



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

REQUEST FOR ADDITIONAL INFORMATION

HOLTEC MASTER DECOMMISSIONING TRUST AGREEMENT

HOLTEC DECOMMISSIONING INTERNATIONAL, LLC

INDIAN POINT NUCLEAR GENERATING UNIT NOS. 1 AND 2

DOCKET NOS. 50-003, 50-247, AND 72-051

By letter dated August 10, 2022 (Agencywide Documents Access and Management System (ADAMS) Accession Nos. [ML22222A087](#)), Holtec Decommissioning International, LLC (HDI, the licensee) provided notification to the U.S. Nuclear Regulatory Commission (NRC) of its Amended and Restated Holtec Indian Point 2, LLC Master Decommissioning Trust Agreement for Indian Point Nuclear Generating Unit Nos. 1 and 2 (Proposed Amended IP2 Master Trust Agreement) in accordance with Title 10 of the *Code of Federal Regulations* (10 CFR) 50.75(h)(1)(iii). 10 CFR 50.75(h)(1)(iii) requires that written notification of any material changes to the decommissioning trust agreement be provided to the Director of the Office of Nuclear Material Safety and Safeguards (NMSS) at least 30 working days before the proposed effective date of the amendment.

The NRC staff reviewed the Proposed Amended IP2 Master Trust Agreement, and, the Director of NMSS objected by email dated September 22, 2022 ([ML22269A345](#)). Based on its review of the Proposed Amended IP2 Master Trust Agreement, the NRC staff needs additional information to determine whether it complies with the applicable regulations. To complete its review, the staff has provided a request for additional information (RAI) below. The RAI specifically focuses on Section 3.07 of the Proposed Amended IP2 Master Trust Agreement, which does not appear to be consistent with 10 CFR 50.75(h)(1)(ii). There are also several general observations on the Proposed Amended IP2 Master Trust Agreement, but these do not require specific response.

**Background**

The Proposed Amended IP2 Master Trust Agreement submitted by HDI on August 10, 2022, is intended to replace the Entergy Master Trust Agreement. In the Proposed Amended IP2 Master Trust Agreement, Section 3.07, "Investment of Funds", Paragraph (a) states the following:

The Company [i.e., HDI] shall have the authority to appoint one or more investment managers (which may include the Company, each an "Investment Manager") who shall have the power to direct the Trustee in investing the assets of the Funds; provided, however, that the Trustee shall not follow any direction which would result in assets of a Qualified Fund [i.e., funds subject to Internal Revenue Code of 1986, Section 468A, Nuclear Decommissioning Reserve Fund]

Enclosure

being invested in assets other than Permissible Assets as defined in the Special Terms. To the extent that the Company chooses to exercise this authority, it shall so notify the Trustee [i.e., the Bank of New York Mellon] and instruct the Trustee in writing to separate into a separate account those assets the investment of which will be directed by each investment manager. Upon the separation of the assets in accordance with the Company instructions, the Trustee, as to those assets while so separated, shall be released and relieved of all investment duties, investment responsibilities and investment liabilities normally or statutorily incident to a trustee; provided, however, that the Trustee shall not be relieved of the responsibility of ensuring that assets of a Qualified Fund are invested solely in Permissible Assets, as defined in the Special Terms. The Trustee shall retain all other fiduciary duties with respect to assets the investment of which is directed by Investment Managers.

However, 10 CFR 50.75(h)(1)(ii) states in relevant part:

The licensee ... [is] prohibited from being engaged as investment manager for the funds or from giving day-to-day management direction of the funds' investments or direction on individual investments by the funds, except in the case of passive fund management of trust funds where management is limited to investments tracking market indices.

The language in Section 3.07(a) appears to conflict with 10 CFR 50.75(h)(1)(ii) should HDI choose to exercise its option to become an "Investment Manager," as the Company (i.e., HDI) would be directing the Trustee on "investing the assets of the funds."

