UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE SECRETARY AND
THE COMMISSION

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 50-348 72-051 October 20, 2020

MOTION OF RIVERKEEPER, INC. TO SUPPLEMENT THE BASIS OF ITS CONTENTION WITH NEW EVIDENCE NOT PREVIOUSLY AVAILABLE

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I. INTRODUCTION

Pursuant to 10 C.F.R. § 2.309(c), Riverkeeper, Inc. ("Riverkeeper") respectfully moves to supplement the basis of its previously-filed contention regarding an application by Entergy Nuclear Operations, Inc. ("Entergy"), Holtec International ("Holtec"), and Holtec Decommissioning International, LLC ("HDI") to the U.S. Nuclear Regulatory Commission ("NRC" or "Commission") for approval of the direct and indirect transfers of control of Provisional Operating License No. DPR-5 and Renewed Facility Operating License Nos. DPR-26 and DPR-64 for IP1, IP2, and IP3, respectively, as well as the general license for the IPEC ISFSI. *See* Petition of Riverkeeper, Inc. to Intervene and for a Hearing (Feb. 12, 2020). The new evidence consists of documentation showing that there is an ongoing criminal investigation into Holtec, a new admission by Holtec that it is suffering significant financial harm and documented unlawful behavior by Holtec in Lacey Township. These documents provide further evidence of Holtec's inability to satisfy the requirements of 10 C.F.R. § 50.80 for a demonstration of character, competence, and integrity. They also show that Holtec is and will be financially strapped, to the point that its ability to meet any decommissioning funding demand beyond the Decommissioning Trust Fund is in serious doubt. Indeed, Holtec will be strongly incentivized to extract as much from the Fund as possible for itself without adequate regard for future funding needs.

Riverkeeper respectfully submits that Riverkeeper satisfies the NRC's standard for amendment of contentions in 10 C.F.R. § 2.309(c), because it merely adds to the basis of the existing contention, the information was not previously available and is materially different from previously available information, and is being submitted in a timely fashion.

II. FACTUAL BACKGROUND

On February 12, 2020, Riverkeeper submitted a petition to intervene and for a hearing to the Commission. Riverkeeper's contention remains that the license transfer application fails to satisfy 10 C.F.R. § 50.80(c) because it fails to demonstrate that the licensee transferees – HDI, Holtec IP2, and Holtec IP3 – have the requisite character, competence, and integrity, as well as the necessary candor, truthfulness and willingness to abide by NRC regulatory requirements. In its initial petition, Riverkeeper outlined other evidence bearing on 10 C.F.R. § 50.80(c), including, that 1) Holtec failed to disclose a safety significant design change to the NRC and failed to disclose a safety issue at the San Onofre Nuclear Generating Station, 2) Holtec bribed a Tennessee Valley Authority official, 3) Holtec overcharged TVA for Spent Fuel Management, 4) Holtec misled government officials in New Jersey to attain a $260M tax credit. *See* Petition of Riverkeeper, Inc. to Intervene and for a Hearing (Feb. 12, 2020). At the time of its petition, public information was limited concerning these events and Riverkeeper relied primarily on certain media publications from The Orange County Register, KPBS, POLITICO, and ProPublica. Since February, there has been active litigation concerning some of the events (namely 2 and 4, as described above) outlined in the initial petition. In this motion, Riverkeeper is now able to rely on court filings that post-date its original petition. Through new court filings Riverkeeper has learned that Holtec is currently under criminal investigation in New Jersey, is financially unsound, and has deliberately violated local laws during the decommissioning of Oyster Creek.

Riverkeeper believes the current criminal investigation into Holtec is for perjury, i.e. lying on a form to obtain tax credits from New Jersey, and fraud. Riverkeeper has also learned that Holtec is unable to pay back some of its debts due to cancellation of the tax credit due to the

fraud. In addition, a lawsuit filed by Lacey Township makes it plain that Holtec willfully violated local laws and did not stop certain work at Oyster Creek until the municipality obtained an injunction from a court. The evidence described below includes briefs filed by Holtec, New Jersey Economic Development Authority ("NJEDA"), an injunction from the Superior Court of New Jersey, Chancery Division Ocean County, and recently reported statements by Holtec's CEO. These new documents contain new facts that are material to the resolution of the matter currently before NRC.

