Petitioners filed a memorandum of understanding ("MOU") with the Department.⁶ The Petitioners filed an amended petition and an amended proposal for decision on October 29, 2009, together with the supplemental prefiled testimony of Dean Keller and Jay Thayer and related exhibits.

On November 20, 2009, the Board submitted questions to the Petitioners and the Department regarding the MOU and the Proposed Actions. The Petitioners filed responses with the Board on December 9, 2009. The Department filed responses on December 24, 2009.

3. The Department expressed concern that Enexus will not be as financially strong as Entergy, noting, among other things, that (1) Entergy has an investment-grade rating for its corporate debt while the credit rating of Enexus is expected to be non-investment grade, (2) Entergy is a larger and more diversified corporation than Enexus will be and has more assets and greater financial resources, revenues and income than Enexus will have, and (3) Enexus will have substantial debt on its balance sheet. The Department also viewed the level of support provided to EVY following the Spin-off to be inferior to current arrangements. Finally, the Department raised issues about the proposed ownership structure for EquaGen LLC and ENO with Entergy and Enexus each owning an indirect 50% interest and the possible effect of that structure on the decision-making process.

4. CVPS and GMP stated their belief that Enexus will be able to provide for the safe and reliable operation of the VY Station. They also stated their view that support arrangements for EVY in the Petitioners' original proposal were superior to the existing arrangements because these arrangements resulted in a slight improvement in the availability of funds for the safe and reliable operation of the VY Station. CVPS and GMP did express some concerns about the joint ownership structure for EquaGen LLC and ENO and the nature of support agreement obligations. They suggested the possibility of certain conditions on the Board's approval to address these concerns.

5. This memorandum of agreement addressed, among other things, the IBEW's concerns about the status of its collective bargaining agreement following the Spin-off and certain retirement plan matters.

6. Under the MOU, the Department agreed to recommend approval of the Proposed Actions on the basis of changes to the financial transactions related to the Spin-off, new support arrangements for EVY and the VY Station and an amendment to the agreement governing EquaGen LLC.

On February 3, 2010, the Department filed a request for a stay of the proceedings in this docket pending resolution of certain issues in Docket 7440. The Petitioners made a filing in opposition to the requested stay on February 19, 2010.

The Board sent a memorandum to the parties on April 2, 2010, requesting advice from the parties as to how to proceed in this docket in light of the decision of the New York Public Service Commission ("NYPSC") to deny an amended petition related to the Spin-off. Specifically, the Board asked the Petitioners to advise it whether they intended to withdraw or further amend their petition and asked the Department about the status of its request to stay the proceedings.

The Board also asked the parties to advise the Board, in the event that the Petitioners did not choose to withdraw or amend its petition, if any of them had any objection to the admission into the record of (i) the Memorandum of Understanding, dated October 6, 2009, between the Petitioners and the Department and the attachments thereto, (ii) the supplemental prefiled testimony of Dean Keller and Jay Thayer and the exhibits thereto, filed with the Board on October 26, 2009, (iii) the responses to the Board's inquiries of November 20, 2009, filed by the Petitioners on December 9, 2009, and the Department on December 24, 2009, including the attachments thereto, and (iv) Amendment No. 5 to Form 10 filed by Enexus with the Securities and Exchange Commission on November 20, 2009 ("Form 10"). The parties were also invited to advise the Board if there were any additional filed materials they believed should be included in the evidentiary record. The Board requested responses from the parties by April 13, 2010.

On April 13, 2010, the Department withdrew its request for a stay in this proceeding and indicated it had no objection to the admission into the record of the items set forth in the Board's April 2 memorandum. The Petitioners filed a letter with the Board on April 14, 2010, indicating that the Petitioners were still evaluating their options following the NYPSC decision.

On April 21, 2010, the Department filed a letter advising the Board that it was withdrawing its support for the MOU because of the denial of the related petition by the NYPSC. The Department also indicated that many of the Department's responses of December 23, 2009, to the Board's questions were no longer applicable or would require revision to reflect the current situation.

Given that none of the parties in this docket has objected to the admission of the items set forth in the Board's memorandum of April 2, 2010, all such documents are admitted into the record in this proceeding.

III. THE PROPOSED ACTIONS UNDER VERMONT LAW AND SCOPE OF BOARD REVIEW

The Petitioners request the Board's approval of certain actions, constituting the Proposed Actions, that the Petitioners plan to undertake in connection with the Spin-off. Enexus will acquire a 100% indirect ownership interest in EVY, the direct owner of VY Station, and a 50% indirect ownership interest in ENO, the operator of VY Station.⁷ In connection with the issuance of certain debt securities by Enexus, EVY will provide guaranties, pledges of its assets and assignments of material contracts as security for the debt of Enexus.⁸ EVY will change its name to Enexus Nuclear Vermont Yankee LLC. ENO will convert to a limited liability company owned by EquaGen LLC and will change its name to EquaGen Nuclear LLC.

