

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**BEFORE THE COMMISSION**

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In the Matter of

ENTERGY NUCLEAR OPERATIONS, INC.;  
ENTERGY NUCLEAR INDIAN  
POINT 2, LLC; ENTERGY NUCLEAR  
INDIAN POINT 3, LLC; HOLTEC  
INTERNATIONAL; and HOLTEC  
DECOMMISSIONING INTERNATIONAL,  
LLC; APPLICATION FOR ORDER  
CONSENTING TO TRANSFERS OF  
CONTROL OF LICENSES AND  
APPROVING CONFORMING LICENSE  
AMENDMENTS

Docket Nos.:

50-3

50-247

50-286

72-051

(Indian Point Nuclear Generating Station)

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**MOTION FOR LEAVE TO AMEND CONTENTIONS NY-2 AND NY-3**

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## INTRODUCTION

The State of New York (the State) respectfully seeks leave to amend its February 12, 2020 Petition for Leave to Intervene and for a Hearing.<sup>1</sup> The State moves to amend Contentions NY-2 and NY-3 by adding limited new bases and supporting evidence (New Bases) pertaining to the calamitous declines in the U.S. securities market that have occurred since the State's deadline to seek leave to intervene in this proceeding. The Applicants<sup>2</sup> base their financial qualification and decommissioning and spent fuel management funding assurance representations solely on the alleged adequacy of the Indian Point nuclear decommissioning trust funds *as of October 2019*. But as discussed below, those funds have likely suffered significant reductions in principal since the Applicants filed their license transfer application. As such, the Applicants' sole reliance on the funds for financial qualifications and decommissioning and spent fuel management funding assurance purposes fails to satisfy relevant NRC regulations. The New Bases thus raise a genuine dispute of material fact with the Applicants and otherwise meet regulatory standards for admission as set forth in 10 C.F.R. §§ 2.309(c)(1) and (c)(4).

## PROPOSED BASES AND SUPPORTING EVIDENCE

### CONTENTION NY-2

Contention NY-2 argues that the Holtec LLCs have, for a number of reasons, failed to demonstrate adequate decommissioning financial assurance and adequate

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<sup>1</sup> Petition of the State of New York for Leave to Intervene and for a Hearing (Petition) (Feb. 12, 2020) (ML20043E118).

<sup>2</sup> Capitalized terms and abbreviations in this motion shall have the meanings ascribed to them in the State's Petition.

funding for spent fuel management as required under applicable NRC regulations.<sup>3</sup>

The State proposes to add the following bases and supporting evidence to Contention NY-2:

- J. Because the Applicants have failed to establish that the license transfer application and supporting cost estimate account for likely substantial reductions in the Indian Point decommissioning trust fund balances since October 31, 2019, the Applicants fail to show adequate decommissioning or spent fuel management funding assurance as required under 10 C.F.R. §§ 50.33(f) and (k)(1), 50.54(bb), 50.75(b)(1) and (e)(1)(i), and 72.30(b).**

### **BASIS**

144. In license transfer proceedings, proposed licensees “must provide reasonable assurance that sufficient funds will be available to decommission the facility.”<sup>4</sup>

145. Proposed licensees must also demonstrate that they have the ability to fund necessary spent fuel management activities until such time as title to a facility’s spent nuclear fuel transfers to DOE.<sup>5</sup>

146. The Holtec LLCs purport to establish decommissioning funding assurance through sole reliance on the Indian Point nuclear decommissioning trust funds.<sup>6</sup> The Holtec LLCs also seek an exemption authorizing them to use trust monies to

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<sup>3</sup> See, e.g., Petition, Contention NY-2, ¶2.

<sup>4</sup> Exelon Generation Co. (Oyster Creek Nuclear Generating Station), CLI-19-06, 2019 WL 2632851, at \*3 (N.R.C. June 18, 2019); see 10 C.F.R. §§ 50.33(k)(1), 50.75(b), 50.80(b)(1)(i), 72.30(b).

<sup>5</sup> See 10 C.F.R. § 50.54(bb).

