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DIVISION OF SOCIAL JUSTICE  
ENVIRONMENTAL PROTECTION BUREAU

October 16, 2019

U.S. Nuclear Regulatory Commission  
Attn: John Tappert  
Office of Nuclear Material Safety and Safeguards  
Division of Rulemaking, Environmental, and Financial Support  
Washington, DC 20555-0001

Re: Indian Point Energy Center, Buchanan, New York – Planned License  
Transfer Application for Renewed Facility Operating License Nos. DPR-  
5, -26, and -64

Dear Mr. Tappert:

The Office of the Attorney General represents the New York State Energy Research and Development Agency, the New York State Department of Environmental Conservation, and the State of New York regarding decommissioning of the nuclear power reactors at the Indian Point Energy Center in Buchanan, New York (Indian Point).

At an October 17, 2019 meeting with NRC staff, representatives from Entergy Nuclear Operations, Inc. (Entergy) and Holtec International (Holtec) will discuss Entergy and Holtec's planned application to transfer the licenses and operating authority for Indian Point Units 1, 2, and 3 from Entergy to Holtec. The State generally supports the prompt and thorough decommissioning of Indian Point. However, given (i) the lack of publicly available financial information about Holtec and its subsidiaries, (ii) the likelihood that many of the key financial terms of the proposed transfer will be hidden from public view, (iii) Entergy and Holtec's likely reliance on general cost estimates rather than an on-the-ground characterization of site contamination at Indian Point, and (iv) the lack of a proven track record for Holtec's "fleet" decommissioning model, New York is unable to support the proposed license transfer at this time. Accordingly, we write to request that the Commission carefully and transparently evaluate the financial details of the proposed transfer. In the event the NRC approves the transfer, we request that it impose common-sense financial assurance

requirements designed to ensure the decommissioning process be completed even if project costs exceed estimates.

Before it grants a license transfer application, the Commission must determine that the proposed transfer “will provide adequate protection to the health and safety of the public.” 42 U.S.C. § 2232(a). Under the regulations governing power reactor license transfers, the applicant bears the burden to submit financial and other information showing the proposed transferee is “qualified” to hold the license. 10 C.F.R. § 50.80(c)(1); *see id.* §§ 50.33(f), 50.80(b)(1)(i). To carry that burden, the applicant must demonstrate, among other things, that the proposed transferee “possesses or has reasonable assurance of obtaining the funds necessary to cover” the costs associated with licensed activities and identify the source or sources of such funding. *Id.* § 50.33(f)(2). Under 10 C.F.R. § 50.30(k)(1), the applicant must also show how the proposed transferee intends to provide assurance that adequate funds will be available to fully decommission the facility. And 10 C.F.R. § 50.82 requires submission of a “*site specific* [decommissioning cost estimate], including the projected cost of managing irradiated fuel.” *Id.* § 50.82(a)(4)(i) [emphasis added].

Our expectation is that Entergy will propose to transfer the operating license for each unit at Indian Point to a Holtec subsidiary. These limited liability entities will engage a separate Holtec subsidiary, Holtec Decommissioning International, LLC (HDI), to operate the plant. HDI in turn will engage yet another Holtec subsidiary, Comprehensive Decommissioning International, LLC—a Holtec-controlled partnership with a subsidiary of the embattled Canadian construction firm SNC-Lavalin—to perform the actual work of decommissioning. These Holtec subsidiaries are not rate-regulated utilities and, to our knowledge, have no funding source other than the monies held in trust for decommissioning.

Given that Entergy will seek authorization to transfer the Indian Point licenses to a group of closely-held Holtec limited liability vehicles for which essentially no information is publicly available, that these entities have no obvious way of generating revenue in the predictable event that decommissioning costs exceed estimates, and that Holtec is proposing to simultaneously decommission six power reactors at four separate sites, the Commission must require a robust showing that the Holtec subsidiaries are financially qualified within the meaning of 10 C.F.R. §§ 50.33 and 50.80 and—especially—that Holtec will provide adequate financial assurance as required under 10 C.F.R. §§ 50.33 and 50.75. Accordingly, New York requests that the Commission obtain from the parties the corporate and financial information responsive to the requests set forth in the attached Appendix.

Regarding financial assurance, the Commission should require that the Holtec subsidiaries do more than simply rely on the Indian Point trust funds as proof of their solvency. Instead, the NRC should require proof of other robust financial assurance



mechanisms, including but not limited to parental guarantees, letters of credit, performance bonds, and escrow accounts, designed to address unanticipated expenses associated with radiological decommissioning, spent fuel management costs not reimbursed by the United States, and site restoration. And to ensure that the financial assurance analysis applies to on-the-ground conditions at Indian Point, the Commission should require that Entergy and/or Holtec perform—with State participation—a thorough characterization of actual site conditions at Indian Point *before* it determines whether Holtec has or has not provided adequate financial assurance.

To ensure that the license transfer proceedings are as transparent as possible, the Commission should make every attempt to disclose information submitted during the license transfer application process bearing on Holtec's ability to provide adequate financial assurance for decommissioning.

We expect that, as in the Pilgrim license transfer proceedings, Entergy will request an exemption—which the State strongly opposes and which the NRC should deny or, at least, condition—authorizing it to draw monies from the Indian Point decommissioning trust funds to subsidize non-decommissioning activities such as spent fuel management. Because the United States has failed to fulfill its obligation to provide a permanent national repository for the storage of spent nuclear fuel, *see e.g. System Fuels, Inc. v. United States*, 818 F.3d 1302, 1303–04 (Fed. Cir. 2016), the United States is the party responsible for the costs of on-site spent fuel management, not the New York ratepayers who faithfully funded the Indian Point decommissioning trusts.