A. Holtec Is Under Criminal Investigation in New Jersey

As described in Riverkeeper's Contention, Holtec made false statements in seeking tax benefits from the State of New Jersey in 2014 as part of the state's "Grow New Jersey" program.[1] Unknown to NJEDA at the time, Holtec misled the agency concerning a required disclosure as to whether the company had been subject to "[d]ebarment by any department, agency, or instrumentality of the State or Federal government."[2] In 2017, Holtec's application was approved by NJEDA.[3] In 2019, after becoming aware of Holtec's prior debarment with the Tennessee Valley Authority ("TVA"), NJEDA determined that the tax credits must be suspended pending a review for eligibility, after which Holtec sued NJEDA.[4] Specifically, in March of 2020 (after submission of Riverkeeper's Contention), Holtec filed a complaint against NJEDA, for breach of contract under the incentive agreement. The $260 million credit was to be paid annually over the course of ten years.[5] In the course of this litigation, NJEDA moved to dismiss

[1] N.J. Stat. Ann. § 34:1B-242 et. seq. (the "Grow Act" or "Grow NJ").
[2] Ex. A. (Def's Mot. to Dismiss. at 6, *Holtec Int. v. New Jersey Economic Development Authority*, N.J. Super. Ct. Law Div. (2020) (No. MER-L-696-20)).
[3] Ex. A. at 8.
[4] *See generally Holtec Int. v. New Jersey Economic Development Authority*, N.J. Super. Ct. Law Div. (2020) (No. MER-L-696-20).
[5] Ex. A. at 2.

Holtec's suit, and in so doing revealed that Holtec is currently the subject of an ongoing criminal investigation.[6] This investigation was seemingly confirmed by recent statements by Holtec's CEO Dr. Krishna Singh.[7]

New Jersey's criminal investigation into Holtec concerns the false statements that the company made to NJEDA as discussed above.[8] In a recently reported statement, Dr. Singh disputed the allegations of an ongoing criminal investigation into Holtec's false statements while concurrently indicating that the company is "cooperating" with the New Jersey Attorney General's office.[9]

Moreover, the two court filings by the State of New Jersey and Holtec show that Holtec is in financial distress because a significant source of its present and future funding are now in jeopardy. First, in response to Holtec's false representation to NJEDA about the prior bribery and debarment (*see* Riverkeeper's Contention at 16), NJEDA has halted the release of Holtec's tax credit for 2018. NJEDA is currently reviewing Holtec's eligibility to receive the 2018 installment and future installments in light of Holtec's false statements.[10]

Second, the civil complaint filed by Holtec against NJEDA states that Holtec relied on the expected $260 million tax credit when it entered into contracts to transfer the tax credit to other entities. In return, purchasers of the transferred credit lent Holtec money with similar value to the

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[6] *Id.*

[7] Ex. B. (Friedman et al., *Holtec under 'criminal investigation,' EDA says in since-redacted court filing*, Politico (Oct. 14, 2020) available at https://www.politico.com/states/new-jersey/story/2020/06/24/holtec-under-criminal-investigation-eda-says-in-since-redacted-court-filing-1294345)

[8] N.J. Stat. Ann. § 34:1B-242 et seq (the "Grow Act" or "Grow NJ")

[9] Friedman *Supra* note 6

[10] Ex. A. (Def's Mot. to Dismiss. at 2 *Supra* note 2.) (In the June 2020 filing, NJEDA states that its review into Holtec's continued eligibility is still ongoing. Riverkeeper is unaware of any final agency decision by NJEDA on Holtec's 2018 tax credit or continued eligibility.)

$260 million credit.[11] Currently, while its eligibility for the tax credit is under review by NJEDA, Holtec is unable to pay back the purchasers.[12] If the tax credit is not restored, Holtec's future financial position may be significantly damaged. Holtec itself states that it will be "significantly harmed on an annual basis" if NJEDA reverses its tax credit approval.[13] NJEDA states in its motion to dismiss the case, that "the TVA debarment itself, and, more significantly, the misrepresentation about the debarment, may constitute an event of default under Section 14 of the Incentive Agreement that would entitle NJEDA, in its sole discretion, to withhold the 2018 tax credit, and any future tax credits, and seek rescission of credits previously issued."[14]

The ongoing criminal investigation into Holtec's blatant misrepresentation to NJEDA and Holtec's previously undisclosed financial stress are only further indication of Holtec's lack of trustworthiness, reliability and ability to carry out the decommissioning in a safe manner. This evidence is further confirmation that Riverkeeper's contention should be admitted and the license transfer application denied.