<sup>6</sup> See License Transfer Application (LTA) at 17–18.

fund necessary spent fuel management and site restoration activities.<sup>7</sup> Under the current proposal, the decommissioning trusts are thus the only source of funding for all license termination, spent fuel management, and site restoration activities at Indian Point.

147. The Holtec LLCs' representations of decommissioning and spent fuel management funding assurance are based on the alleged balances of the Indian Point decommissioning trusts as of October 31, 2019.<sup>8</sup>

148. In recent weeks, the global spread of the novel coronavirus has caused substantial economic turmoil, leading to steep declines in the U.S. securities market.<sup>9</sup> Heavy market losses have likely significantly reduced the balances in the Indian Point trust accounts. Accordingly, the Holtec LLCs' showing of decommissioning and spent fuel management funding assurance is inadequate.

### **SUPPORTING EVIDENCE**

149. The State incorporates the accompanying Supplemental Declaration of Chiara Trabucchi as if fully set forth herein.

150. Recent, extreme volatility in the U.S. securities market has put substantial downward pressure on investment returns.<sup>10</sup>

151. The license transfer application and supporting materials do not include

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<sup>7</sup> Request for Exemptions from 10 C.F.R. §§ 50.75(h)(1)(iv) and 50.82(a)(8)(i)(A) (Feb. 12, 2020) (ML20043C539).

<sup>8</sup> See LTA at 17.

<sup>9</sup> See Sam Potter and Justina Lee, *Diary of a Crisis: Inside Wallstreet's Most Volatile Week Ever*, Bloomberg (Mar. 20, 2020), available at <https://www.bloomberg.com/news/articles/2020-03-20/diary-of-a-crisis-inside-wall-street-s-most-volatile-ever-week>.

<sup>10</sup> See Trabucchi supp. decl. ¶4.

valuation statements for the Indian Point nuclear decommissioning trusts, nor do they describe the precise mix of securities comprising the trusts' investment portfolios. The master trust agreement for Units 1 and 2 and the master trust agreement for Unit 3, however, include broad investment parameters generally establishing the nature and composition of permitted investments.<sup>11</sup> While the master trust agreement for Units 1 and 2 allows the trustee broad latitude in selecting investments, the master trust agreement for Unit 3 is somewhat more restrictive.<sup>12</sup>

152. Assuming, conservatively, that both trusts are invested in accordance with the stricter, more risk-averse parameters set forth in the master trust agreement for Unit 3, and benchmarking portfolio performance against established market indexes, the trust funds may have decreased in value by over \$210 million since October 31, 2019.<sup>13</sup>

153. The license transfer application and supporting materials fail to account for these substantial losses.

154. Accordingly, the Holtec LLCs have failed to establish adequate decommissioning and spent fuel management funding assurance as required under NRC rules.

### **CONTENTION NY-3**

In Contention NY-3, the State argues that the Holtec LLCs have failed to establish that they are financially qualified to hold the Indian Point licenses as required

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<sup>11</sup> *See id.* ¶¶10–11.

<sup>12</sup> *See id.*

<sup>13</sup> *See id.* ¶¶4, 13–16, tables 1–3.



under applicable NRC rules.<sup>14</sup>

The State proposes to add the following bases and supporting evidence to Contention NY-2:

### **BASIS**

31. The Atomic Energy Act and NRC rules require proposed licensees to establish their financial qualification to hold an NRC license.<sup>15</sup>

32. The Holtec LLCs take the position that they are financially qualified to hold the Indian Point licenses solely based on the amount of money in the Indian Point nuclear decommissioning trusts as of October 31, 2019.<sup>16</sup>

33. In recent weeks, the global spread of the novel coronavirus has caused substantial economic turmoil, leading to steep declines in the U.S. securities market.<sup>17</sup> Heavy market losses have likely significantly eroded the principal of the Indian Point decommissioning trusts.

34. The Holtec LLCs have not demonstrated that the single-asset entities Holtec IP2 and Holtec IP3 will have access to any source of funding other than the Indian Point decommissioning funds. Nor have the Holtec LLCs demonstrated that, in the likely event decommissioning, spent fuel management, and/or site restoration costs exceed estimates, Holtec IP2 and Holtec IP3 will have the financial ability to procure additional financial assurance.

