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March 24, 2020

Email and U.S. Mail

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State of New York's Opposition to Holtec's February 12, 2020 Request for
Exemptions from 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(1)(iv)

Indian Point Nuclear Generating Units 1, 2 and 3
Docket Nos. 50-3, 50-247 and 50-286
Provisional Operating License No. DPR-5
Renewed Facility Operating License Nos. DPR-26 and DPR-64

Dear Messrs. Guzman and Tifft:

The Office of the Attorney General represents the State of New York in the above-referenced Nuclear Regulatory Commission (NRC) license transfer proceeding involving the decommissioning of the nuclear power reactors at the Indian Point Energy Center in Buchanan, New York (Indian Point). On February 12, 2020, the

State filed as a party to, and has sought intervention in, that proceeding. We submit this letter to provide comment on Holtec's February 12, 2020 request for regulatory exemptions that would allow it to use the Indian Point nuclear decommissioning trusts (NDTs) for non-decommissioning costs, namely, spent fuel management and site restoration. The exemptions sought by Holtec constitute the sole financial assurance for all work summarized in the PSDAR and are the foundation of Holtec's decommissioning scheme delineated in the license transfer proceeding.

On November 21, 2019, Entergy and Holtec applied to transfer the licenses and operating authority for Indian Point Units 1, 2, and 3 from Entergy to Holtec. In the State's October 16, 2019 letter, and as communicated during the NRC's October 17, 2019 pre-filing meeting with NRC staff and representatives from Entergy and Holtec, although the State supports the prompt and thorough decommissioning of Indian Point, it articulated a number of concerns, including (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. *See* October 16, 2019 Letter from J. Tallent, OAG to J. Tappert, NRC (ML19362A001). Holtec's December 19, 2019 PSDAR and DCE, followed by its February 12, 2020 exemption request, have borne out New York's concerns.

The State believes that the financial circumstances of the NDTs have materially changed since Entergy and Holtec's November 2019 filings. The description of the amount of funds in those trusts likely is now inaccurate and incomplete and, therefore, NRC must require that they be revised. 10 CFR § 50.9. Given the likely material changes to the NDTs because of post-November 2019 market volatility, at this time we oppose Holtec's February 12, 2020 exemption requests. We urge the NRC to defer consideration of Holtec's exemption requests unless and until: 1) Entergy and Holtec provide a revised license transfer application, PSDAR and decommissioning cost estimate (DCE) to the NRC and parties that accurately reflects the balance in each decommissioning trust as of April 1, 2020, and revises those documents to accurately account for the estimated costs of decommissioning, spent fuel management and site restoration; 2) Holtec commits to reimburse the ratepayer-funded NDTs with spent fuel settlement monies obtained from U.S. Department of Energy, which commitment is incorporated as a condition of the license transfer; and 3) Holtec commits to a dedicated funding assurance and/or designated allocation for site restoration as a condition of the license transfer.

With respect to the license transfer application and Holtec's embedded exemption assumptions, first and foremost, in light of the ongoing global economic contraction from the COVID-19 pandemic, the NRC must require current and com-

plete financial information regarding the status of the Indian Point NDTs from Entergy and Holtec. As indicated in the State’s March 24, 2020 motion to amend contentions in the underlying license transfer proceeding, funds such as the NDTs are likely to have suffered substantial losses in recent weeks. For example, depending on the underlying NDT investment allocations, valuation of the IP3 NDT has likely declined markedly, anywhere from nine percent (most conservative investments) to more than eleven percent (least conservative investments). *See*, 2020 03 23 Chiara Trabucchi Supplemental Declaration (Trabucchi Supp. Decl.), ¶¶4, 6, 13-16, 19-22 (attached). Accordingly, the balances reported in the November 2019 license transfer application have likely eroded substantially. In fact, as of March 23, 2020, losses to the \$2.1 billion in trust assets reported in the November 2019 license transfer application could range from \$213.5 million to \$248.9 million for the NDTs collectively. *Id.* Thus, based upon the limited NDT information provided in the license transfer application,¹ PSDAR, and DCE, the presumptive decline in the NDTs and resulting eroded fund balances could materially affect the application, including whether the NDTs continue to support the decommissioning scheme as proposed by Holtec.

As demonstrated in its February 12, 2020 petition for intervention, the State has substantive concerns regarding the financial underpinnings of the license transfer application. Those concerns have only increased following Holtec’s subsequent exemption requests, compounded by the significant contraction of financial markets during the past 30 days. We urge the NRC to require revised licensing materials to ensure 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). Fundamentally, the applicant must demonstrate 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.* 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]. The accuracy and completeness of the required financial showings, purported to have been satisfied by Entergy and Holtec prior to March 2020, are now subject to question.

¹ Information regarding the specific investment portfolios for the NDTs has not been provided as a component of the license transfer application or the exemption requests; therefore, the State is unable to present a more precise assessment of the NDTs’ status. That, however, is not the State’s burden. It is the responsibility of the applicants to demonstrate compliance with NRC regulatory requirements, and the duty of the NRC to ensure compliance. 10 CFR §§ 50.33(f) and (k)(1), 50.54(bb), 50.75(b)(1) and (e)(1)(i), and 72.30(b).

It is critical that the NRC require revised submissions from Entergy and Holtec before its consideration of both the license transfer application and exemption requests. As the State explained during the NRC's October 2019 pre-filing public meeting, and as set forth in our petition for intervention in the license transfer proceeding, transfer of the Indian Point licenses from Entergy to Holtec subsidiaries for decommissioning involves nested, aggressively private limited liability entities. These Holtec subsidiaries, which will hold the licenses and/or conduct the decommissioning, have no funding source save for the NDTs. And neither Entergy nor Holtec have offered any financial assurance to support the Holtec subsidiaries. The fact that Holtec is proposing to simultaneously decommission six power reactors at four separate sites underscores the need for the Commission to require a robust showing in the Indian Point license transfer proceeding that the Holtec subsidiaries are financially qualified within the meaning of 10 C.F.R. §§ 50.33 and 50.80, and that they will provide adequate decommissioning funding assurance as required under 10 C.F.R. §§ 50.33 and 50.75.

The current economic circumstances compel heightened NRC financial review. Moreover, as demonstrated by the current economic volatility, the Commission should require that the Holtec subsidiaries do more than simply rely on the Indian Point trust funds as financial assurance. As the State has advocated, the NRC should require that Holtec identify and agree to other available financial assurance mechanisms, including but not limited to parental guarantees, letters of credit, performance bonds, and escrow accounts, designed to address unplanned expenses associated with radiological decommissioning, spent fuel management costs not reimbursed by the United States,² and site restoration³. The Holtec exemption request at issue—authorizing it to withdraw funds from the Indian Point NDTs to fund non-decommissioning activities such as spent fuel management—should only be considered after submission of a revised license transfer application, PSDAR and DEC, and with a license condition to reimburse the ratepayer-funded NDTs with DOE

² 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.

³ 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.

spent fuel settlement payments, and to provide dedicated financial assurance for site restoration.

Very truly yours,



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