The Proposed Actions require Board approval under a number of statutory provisions, namely 30 V.S.A. §§ 107, 108, 231 and 232. Section 107(a) governs acquisitions of controlling interests in companies subject to the Board's jurisdiction, such as EVY and ENO, and provides:

No company shall directly or indirectly acquire a controlling interest in any company subject to the jurisdiction of the public service board, or in any company which, directly or indirectly has a controlling interest in such a company, without the approval of the public service board.

Section 108(a) provides:

7. Enexus and Entergy will each have an indirect 50% ownership interest in EquaGen LLC and ENO following the Spin-off.

8. The Petitioners describe these obligations under their most recent proposal as follows:

Each of Enexus' subsidiaries, including EVY, will pledge their assets as collateral for and to secure their guarantee of the intercreditor indebtedness, which comprises the direct, lien-supported power-sales agreements . . . , the \$1.2-billion Secured Bank Facility and the up to \$800 million of additional, secured-financing authority that has been requested. All of Enexus' subsidiaries, including EVY, will also guarantee the up to \$3.5 billion of Enexus' long-term, unsecured bonds as well as up to \$500 million of shorter-term, unsecured bonds used to fund the Term LC Facility, but the subsidiaries, including EVY, will not pledge their assets to secure the bonds.

Response of Petitioners to Board Questions (12/9/09) at 30.

A domestic corporation subject to the jurisdiction of the public service board shall not mortgage nor pledge any of its corporate property nor issue any stocks, bonds, notes or other evidences of indebtedness without the consent of the public service board given on petition and after opportunity for hearing of the corporation or its incorporators and a finding of the board that the proposed action will be consistent with the general good of the state

Section 232(a) provides:

Except in connection with replacement or exchange, an individual, partnership or unincorporated association conducting such public service business shall not . . . mortgage or pledge any of its property or issue any bonds, notes or other evidences of indebtedness without the consent of the public service board, given on petition and after opportunity for hearing and a finding that the same will promote the general good of the state

The Proposed Actions will also require amendments to the Certificates of Public Good for EVY and ENO. Section 231(a) provides in applicable part: "For good cause, after opportunity for hearing, the board may amend or revoke any certificate awarded under the provisions of this section."

While it is contemplated that all the Proposed Actions will be undertaken in connection with the Spin-off, the acquisition by Enexus of controlling interests in EVY and ENO are the central components to the Spin-off as far as Vermont is concerned. Enexus will replace Entergy as the ultimate parent company of EVY as the merchant nuclear plant business is separated from the rest of Entergy. It is apparent that a favorable Board determination on the acquisition by Enexus of a controlling interest in EVY is essential to all of the other Proposed Actions for which Board approval is sought.

Section 107(b) provides that the Board may approve the acquisition of a controlling interest in a company subject to its jurisdiction only upon a finding that such acquisition will promote the public good. In various prior orders, we have enunciated certain concerns, criteria, considerations and factors that may be applicable in analyzing and evaluating a proposed acquisition.⁹ These include technical competence, financial soundness, fairness as a partner in

9. See Joint Petition of Green Mountain Power Corporation, Northern New England Energy Corporation, a subsidiary of Gaz Metro of Quebec, and Northstars Merger Subsidiary Corporation for approval of a merger, Docket No. 7213, Order of 3/26/07 at 9-10; Joint Petition of Bell Atlantic Corp. and GTE Corp. for approval of Agreement and Plan of Merger, Docket No. 6150, Order of 9/13/99 at 48-49; Joint Petition of New England Telephone &

transactions with Vermonters, the creation of efficiencies that will benefit customers, and the effect on competition in relevant markets.¹⁰ As we have previously noted, our analysis of relevant considerations and factors "is directed toward meeting the fundamental requirements under the statutes: that an acquisition must promote the public good."¹¹

In determining whether the proposed transfers of control will promote the public good, the Board needs to compare each of the relevant factors and concerns both before and after the Spin-off to reach a judgment as to whether the Proposed Actions, overall, will promote the public good. We also must be mindful of the consequences of not approving the Proposed Actions, which would not necessarily be a return to the *status quo*. The fundamental inquiry involves the relative ability, following the Spin-off, of Enexus and its subsidiaries to operate, maintain and support VY Station, and provide for its decommissioning, at least as competently, reliably, efficiently and fully as under the current ownership structure.