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<sup>14</sup> See Petition, Contention NY-3, ¶¶1–22.

<sup>15</sup> See 42 U.S.C § 2232(a); 10 C.F.R. §§ 50.33(f), 50.80(b)(1)(i)

<sup>16</sup> See LTA at 17.

<sup>17</sup> See Sam Potter and Justina Lee, *Diary of a Crisis: Inside Wallstreet's Most Volatile Week Ever*, Bloomberg (Mar. 20, 2020), available at <https://www.bloomberg.com/news/articles/2020-03-20/diary-of-a-crisis-inside-wall-street-s-most-volatile-ever-week>.

35. Particularly in this period of extreme market volatility, the Holtec LLCs' sole reliance on the trust funds to show adequate financial qualification is unreasonable and fails to comply with NRC regulations.

### **SUPPORTING EVIDENCE**

36. The State incorporates the accompanying Supplemental Declaration of Chiara Trabucchi as if fully set forth herein.

37. Recent, extreme volatility in the U.S. securities market has put substantial downward pressure on investment returns.<sup>18</sup>

38. The license transfer application and supporting materials do not include valuation statements for the Indian Point decommissioning trusts, nor do they describe the mix of securities comprising the trusts' investment portfolios. The master trust agreement for Units 1 and 2 and the master trust agreement for Unit 3, however, include broad investment parameters that generally establish the nature and composition of permitted investments.<sup>19</sup> While the master trust agreement for Units 1 and 2 allows the trustee broad latitude in selecting investments, the master trust agreement for Unit 3 is more restrictive.<sup>20</sup>

39. Assuming, conservatively, that both trusts are invested in accordance with the stricter, more risk-averse parameters set forth in the master trust agreement for Unit 3, and benchmarking portfolio performance against established market indexes, the trust funds may have decreased in value by more than \$210 million since

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<sup>18</sup> See Trabucchi supp. decl. ¶4.

<sup>19</sup> See *id.* ¶¶10–11.

<sup>20</sup> See *id.*

October 31, 2019 and by nearly \$250 million since December 31, 2019.<sup>21</sup>

40. The license transfer application and supporting materials fail to account for these substantial losses.

41. The Holtec LLCs make no showing that they have access to financial resources other than the monies in the Indian Point decommissioning trusts, or that they possess the financial ability to procure additional financial assurance in the likely event current economic conditions severely erode the corpus of the decommissioning trusts.

42. In view of the extreme current volatility in the securities markets, the single-asset Holtec LLCs have failed to establish that they are financially qualified to hold the Indian Point licenses as required under NRC rules.

## LEGAL ANALYSIS

### **I. The State's Contentions as Amended Meet the Good Cause Requirements at 10 C.F.R. § 2.309(c)(1)(i)–(iii).**

Under 10 C.F.R. § 2.309(c)(1), amended contentions will be entertained upon a showing of good cause. Specifically, the proponent must demonstrate that:

- “(i) The information upon which the filing is based was not previously available;
- (ii) The information upon which the filing is based is materially different from information previously available; and
- (iii) The filing has been submitted in a timely fashion based on the availability of the subsequent information.”<sup>22</sup>

As demonstrated below, Contentions NY-2 and NY-3 as amended fully comply with the requirements of 10 C.F.R. § 2.309(c)(1) and (4).

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<sup>21</sup> See *id.* ¶¶4, 13–16, tables 1–3.

<sup>22</sup> 10 C.F.R. § 2.309(c)(1)(i)–(iii).

**A. The information on which the amended contentions are based was not previously available.**

The New Bases flow from a precipitous drop in major U.S. securities indexes that occurred after the State filed its petition to intervene and request for a hearing in this proceeding. The market data giving rise to the New Bases was thus unavailable at the time the State filed its contentions, satisfying 10 C.F.R. § 2.309(c)(1)(i).