Please take note that, upon Entergy and Holtec's filing of the Indian Point license transfer application, New York intends to file a petition for intervention in the license transfer proceeding and will seek a hearing regarding these and other issues.

Thank you for your careful attention to New York's concerns.

Truly yours,



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## Appendix

In evaluating whether Holtec and its limited-liability subsidiaries are financially qualified to hold the Indian Point licenses, NRC staff should review information responsive to the items listed below. This information should be made available to concerned members of the public under, as necessary, appropriately protective conditions. All terms in this Appendix are to be interpreted as defined in the Statement of Financial Accounting Standards No. 57, Appendix B.

1. A current corporate map of Holtec International with names and addresses, including Holtec International's immediate corporate family, all subsidiaries, all affiliates, all related parties, all predecessors, and all successors; all entities in which Holtec International or its subsidiaries, affiliates, or related parties maintain a controlling interest; all entities in which Holtec International or its subsidiaries, affiliates, or related parties are principal owners; all entities over which Holtec International or its subsidiaries, affiliates, or related parties have the ability to exercise significant influence or control over operating or financial policies; and all entities with which Holtec International or its subsidiaries, affiliates, or related parties have a substantial business relationship. Hereinafter, unless otherwise specified, the term "Holtec" shall refer to all entities identified in response to Question 1 herein.
2. A list of Holtec shareholders, including shareholder name, company affiliation(s), and percentage equity interest by company.
3. Holtec International's complete, audited fiscal year-end financial statements, including audit opinion, balance sheet, income statement, statement of cash flows, consolidating schedules, accompanying notes, and attachments. If Holtec International does not have audited financial statements, reviewed statements, including all accompanying notes, attachments, and consolidating schedules are acceptable.
4. Holtec Decommissioning International's complete, audited fiscal year-end financial statements, including audit opinion, balance sheet, income statement, statement of cash flows, consolidating schedules, accompanying notes, and attachments for most recent three fiscal years. If Holtec Decommissioning International does not have audited financial statements, reviewed statements, including all accompanying notes, attachments, and consolidating schedules are acceptable.
5. All documents concerning estimation of asset retirement obligations or loss contingencies associated with Holtec's nuclear plant operations, including but not limited to its radiological decommissioning activities; such documentation shall



be organized by nuclear plant and include the nature of the loss contingency or asset retirement obligation, potential magnitude of loss or retirement obligation, potential timing of loss or retirement obligation, maximum exposure to loss or maximum estimable retirement obligation, and the person within Holtec responsible for satisfying the loss contingency or asset retirement obligation.

- a. To the extent the asset retirement obligation or loss contingency is offset by assets held within one or more decommissioning trust funds, identify the value of the offset, the trust fund used to finance the offset, and the contractual or legal basis for the right of setoff.
6. All documents concerning financial assurance(s) associated with Holtec's asset retirement obligations, including but necessarily limited to the following fleet of nuclear plants:
    - a. Oyster Creek
    - b. Pilgrim
    - c. Palisades
    - d. Big Rock Point
  7. All documents sufficient to show any transfer of money, assets, real property, or any other consideration from the decommissioning trust fund(s) of any nuclear power plant wherein Holtec is the licensee, including but not limited to:
    - a. Oyster Creek
    - b. Pilgrim
    - c. Palisades
    - d. Big Rock Point
  8. All documents concerning estimation of loss contingencies associated with potential litigation to which Holtec is a party, including the nature of the loss contingency, potential magnitude of loss, potential timing of loss, the entity's maximum exposure to loss, and a table with an accounting of all litigation to which Holtec is a party, inclusive of the court in which the complaint was filed, the case or docket number, and the party or parties.
  9. Complete, audited fiscal year-end financial statements, including audit opinion, balance sheet, income statement, statement of cash flows, consolidating schedules, accompanying notes, and attachments for the most recent three fiscal years for the person that will serve as licensee of Indian Point. If this person does not have audited financial statements, reviewed statements, including all accompanying notes, attachments, and consolidating schedules are acceptable.

10. Holtec and HDI's Decommissioning Cost Estimate for costs associated with the operation, maintenance, and/or decommissioning of Indian Point, including but not limited to cost estimates associated with spent fuel management and site restoration activities.
11. All documents that have been or will be provided to the NRC to evince financial protection, including demonstration of financial qualification or proof of adequate financial resources, in support of Entergy and Holtec's application for transfer of the Indian Point licenses.
12. All documents that have been or will be provided to the NRC to evince financial protection, including demonstration of financial qualification or proof of adequate financial resources, in support of Holtec's request for exemption to access the Indian Point decommissioning trust fund.
13. Unredacted versions of the Equity Purchase and Sale Agreement or similar agreements between Holtec and its subsidiaries and Entergy and its subsidiaries, as such documents relate to Indian Point.
  - a. All documents regarding Holtec's assumption of liabilities pursuant to any of the aforementioned agreements.
  - b. All documents relating to or reflecting the estimation of potential liabilities associated with Holtec's acquisition of Indian Point.
  - c. Any communications or agreements with any financial institutions, state or federal regulatory agencies, or any other third parties regarding potential liabilities, including but not limited to asset retirement obligations, associated with Indian Point.
14. An unredacted copy of any IRS private letter rulings obtained by either party as relevant to the transfer of the Indian Point decommissioning trust fund(s) from Entergy and/or its subsidiaries to Holtec and/or its subsidiaries.
15. A list of jurisdictions in which Holtec, SNC-Lavalin or any of its subsidiaries, or any principals of the aforementioned entities have been debarred, have been the subject of a finding of nonresponsibility, or have been the subject of criminal or civil fraud investigation(s).