In evaluating the Proposed Actions, the Board assumes that the financial terms of the Spin-off and related transactions will be based on the terms described in the Petitioners' October 2009 prefiled testimony and the Form 10. Although the Department has now withdrawn its support for the MOU, the Board is also basing its findings on the assumption that the Petitioners will voluntarily adhere to the terms of the MOU. Finally, the Board assumes, for purposes of its determination, that no final decision has been made by the NYPSC on the related petition in New York. The Board believes that, by basing its conclusions on assumptions that are more favorable to a determination of public good, it will provide more guidance to both the Petitioners and the Department with respect to the Board's evaluation of any future restructuring proposals involving EVY, ENO and VY Station.

Telegraph Co. and Bell Atlantic Corp. for approval of a merger, Docket No. 5900, Order of 2/26/97 at 9-10.

10. Docket No. 6150, Order of 9/13/99 at 48-49.

11. Docket No. 7213, Order of 3/26/07 at 10.

IV. FINDINGS

1. EVY, a limited-liability company organized under the laws of Delaware, holds a Certificate of Public Good ("CPG") issued by the Board in Docket No. 6545 under 30 V.S.A. § 231 and is subject to the jurisdiction of the Board for purposes of 30 V.S.A. §§ 107, 108 and 232. Petition at 4.

2. ENO, a corporation organized under the laws of Delaware, holds a CPG issued in Docket No. 6545 under 30 V.S.A. § 231 and is subject to the jurisdiction of the Board for purposes of 30 V.S.A. § 107. Petition at 4.

3. Entergy Corporation is the ultimate parent corporation of EVY and ENO and is engaged, through its subsidiaries, in electric-power generation, production, transmission and distribution. Entergy indirectly owns and operates power plants with approximately 30,000 megawatts of electric generating capacity. Petition at 4; Curry pf. at 5.

4. In connection with the Spin-off:

(a) Enexus, through its subsidiaries, will acquire a 100% ownership interest in EVY, which will be renamed "Enexus Nuclear Vermont Yankee LLC."

(b) Entergy and Enexus will establish a nuclear-services joint venture company, Equagen LLC, that will own ENO. Entergy and Enexus will each have a 50% ownership interest in Equagen LLC. ENO will be converted from a Delaware corporation to a limited-liability company and will change its name to "Equagen Nuclear LLC."

(c) Entergy will distribute shares of common stock of Enexus to Entergy's shareholders and to a trust for the benefit of these shareholders, at which time Enexus will become a separate, publicly-traded corporation.

(d) EVY will guarantee certain debt of Enexus and will pledge its assets and assign material contracts as security for debt of Enexus.

Curry pf. at 7-9, 18; exh. EN-1 (Revised); exh. EN-2 (Revised); Response of Petitioners to Board Questions (12/9/09) at 30.

5. Following the Spin-off, the responsibilities and liabilities of Entergy regarding EVY will be assumed by Enexus. Curry pf. at 9.

6. EVY will need assistance from its parent or affiliated companies in the coming years to assist in capital expenditures. Parker pf. 5/29/08 at 25.
7. Enexus is expected to receive a non-investment grade credit rating in the BB/Ba category from Standard & Poor's ("S&P") and Moody's Investors Services ("Moody's"). Response of Petitioners to Board Questions (12/9/09) at 3.
8. S&P describes the credit quality of an issuer with a credit rating in the BB category as facing "major ongoing uncertainties and exposure to adverse business, financial or economic conditions which could lead to the obligor's inadequate capacity to meet its financial commitments." Parker pf. at 14.
9. Moody's rates debt issues in the Ba category when they are "judged to have speculative elements and are subject to substantial credit risk." Parker pf. at 14.
10. Entergy has an investment-grade credit rating from S&P and Moody's. Parker pf. at 10.
11. Almost all the owners of nuclear power plants that could be researched have investment-grade corporate or issuer credit ratings. Parker pf. at 10.
12. Enexus will be a smaller and less diversified parent corporation than Entergy now is. Enexus will have fewer assets, less revenue and less income. Parker pf. at 20-21; Parker reb. pf. at 6; Form 10 at 63-67.
13. Enexus will be a highly debt-leveraged company. Its debt-to-capital ratio on a pro-forma basis as of September 30, 2009, would be 87.5%. Form 10 at 70.
14. Enexus's debt leverage could make it more vulnerable to economic downturns, limit its ability to withstand competitive pressures, and restrict its ability to react to changes in the economy or its industry. Form 10 at 36.
15. Enexus will be subject to significant debt-service requirements associated with its anticipated debt of approximately \$4.2 billion following the Spin-off and the anticipated high interest rates on such debt. This debt service will utilize a significant portion of its cash flow and reduce the available cushion to address unexpected contingencies. Form 10 at 36, 63-67.
16. Enexus will need to refinance most, if not all, the debt issued in connection with the Spin-off over a period of several years as such debt matures. Enexus's debt leverage and credit

rating could limit its ability to obtain additional financing as needed in the future. Response of Petitioners to Board Questions (12/9/09) at 25-26; Form 10 at 35.