The Applicants filed their license transfer application on November 21, 2019. The NRC published notice of the completed application in the Federal Register on January 23, 2020.<sup>23</sup> Petitions to intervene and requests for a hearing with proposed contentions were due twenty days from the date of the notice, or February 12, 2020.<sup>24</sup> The State filed its petition on the due date. Major U.S. securities indexes peaked in mid-February 2020.<sup>25</sup> On March 11, 2020, the World Health Organization (WHO) announced that a novel coronavirus to which humans have no immunity had become pandemic.<sup>26</sup> U.S. securities indexes plunged.<sup>27</sup> Since then, the U.S. government has taken drastic actions to ensure liquidity.<sup>28</sup> In sum, in the weeks since the State filed

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<sup>23</sup> See 85 Fed. Reg. 3947 (Jan. 23, 2020).

<sup>24</sup> See *id.* at 3949; see also 10 C.F.R. § 2.309(b)(1).

<sup>25</sup> See Peter Wells, *S&P 500 Suffers Its Quickest Fall Into Bear Market on Record*, Financial Times (Mar. 12, 2020), available at <https://www.ft.com/content/d895a54c-64a4-11ea-a6cd-df28cc3c6a68> (noting that the S&P 500 peaked on February 19, 2020).

<sup>26</sup> See WHO media briefing (Mar. 11, 2020), available at <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19--11-march-2020>.

<sup>27</sup> See Ben Casselman, *Dow Ends 11-Year Bull Market as Coronavirus Defies Economic Remedies*, New York Times (Mar. 11, 2020), available at <https://www.nytimes.com/2020/03/11/business/economy/markets-plunge-coronavirus.html> (noting that the S&P 500 and the Dow Jones Industrial Average declined five and six percent respectively, and that the respective indexes had each declined nearly twenty percent since their mid-February peaks).

<sup>28</sup> See, e.g., U.S. Federal Reserve press release, *Coordinated Central Bank Action to Enhance the Provision of U.S. Dollar Liquidity* (Mar. 15, 2020), available at <https://www.federalreserve.gov/newsevents/pressreleases/monetary20200315c.htm>.

its petition, “financial markets have gone into freefall,” “volatility has spiked to levels last seen during the global financial crisis,” and “liquidity stress [has] spread.”<sup>29</sup> The starkly negative economic developments in which the New Bases are grounded post-date the State’s February 12, 2020 filing deadline.

**B. The information on which the amended contentions are based is materially different from information previously available.**

The State’s expert’s conservative analysis of recent economic data indicates that the Indian Point nuclear decommissioning trusts may have lost significant value since the State filed its petition.<sup>30</sup> At the time the State filed the petition, it based its financial qualification and decommissioning and spent fuel management funding assurance analyses on the Applicants’ representation that the Indian Point trusts contained approximately \$2.1 billion as of October 31, 2020.<sup>31</sup> Because the recent economic data and expert analysis informing the New Bases indicate that the trusts may have declined in value by more than \$210 million, and because the Holtec LLCs rely solely on the trusts to demonstrate both financial qualification and adequate funding assurance for radiological decommissioning and spent fuel management, the New Bases are materially different from the information provided in the Applicants’ license transfer application.

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<sup>29</sup> S&P Global, *Economic Research: COVID-19 Macroeconomic Update: The Global Recession Is Here and Now* (Mar. 17, 2020), available at <https://www.spglobal.com/ratings/en/research/articles/200317-economic-research-covid-19-macroeconomic-update-the-global-recession-is-here-and-now-11392265>.

<sup>30</sup> See Trabucchi supp. decl. ¶¶13–16, tables 1–3.

<sup>31</sup> See LTA at 17.

**C. The amended contentions have been submitted in a timely fashion based on the availability of the subsequent information.**

As discussed above,<sup>32</sup> the recent economic data that is the foundation for the New Bases became available during the course of March, 2020. Accordingly, the New Bases satisfy the Commission's general requirement that contentions be amended within thirty days from the date new information becomes available.<sup>33</sup>

**II. The State's Contentions as Amended Meet the Admissibility Requirements at 10 C.F.R. § 2.309(f)(1).**

The Holtec LLCs rest their financial qualification and decommissioning and spent fuel management funding assurance representations solely on the alleged adequacy of Indian Point decommissioning trusts as of October 31, 2020.<sup>34</sup> Because the gravamen of the New Bases is that the trusts have likely lost considerable value in recent weeks (and that the license transfer application and supporting materials do not take these losses into account), the New Bases present a genuine dispute of material fact with the Applicants. As required under 10 C.F.R. § 2.309(c)(4), Contentions NY-2 and NY-3 as amended thus meet the contention admissibility requirements as set forth in 10 C.F.R. § 2.309(f)(1).