This notwithstanding, Section 3.07(h) of the Proposed Amended IP2 Master Trust Agreement further states:

The Company, its affiliates, and its subsidiaries are prohibited from being engaged as investment manager for the Funds or from giving day-to-day management direction of the Funds' investments or direction on individual investments by the Funds, except in the case of passive fund management of the Funds where management is limited to investments tracking market indices.

The NRC staff recognizes that this verbiage is taken from 10 CFR 50.75(h)(1)(ii), so the above language would be permissible; however, this section of the Proposed Amended IP2 Master Trust Agreement would appear to conflict with Section 3.07(a) if HDI chose to exercise its Investment Management option (and that option appears to conflict with 10 CFR 50.75(h)(1)(ii)).

### **RAI-1 Investment of Funds**

It is unclear who directs the Trustee regarding assets of a Qualified Fund being invested in assets other than Permissible Assets, as defined in the Special Terms. Specifically, the NRC staff finds Section 3.07 (a) and (h) of the Proposed Amended IP2 Master Trust Agreement in conflict with each other, which does not maintain the regulations in 10 CFR 50.75(h)(1)(ii).

### **Request:**

Please provide any supporting explanation or description, as appropriate of the HDI commitment to the "Authorized Person" as either the Company or an Investment Manager

(Section 3.02 of the Proposed Amended IP2 Master Trust Agreement), as well as whether HDI has any specific process on who directs activities for the Trustee.

### **RAI-2 Limitation on Use of Assets**

“Permissible Assets” as per “Special Terms”: Exhibit A of the Proposed Amended IP2 Master Trust Agreement defines Special Terms of the qualified nuclear decommissioning reserve fund. Subsection (c), Permissible Assets (Page 3), states that “any investment permitted for a qualified nuclear decommissioning reserve fund under section 468A of the Code and the regulations thereunder.” However, in referencing Section 468A of the Internal Revenue Code, the NRC staff could not find language directly regarding “a permissible asset or investment for a qualified decommissioning reserve fund” under the cited section of the Code.

### **Request:**

Please clarify what the Permissible Assets are per the Special Terms of the Proposed Amended IP2 Master Trust Agreement, and point out where they are defined under the cited Internal Revenue Code, to demonstrate that this language does not violate 10 CFR 50.75(h)(1)(ii).

### **General Observations**

- A. By letter dated August 10, 2022, HDI stated that the Proposed Amended IP2 Master Trust Agreement would “permit international investments for IP2.” However, the NRC staff could not locate any language explicitly stating that international investments would be permitted under “Permissible Assets” or anywhere else in the document. It would be useful to consider a revision to Article V, “Powers of the Trustee and Investment Manager,” Section 5.01(j), of the Proposed Amended IP2 Master Trust Agreement to make clear that, not only can the IP2 decommissioning trust invest in foreign securities, but the Trustee could also invest in futures, options, short sales, foreign exchange or foreign exchange contracts, etc. (if that is the case).
- B. Section 1(d) of Exhibit A to the Proposed Amended IP2 Master Trust Agreement defines “substantial completion of decommissioning” as the date that the maximum acceptable radiation levels mandated by the NRC with respect to a decommissioned nuclear power plant are satisfied by the Unit. The section goes on to state that if HDI requests a ruling from the Internal Revenue Service (IRS), then the IRS will make the determination on when “substantial completion of decommissioning” was completed. It would be useful to consider a revision to this section to clarify whether substantial completion of decommissioning at Indian Point Energy Center (IPEC) will be determined on a sitewide or unit-specific basis to meet the NRC requirements.
- C. On Page 3 and Page 13 of the Proposed Amended IP2 Master Trust Agreement, there are references to the Director, Office of Nuclear Reactor Regulation. It would be useful to consider a revision to clarify that only the NMSS Director will need to be addressed for this submittal as IPEC is now in a decommissioning status.