



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES
ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE
ENVIRONMENTAL PROTECTION BUREAU

October 7, 2020

Email and U.S. Mail

NRC Commissioners
c/o Annette L. Vietti-Cook
U.S. Nuclear Regulatory Commission
Mail Stop 0-16 B33
Washington, DC 20555-0001

Richard V. Guzman
Senior Project Manager
Division of Operating Reactor Licensing
Office of Nuclear Reactor Regulation
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
Richard.Guzman@nrc.gov

State of New York's Supplemental Comments in 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 Commissioners and Mr. Guzman:

As you know, 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 a petition seeking party status and leave to intervene in that proceeding. Additionally, on March 24, 2020, we provided comments to the

NRC regarding 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. As explained in the State's comments, the exemptions from NRC regulations sought by Holtec to use the ratepayer-funded decommissioning trusts for otherwise prohibited activities compounds the financial risks posed by the Holtec plans.

In the wake of NRC Staff's September 22, 2020 government-to-government and public information sessions, it is apparent that NRC Staff intends to approve the license transfer and related exemption request without waiting for the Commission to address the State's pending petition. According to NRC Staff, these approvals may occur as early as November 2020. The State objects to this practice of segmenting the Commission's regulatory and decisional processes, which is both contrary to sound administrative practice and harms the public interest. Here in particular, in view of the complexity of the three-reactor Indian Point site and the plant's history of significant radiological and other contamination, circumstances warrant deferring NRC Staff's decision on the license transfer application and exemption request until after the Commission rules on the State's petition to intervene.

The exemptions seeking NRC approval to use the NDTs for non-decommissioning purposes (e.g. site restoration and spent fuel management) form the lynchpin of Holtec's multi-faceted decommissioning strategy. Our chief concern is that NRC approval of these exemptions will magnify the State's risk exposure in two respects. First, Holtec has failed to evince the financial wherewithal necessary to safely and effectively conduct spent fuel management and site restoration absent access to the \$2.1B held in the three NDTs. Second, the absence of independent, verifiable financial wherewithal increases the likelihood that Holtec will be unable to secure financial assurances within the time frame and in the amounts necessary to comply with all State statutory and regulatory obligations. Without such assurances in place, the State will be unable to fully protect the public's interests in the event Holtec faces financial distress and is forced to seek bankruptcy protection. At minimum, the NRC should itself act to mitigate risk by conditioning any approvals of the license transfer application and exemption request on Holtec's adherence to all federal and State statutory and regulatory obligations, including without limitation demonstration of third-party financial assurances satisfactory to the State.

We reiterate our chief concern that NRC approval of the license transfer and exemptions will place the fate of the Indian Point facility, its attendant regulatory obligations, and the \$2.1B held in trust in the hands of undercapitalized limited liability shell corporations with no tangible assets independent of the \$2.1B trust, and lack of demonstrated decommissioning experience. The State supports the prompt and thorough decommissioning of Indian Point, but Holtec's August 10, 2020 response to NRC Staff's July 8, 2020 Request for Additional Information did little to

assuage the State's concerns about Holtec's solvency and capital adequacy. For these reasons, should the NRC decline to wait to approve the pending applications, we urge the NRC to impose conditions on any license transfer or exemption approval. The NRC should constrain its approvals of the license transfer application and exemption request on Holtec's adherence to state and federal law, including without limitation demonstration of third-party financial assurances satisfactory to the State. Our assessment remains that Holtec's plan, as submitted, presents unacceptable levels of financial risk to the public interest, including that of the State and the host communities.

Because the NRC is being asked to authorize use of the decommissioning trusts for purposes other than decommissioning the NRC should also direct Holtec to amend the trust agreements to explicitly designate the State as a beneficiary under the master trust agreement for each trust. The NRC should require Holtec to amend the trust agreements to require that: (a) no disbursements or payments be made from the trusts unless the trustee has given prior written notice of such disbursement or payments to the State, and (b) no such payment or disbursement shall be made if the trustee receives prior written notice of objection from the State. The current trusts afford the NRC these rights, and the State should have the same consideration. The Indian Point decommissioning trusts were originally funded by ratepayer contributions required by the New York State Public Service Commission (Units 1 and 2) and supplemented under the stewardship of the New York Power Authority (Unit 3). The State has a compelling interest in Holtec's use and management of those funds.

What is more, the NRC's outdated decommissioning rules do not make sufficient provision for the economic reality of merchant plants that lack parental corporate support. Neither Entergy nor Holtec have offered third-party financial assurance. Again, should NRC Staff decline to wait until after a Commission ruling on the State's intervention petition, it should also condition any license transfer and exemption approval by requiring Holtec to sequester federal spent fuel settlement monies obtained from U.S. Department of Energy to offset non-decommissioning costs charged to the ratepayer-funded NDTs. This will provide a safeguard for decommissioning success. Put another way, the NRC should not facilitate Holtec's repurposing of decommissioning trust monies in exchange for the unfettered windfall of spent fuel cost reimbursement when such costs are being reimbursed by the DOE.

Transfer of the Indian Point licenses from Entergy to Holtec subsidiaries for decommissioning involves nested, closely-held limited liability entities. These Holtec subsidiaries will hold the licenses and conduct the decommissioning and have no funding source save for the NDTs. The fact that Holtec intends to simultaneously decommission six power reactors at four separate facilities, including Indian Point, underscores the need for the NRC to insist on a more robust showing 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. We urge the NRC to require heightened financial review and Holtec funding assurances for the pending Indian Point license transfer and exemption request.

Very truly yours,



Lisa M. Burianek
Joshua M. Tallent
Channing Wistar-Jones
Assistant Attorneys General
Environmental Protection Bureau
(518) 776-2423

cc :

Douglas Tiftt
Regional State Liaison Officer
U.S. Nuclear Regulatory Commission
Region 1
2100 Renaissance Blvd., Suite 100
King of Prussia, PA 19406-2713
Doug.Tiftt@nrc.gov

By U.S. Mail:

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

Fred Miller
Office of Nuclear Material Safety and Safeguards
Division of Rulemaking, Environmental, and Financial Support
Financial Assessment Branch
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Bruce Watson
Office of Nuclear Material Safety and Safeguards
Division of Decommissioning, Uranium Recovery, and Waste Programs
Reactor Decommissioning Branch
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

By U.S Mail and electronic mail:

Janice Dean
Alyse Peterson
NYSERDA

Mark D. Sanza
Andrew Guglielmi
NYSDEC

Peter C. Trimarchi
Nixon Peabody LLC
Counsel for Entergy

Susan H. Raimo, Esq.
Counsel for Entergy Services, LLC

Eugene Kelly, Esq.
Harris Beach LLC
Counsel for Holtec

Jason Day
Pamela Cowan
Holtec International/CDI