The New Bases, supported by a detailed supplemental declaration from the State's economics and financial assurance expert,<sup>35</sup> allege that the Holtec LLCs fail to show adequate decommissioning and spent fuel management funding assurance

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<sup>32</sup> See Point I.A, *supra*.

<sup>33</sup> See Southern Nuclear Operating Co. (Vogtle Electric Generating Plant, Units 3 and 4), 74 N.R.C. 214, 218 n.8 (2011); DTE Elec. Co. (Fermi Nuclear Power Plant, Unit 2), LPB-17-1, 2017 WL 4310358, \*3 (N.R.C. Jan. 10, 2017).

<sup>34</sup> See LTA at 17–18.

<sup>35</sup> See 10 C.F.R. § 2.309(f)(1)(v).

or adequate financial qualification as required under 10 C.F.R. §§ 50.33(f) and (k)(1), 50.54(bb), 50.75(b)(1) and (e)(1)(i), and 72.30(b).<sup>36</sup> Specifically, the New Bases allege, on the basis of recent, extremely negative economic data, that the Indian Point decommissioning trusts have likely lost substantial value since the Applicants filed the license transfer application. Because the Holtec LLCs rely solely on the alleged trust balances as of October 31, 2019 for their showings of financial qualification and decommissioning and spent fuel management funding assurance,<sup>37</sup> substantial, unaccounted-for erosion of trust principal makes their reliance unreasonable.<sup>38</sup> As the Commission has long recognized, financial qualification and decommissioning funding assurance issues “go to the very heart” of the license transfer proceeding<sup>39</sup> and so fall well within the scope of the present proceeding.<sup>40</sup> Finally, the New Bases raise a material dispute with the Applicants: conservatively, recent declines in the U.S. securities markets may have reduced collective trust principal by over \$210 million. Either independently or in conjunction with the remaining bases in Contention NY-2, the New Bases undermine the Holtec LLCs’ showing of decommissioning funding assurance and so raise a material dispute of fact with the Applicants.<sup>41</sup> Likewise, the likely substantial erosion of trust principal described in the New Bases only reinforces the State’s argument, set forth in Contention NY-3, that the single-asset Holtec

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<sup>36</sup> *See id.* § 2.309(f)(1)(i).

<sup>37</sup> *See* LTA at 17–18.

<sup>38</sup> *See* 10 C.F.R. § 2.309(f)(1)(i)-(ii).

<sup>39</sup> North Atlantic Energy Serv. Corp. (Seabrook Station, Unit 1), 49 N.R.C. 201, 219 (1999).

<sup>40</sup> *See* 10 C.F.R. § 2.309(f)(1)(iii).

<sup>41</sup> *See id.* §§ 2.309(f)(1)(iv), (vi).

LLCs lack the financial resources necessary to provide additional financial assurance in the event of a decommissioning or spent fuel management-related cost overrun at Indian Point.<sup>42</sup>

## CONCLUSION

For the foregoing reasons, the Commission should grant the State's motion for leave to amend Contentions NY-2 and NY-3.

Respectfully submitted,

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Signed (electronically) by

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Executed in accord with 10 C.F.R.  
§ 2.304(d)

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<sup>42</sup> *See id.*



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(Indian Point Nuclear Generating Station)

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**CERTIFICATION OF SERVICE**

Pursuant to 10 C.F.R. § 2.305, I certify that I served the foregoing Motion for Leave to Amend Contentions NY-2 and NY-3 in the above-captioned proceeding via the NRC's Electronic Information Exchange on this 24th day of March, 2020.

Signed (electronically) by

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