17. Enexus will be dependent for its revenue, cash flow, debt service and income on the safe and continued reliable operation of six merchant nuclear plants, all of which began commercial operations in the 1970s. Because of the age of these plants and some of their equipment, these plants may require significant capital expenditures in future years to continue to operate efficiently and reliably and to meet current environmental standards, and may be shut-down temporarily or permanently. Form 10 at 23, 27-28, 69, 102.

18. Following the Spin-off, there will be a \$700-million Support Agreement for the benefit of the direct owners of the six merchant nuclear plants, including EVY. This Support Agreement will replace the existing support arrangements among Entergy and its subsidiaries and will obligate Enexus to advance up to \$700 million, in aggregate, as necessary to pay "Operating Expenses or meet NRC requirements. "Operating Expenses are defined in the Support Agreement as "expenses to pay the pro rata expenses of maintaining the Facilities safely and protecting the public health and safety." The Support Agreement was required as financial assurance by the U.S. Nuclear Regulatory Commission in connection with the Spin-off. Curry pf. at 42; Curry reb. pf. at 10-11; exh. EN-3; tr. 1/29/08 at 174 (Curry).

19. To address the Department's concerns about the Support Agreement, the MOU provided for the establishment of a \$100 million working capital facility between Enexus and EVY under which EVY could borrow funds from Enexus for economic reliability investments at the VY Station. Keller pf. at 2-3; MOU at 4.

20. Under the MOU, there is no obligation for EVY to borrow and Enexus to lend funds under the working capital facility for reliability projects at the VY Station that "are cost justified and economic to EVY" but opposed by Enexus as not in its own best interest. The amount of funds Enexus would have available to it to support the VY Station would be unaffected by the existence of the working capital facility. Petitioners' Responses to Board Questions (12/9/09) at 38.

21. Under the MOU, Enexus will obtain and maintain "until VY Station is decommissioned to a Greenfield State" a letter of credit in the amount of \$60 million which would be available,

following the cessation of operations at the VY Station, to fund operating expenses of the VY Station and decommissioning costs. MOU at 5.

22. If Enexus does not have a credit rating "one notch below investment grade" or higher on January 1, 2014, Enexus will be required to obtain an additional letter of credit in the amount of \$50 million for the benefit of EVY, which may be utilized by EVY to provide cost-justified financial support for generation operations at the VY Station. MOU at 5-6; Keller supp. pf. at 3-4.

23. Enexus would have the repayment obligation on the letters of credit to the extent they are drawn down. The MOU does not obligate EVY to draw on the letters of credit as needed to support its operations. Petitioners Responses to Board Questions (12/9/09) at 40.

V. DISCUSSION

In evaluating the Spin-off and related transactions, the central question is whether the acquisition by Enexus of controlling interests in EVY and ENO promotes the public good. EVY and ENO were issued a Certificate of Public Good in Docket No. 6545 for EVY to own and ENO to operate VY Station.¹² There are few more important public trusts than that assumed by the direct and indirect owners of nuclear power plants to ensure their competent and reliable operation and decommissioning. The financial capabilities and resources of the owner are an important consideration, along with technical knowledge, experience, ability and managerial competence.

When it comes to the transfer of ownership of a nuclear power plant, the Board regards the relative financial capability and resources of the new owner as compared with the current owner as a more important consideration than it may be in the context of other acquisitions, particularly in light of the capital-intensive requirements of reliably operating and maintaining a nuclear plant. In this case, the relative financial capability of Enexus as compared with Entergy to support EVY and to make necessary investments to ensure the reliable operation of the VY Station is central to the Board's review.

12. Certificate of Public Good (6/13/02) in Docket No. 6545.

The purpose of the Spin-off is to separate the ownership and business operations of six merchant nuclear plants, including the VY Station, from the rest of Entergy¹³ through a distribution of Enexus common stock to Entergy's stockholders.¹⁴ Three of the other five plants are located in New York, one is in Massachusetts and one is in Michigan.¹⁵

No one disputes that Enexus will be a smaller and less diversified parent corporation than Entergy now is. Enexus will have fewer assets, less revenue and less income. Its core business will be the sale of power generated by merchant nuclear plants. While the focus of Enexus on merchant nuclear power may be attractive to potential equity investors, the dependence of Enexus on a non-diversified revenue stream from six 34-to-39-year old nuclear plants is a source of concern in assessing the public good for Vermont. What raises even more concern is the anticipated non-investment grade credit rating of Enexus and the amount of debt and the degree of leverage Enexus will assume as part of the Spin-off to fund payments to Entergy. All these factors create potential constraints on Enexus' relative ability to support the VY Station as compared with Entergy.

The Petitioners argue that not only will Enexus "be financially strong but that it will be better able to deploy its substantial financial and other resources to the VY Station" and its other facilities because of its core business focus on the operation of merchant nuclear plants and because of various support arrangements that would be available to EVY and the VY Station.¹⁶ A core business focus on the operation of merchant nuclear plants by its ultimate parent company

13. Entergy's remaining business will consist largely of its regulated utility business through which it operates generation facilities and delivers electricity to approximately 2.6 million customers in Arkansas, Louisiana, Mississippi and Texas. Curry pf. at 5.

14. Under the version of the Spin-off proposals most recently filed with the Board, Entergy will distribute about 80.1% of Enexus common stock to Entergy shareholders and will transfer about 19.9% to a trust which will retain such stock for the benefit of Entergy and its shareholders for up to 18 months before the trustee disposes of such shares in an exchange with or distribution to Entergy's shareholders. Neither Entergy nor the trustee will have any independent voting control with respect to the shares retained in the trust. Keller supp. pf. at 9-10; Form 10 at 44-46.

15. The six plants (with their 2008 capacity) are: Indian Point 2 (1028 MW); Indian Point 3 (1041 MW); Fitzpatrick (838 MW); Pilgrim (688 MW); Palisades (798 MW); and VY Station (605 MW). The in-service years for these plants all date from 1971 to 1976. Form 10 at 104.

16. Petitioners' Brief at 1-2.

may have some benefits for the support of the VY Station, but it is not at all apparent how real or significant those benefits would be or how to weigh them against the benefits of having a parent company with more assets and a larger and more diversified cash flow, revenue and income stream. The need to demonstrate tangible benefits is heightened even more when considering the risks associated with a parent company that is expected to have a non-investment grade credit rating and a significant debt burden to service following the Spin-off.¹⁷ Financial and economic developments since the July 2008 technical hearing in this docket have elevated the Board's concerns about such risks.

Many of the concerns associated with a financially weaker parent company could be overcome by strong support arrangements that ensured that funds for reliability investments at VY Station would both be available and would be certain to be drawn upon when needed. However, based on the Petitioners' own interpretations of contemplated support arrangements, it appears that the actual benefits of some of the most important of these proposed arrangements are largely illusory in the parent-subsidary context.

The Board first notes that the financial terms of the October 2009 proposal are an improvement over the proposal before the Board at the time of the technical hearing in July 2008. The Petitioners cite a \$1.0 billion reduction to \$3.5 billion in the amount of long-term unsecured bonds that will be issued by Enexus as part of the financing transactions related to the Spin-off.¹⁸ More significantly, it appears that the value of the transfers from Enexus to Entergy in connection with the Spin-off has been substantially reduced.¹⁹ The consequence is that Enexus will likely

17. While the material terms of the \$4.0 billion of debt (\$3.5 billion in senior notes and \$500 million to provide collateral for credit support obligations) Enexus plans to issue at the time of the Spin-off have not yet been determined, it is apparent the interest obligation on that debt will be substantial. For purposes of the pro forma information included in the Form 10, Enexus assumes such debt will carry a 9% interest rate. Form 10 at 70.

18. Keller supp. pf. at 9. In addition to the \$3.5 billion of senior notes, Enexus also plans to issue an additional \$500 million of unsecured notes to fund a facility Enexus will use to provide credit support for letters of credit. Keller supp. pf. at 10-11.

19. For example, under the original proposal, Enexus would issue \$3 billion of debt securities to Entergy, while in the more recent proposal Enexus would issue \$2 billion of debt securities to Entergy. See Form 10 at 65. The reduction in such transfers and the increased liquidity is "facilitated" by Entergy's retention in the exchange trust of a 19.9% interest in Enexus at the time of the Spin-off. Keller supp. pf. at 10-11.

have a positive rather than a negative shareholders' equity on its balance sheet after the Spin-off and significantly more liquidity than Enexus would have had after the Spin-off under the original proposal. Furthermore, the procurement of a secured bank facility in the amount of \$1.2 billion provides some additional comfort that Enexus may have a source of funds to make reliability investments in the VY Station as needed.²⁰

Even with these improvements, however, the fundamental concerns about the proposed Spin-off remain. Enexus is expected to receive a non-investment grade credit rating in the BB/Ba category from S&P and Moody's.²¹ Enexus will be a highly debt-leveraged company. Its debt-to-capital ratio on a pro-forma basis as of September 30, 2009, would be 87.5%.²² Its future will also be dependent on its ability to refinance its large debt on acceptable terms as it becomes due.²³ Enexus will also be subject to significant debt-service requirements associated with its large debt and high interest rates,²⁴ which will have significant effects on its cash flow and income and reduce the available cushion to address unexpected contingencies. As a company with substantial debt, a non-investment grade credit rating and refinancing needs, Enexus will be more vulnerable to the exigencies of the credit market than Entergy. Such concerns are heightened by the dependence of Enexus for its revenue, cash flow and income on the safe and continued reliable operation of six merchant nuclear plants, all of which are now between 34 and 39 years old, and on the still uncertain financial and economic environment.

The Petitioners' responses of December 9, 2009, were helpful in ameliorating some concerns. And the Petitioners also correctly point out that Entergy's regulated utility business imposes constraints on Entergy's ability to support its merchant nuclear business.

20. The Board notes, however, that restrictive covenants in the secured bank facility may impair the ability of Enexus to borrow funds under this facility at those times when such funds are most needed.

21. Response of Entergy VY to Board Questions (12/9/09) at 3.

22. Form 10 at 70.

23. Enexus acknowledges that the extent to which it is leveraged and its resulting credit rating could limit its ability to obtain additional financing as needed in the future. *See* p. 35 of Form 10.

24. On a pro forma basis for the year ended December 31, 2008, Enexus's interest expense would have been \$404 million. Form 10 at 70.

Yet, in the end, the Petitioners have not met their burden of demonstrating that the Proposed Actions are in the public good. Demonstrating that ownership by a spun-off Enexus may not be as risky as one may fear is not the same as demonstrating that such ownership is less financially risky and more beneficial than the current ownership structure. Given the relative financial strength of Enexus, its anticipated credit rating, the amount of its debt-leverage, its debt service and refinancing needs, and the many uncertainties related to its future business and the financial environment in which it will operate, the Board is unable to conclude that Enexus will be as capable as Entergy of providing financial support to EVY as necessary to fund investments and maintain the reliable operation of the VY Station. Overall, there is more potential risk, more uncertainty and less potential benefit for Vermont in approving the Proposed Actions than in denying approval.

Even the Petitioners do not contend that Enexus will be as financially strong as Entergy. Their argument portrays Enexus as a financially strong and focused parent company, but relies heavily on improved financial support arrangements for EVY to make the case that the Spin-off and related transactions will promote the public good.

Based on the testimony and other evidence presented, the Board is not persuaded that the proposed support arrangements will provide significant enhancements that would overcome the potential detriments of Enexus ownership. Even if the Petitioners were to adhere voluntarily to the support arrangements provided for in the MOU, these support arrangements appear to provide very limited additional assurance that support required by the VY Station will be available as necessary.

The value of a support arrangement is largely determined by the extent to which it either increases the obligation of Enexus to fund investments at the VY Station and/or increases the capabilities of Enexus to fund such investments under difficult circumstances. A substantial amount of testimony has been devoted to the proposed financial support arrangements, but significant uncertainties remain as to the actual value of these arrangements for EVY and VY Station.

The Department maintains the position expressed in its brief²⁵ that Enexus would not be obligated to loan funds to EVY under the \$700 million support agreement for reliability improvements that are not necessary to meet requirements of the Nuclear Regulatory Commission ("NRC").²⁶ Even the testimony offered by the Petitioners at the technical hearing appears to indicate that while EVY would be required to draw down funds under the Support Agreement to meet NRC requirements, it would not be required to do so in the absence of an NRC requirement.²⁷ In addition, there is substantial uncertainty as to whether the Support Agreement would be available for expenditures other than those necessary for public health and safety.²⁸

To address the Department's concerns about the support agreement, the MOU provides for the establishment of a \$100 million working capital facility between Enexus and EVY under which EVY could borrow funds from Enexus for economic reliability investments at VY Station. The existence of a \$100 million inter-company facility is cosmetically attractive and could have some minor procedural benefits in institutionalizing a process by which funds are advanced by a parent to its subsidiary. On closer examination, however, this \$100 million working capital facility would appear to be of little practical value in ensuring investments are made at VY Station (at least based on the Petitioners' interpretations of these arrangements²⁹). As a practical matter, any commitment of funds by Enexus which rests solely on the willingness of a wholly-owned subsidiary to enforce such commitment hardly counts as a meaningful obligation to advance funds. In addition, the \$100 million facility does not increase in any way Enexus' capacity to make funds available for VY Station as the amount of funds Enexus would have available to it for

25. Department Brief at 12-13.

26. Keller supp. pf. at 2.

27. Tr. 7/30/09 (Curry) at 10-29.

28. *Id.*

29. In their responses to Board inquiries about the MOU, the Petitioners indicated that the Department would not have an enforceable right under the MOU to require EVY to borrow (and Enexus to lend) funds under the working capital facility for reliability projects at the VY Station that "are cost justified and economic to EVY" but opposed by Enexus as not in its own best interest. Petitioners' Responses to Board Questions (12/9/09) at 38. See Finding 20.

VY Station is unaffected by the existence of the facility.³⁰ The Board also notes that the Petitioners did not respond when queried by the Board about the practical value and benefit of this \$100 million facility in the parent and wholly-owned subsidiary context.³¹

In substitution for existing support arrangements with EVY, which consist of two inter-company loan facilities totalling \$70 million from other Entergy subsidiaries and a \$60 million guarantee by Entergy related to these facilities, the Petitioners' original proposal and the MOU contemplate the use of letters of credit that could be used to support EVY to varying degrees before and after the cessation of operations at the VY Station.³² The securing of letters of credit from institutions with an S&P credit rating of "A" or higher to support the VY Station is preferable to an undertaking of support by Enexus or its other subsidiaries as it increases the likelihood that funds will be available.³³ However, based on the Petitioners' interpretation of the MOU, there is no new requirement or enforceable obligation that EVY draw on the letter of credit as needed to support its operations.³⁴ Any drawdown under the letter of credit by EVY will create a repayment obligation for Enexus.³⁵ As a consequence, drawdowns on the letter of credit by EVY will only occur when Enexus believes it is in its own best interest to permit such a drawdown or it is required to do so.³⁶

30. The Petitioners oppose any requirement that Enexus set aside \$100 million to fund the working capital facility. Petitioners' Responses to Board Questions (12/9/09) at 40.

31. Petitioners' Responses to Board Questions (12/9/09) at 38.

32. Under the MOU, Enexus would be required to maintain for the benefit of EVY a \$60 million letter of credit which would be available to fund VY Station's operating expenses following the cessation of operations of the VY Station and, under certain conditions, for decommissioning costs. In addition, if Enexus does not have an S&P credit rating of BB+ by January 1, 2014, Enexus must obtain a \$50 million letter of credit to provide financial support for the VY Station. Keller supp. pf. at 3-4; MOU at 5-6.

33. The Board notes that the MOU provides that the issuing institution of the \$50 million letter of credit is required to have an S&P credit rating of "A" or better, but no such requirement appears to exist with respect to the \$60 million letter of credit. MOU at 5-6.

34. Petitioners' Responses to Board Questions (12/9/09) at 40.

35. *Id.*

36. The Petitioners "do not believe that EVY will have an obligation enforceable by the DPS to draw upon the LOCs provided under the MOU." *Id.*

It is true as the Petitioners contend that Enexus has "the incentive to support investments in the VY Station that are economic and cost-justified as well as the obligation to make expenditures for the VY Station that are required by law."³⁷ But those incentives and obligations exist with or without the letters of credit. It is apparent from the Petitioners' responses that they do not believe that the obligation to obtain letters of credit increases in any way the obligation of Enexus to fund investments at the VY Station. Thus, in the end, an evaluation of the value of the letters of credit as compared to present arrangements rests on the difference in credit rating between the issuer of the letter of credit and Entergy.³⁸ The benefit derived does not appear sufficient to overcome the uncertainties and potential risks associated with the transfer of control of EVY by Entergy to Enexus.

The Board has been well aware throughout these proceedings that a disapproval of the Proposed Actions would not necessarily mean a return to the *status quo*. In particular, the "orphan plant" scenario³⁹ under which Entergy spins-off all its merchant nuclear plants except the VY Station seemed like a viable possibility in the event the NYPSC approved the Spin-off and the Board failed to approved the Proposed Actions.⁴⁰ In their brief, CVPS and GMP note that this outcome could result in a diminished interest in the VY Station by Entergy as it would be focusing its efforts on its regulated business. "Entergy may then have an incentive to sell the station, to shut it down or, at least, reduce the level of operational support that might otherwise be

37. *Id.*

38. It should also be noted that Entergy previously committed to obtain a third-party letter of credit for the benefit of EVY to cover spent-fuel expenses following cessation of operations at the VY Station in the event that Entergy Corporation's debt should be rated below investment grade. Order re Financial Assurances Compliance Filing (6/9/06), Docket 7082. As a company with a non-investment grade credit rating and the successor to Entergy's obligations under existing Board orders, Enexus would be subject to this requirement to obtain a letter of credit in any case. The circumstances under which the letter of credit contemplated by the MOU could be drawn upon are somewhat broader than under existing arrangements, which would be helpful if EVY was obligated or required to drawdown on the letter of credit.

39. Tr. 7/30/08 (Brock) at 144-146; tr. 7/29/08 (Curry) at 229-30; CVPS-GMP Brief at 7-8.

40. The decision of the NYSPC to deny the related petition may moot these concerns, though this decision could conceivably be reversed upon reconsideration or appeal.

available."⁴¹ CVPS and GMP conclude that "denial of the petition or imposition of unacceptable conditions may produce results for Vermont that are worse than the *status quo*."⁴²

On the other hand, the Board notes that Entergy will be a financially stronger company after the Spin-off than Enexus will be and, in fact, Entergy may be in some respects (such as a reduced debt burden) financially stronger than it currently is. Because of the change in Entergy's business focus following the Spin-off, Entergy may have an incentive to sell the VY Station. However, so long as the VY Station has economic value, Entergy will have an incentive to support the operations of the VY Station and maintain its value.⁴³ Overall, the orphan plant scenario, while not the best outcome, appears preferable to the transfer of control of the VY Station to Enexus.

The Board's decision to deny approval of the Proposed Actions is based on the Petitioners' failure to demonstrate that the acquisition by Enexus of a controlling interest in EVY would promote the public good. Accordingly, the Board did not address in its findings other aspects of the Proposed Actions. The Board observes, however, that it also has concerns regarding the joint indirect ownership of EquaGen LLC by Enexus and Entergy and the resulting split ownership of ENO and EVY. After the Spin-off, ENO will operate not only the merchant nuclear plants of Enexus, including the VY Station, but also the nuclear plants retained by Entergy. ENO will be a wholly-owned subsidiary of EquaGen LLC. EquaGen LLC will be jointly owned by Entergy and Enexus, as each will have an indirect 50% membership interest in EquaGen LLC. Accordingly, the ultimate ownership of EVY and ENO will be different. While Enexus will indirectly own 100% of EVY, it will indirectly own only 50% of ENO, with Entergy retaining the remaining half ownership interest. To varying degrees, GMP, CVPS and the Department have all expressed concerns about the effect of this organizational structure on decision-making given that Entergy and Enexus each will have a 50% ownership interest.⁴⁴ In the Board's view, the proposed 50/50

41. CVPS-GMP Brief at 7-8.

42. *Id.* at 8.

43. Tr. 7/30/09 (Parker) at 193-198.

44. Department Brief at 21-22. "The split ownership of the VY Station and its licensed operator will result in a cumbersome dispute resolution process, involving CEO meetings, mediation and arbitration. Brock supp. pf. at 5; tr.

ownership structure raises legitimate concerns about decision-making impasses and delays that may prevent timely implementation of necessary actions.

The MOU sought to address the possibility of unresolved operational decisions and disputes affecting the operation of the VY Station through a proposed amendment to the proposed joint venture operating agreement between subsidiaries of Entergy and Enexus.⁴⁵ The amendment provides that the performance of obligations by ENO and other EquaGen LLC subsidiaries, "including approval of budgets, business plans, labor agreements, regulatory filings, contracting and spending for Enexus owned facilities" will not require a vote of the directors or members of EquaGen LLC.⁴⁶ Both the proposed amendment and evidence previously offered by the Petitioners have lessened the Board's concerns about the potential negative effects in practice of the proposed ownership arrangements, although the Board would still view the proposed joint ownership of EquaGen LLC and ENO as a negative factor in assessing the benefits of the Spin-off.

In summary, the Petitioners have not demonstrated that an acquisition of a controlling interest in EVY by Enexus will promote the public good. In particular, the Board has significant concerns about the relative financial strength of Enexus, its anticipated credit rating, the amount of its debt leverage, its debt service and refinancing needs, and the adequacy of proposed support arrangements. These concerns are heightened by uncertainties related to the future business and the financial environment in which Enexus will operate. Based on these considerations, Enexus may be less capable than Entergy of providing financial support to EVY as necessary to fund investments to maintain the reliable operation of the VY Station.

VI. CONCLUSION

For the reasons discussed above, the Board finds that the Petitioners have not shown by a preponderance of the evidence that the transfer of control of EVY to Enexus and the other

7-29-08 (DeRoy) at 82-83)." CVPS-GMP Brief at 5. However, in their brief, CVPS and GMP also stated that any adverse impact of the split ownership is outweighed by the benefits of the proposed restructuring. *Id* at 7.

45. MOU at 6 and Attachment 1 to MOU.

46. Section 2.06 of Limited Liability Agreement of EquaGen LLC. *See* attachments 1 and 2 to MOU.

Proposed Actions will promote the public good of Vermont. Accordingly, the Board declines to approve the Proposed Actions.

VII. ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED by the Public Service Board of the State of Vermont that:

1. Pursuant to 30 V.S.A. §§ 107, 108, 231 and 232, the petition of Entergy Nuclear Vermont Yankee, LLC, Entergy Nuclear Operations, Inc., and Enexus Energy Corporation, for themselves and on behalf of others, for approval of an indirect acquisition by Enexus Energy Corporation of a controlling interest in Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc., a pledge of assets, guarantees, assignments of contracts, amendments to Certificates of Public Good, and the replacement of existing support arrangements is denied.
2. This docket shall be closed.

Dated at Montpelier, Vermont, this 24th day of June, 2010.

s/ James Volz)	
)	PUBLIC SERVICE
)	
s/ David C. Coen)	BOARD
)	
)	OF VERMONT
s/ John D. Burke)	

OFFICE OF THE CLERK

FILED: June 24, 2010

ATTEST: s/ Susan M. Hudson

Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.