B. Holtec Violated the Law in Lacey Township

Based on court filings that post-date the February 12th contention, Riverkeeper is now aware that Holtec was found to have intentionally violated the law in Lacey Township and continues to demonstrate an unwillingness to abide by local laws. In Fall of 2019, Holtec submitted a proposal and application for site plan approval to the Lacey Township Planning Board.[15] The proposal was to build a large concrete pad to transfer spent fuel and storage

[11] Ex. C. (Pl's. Compl. at 17-18, *Holtec Int. v. New Jersey Economic Development Authority*, N.J. Super. Ct. Law Div. (No. MER-L-696-20))
[12] *Id.*
[13] Ex. C. at 18.
[14] Ex. A. (Def's Mot. to Dismiss. at 3 *Supra* note 2)
[15] Ex. D. (Pl's Compl. at 4, *Township of Lacey v. Holtec International*, N.J. Super. Ct. Ch. Div. Ocean County (2020) (No. OCN-C-76-20)).

operations to another part of the Oyster Creek Facility's decommissioning operation.[16] In early 2020, Holtec withdrew its application to the Lacey Township Planning Board; however, the company went forward anyway with construction work at the site. Only now Holtec was not constructing the pad expansion, but instead a “cask transfer pit” (CTP).[17] On or around March 27, 2020, Lacey Township became aware of Holtec’s unlawful work and issued a Stop Work Order because Holtec proceeded to construct the CTP without the necessary planning board approval according to sections 285-1 or 297-17 of the Lacey Township Development Code.[18] Holtec ignored Lacey Township’s lawful order and proceeded to construct the CTP for the purpose of storing more fuel rods. Holtec continued the work until Lacey Township, in order to protect its residents, sought and obtained injunctive relief restraining Holtec from continuing its illegal work until it obtained the necessary development permits. On June 2, 2020, the Superior Court of New Jersey, Chancery Division Ocean County, issued an order enjoining Holtec from "continuing all work at the facility until permits and approvals are granted."[19] In June 2020, Holtec was found to have violated the law in Lacey Township by failing to obtain planning permission to construct the new CTP at the former Oyster Creek Nuclear Generated Facility.[20]

Only after it began the work in blatant disregard of a Stop Work Order and received an injunction from the courts, did Holtec file an application to the Lacey Township Planning Board

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[16] Ex. E. (Def. Opp. To Plaintiff’s Comp. at 3.. *Holtec International et al. v. Township of Lacey, et al.*, United States District Court for the District of New Jersey Vicinage (2020) (No. 3:20-cv-12773)).
[17] Ex. at 3.
[18] Ex. at 6.
[19] Ex. F. (Ord. Imposing Temporary Restraints, *Township of Lacey v. Holtec International,* N.J. Super. Ct. Ch. Div. Ocean County (2020) (No. OCN-C-76-20 (the order stated that the only work that could continue on the site was "work which has been permitted by the Nuclear Regulatory Commission”)).
[20] *Id*.

for the proposed CTP.[21] Based on outstanding concerns regarding spent fuel storage, the Lacey Township Planning Board denied Holtec's application as submitted.[22] On September 16, 2020, rather than work to resolve the dispute with Lacey Township, Holtec filed a lawsuit in federal court against Lacey Township seeking to enjoin the township from "any action . . . to stop or interfere" with the company's efforts to build out its dry cask storage operation.[23] Pursuant to a September 17, 2020 order to show cause for the preliminary injunction and temporary restraining order, this matter is currently being briefed by the parties.[24]

In summary, Holtec proceeded illegally and in complete disregard of a notice from a municipality that it was in violation of the law. The fact that Holtec would intentionally break the law despite knowing that the trustworthiness and reliability of the company was at issue in this proceeding further confirms that it cannot be trusted to abide by NRC regulatory requirements. Furthermore, the latest suit against Lacey Township demonstrates Holtec's pattern of disregard for local law and that Holtec is unfit to hold an operating license for the Indian Point Nuclear Generating Facility.

III. RIVERKEEPER SATISFIES NRC'S STANDARD FOR AMENDING CONTENTIONS

Under § 2.309(f)(2), "participants may file new or amended environmental contentions after the deadline in paragraph (b) of this section . . . if the contention complies with the requirements in paragraph (c) of this section." Therefore, § 2.309(f)(2) operates to allow for

[21] Ex. G. (Pl's Comp. at 4. *Holtec International et al. v. Township of Lacey, et al.*, United States District Court for the District of New Jersey Vicinage (2020) (No. 3:20-cv-12773)).
[22] Ex. G. at 5.
[23] Ex. G. at 18.
[24] Ex. H. (Order to show cause. *Holtec International et al. v. Township of Lacey, et al.*, United States District Court for the District of New Jersey Vicinage (2020) (No. 3:20-cv-12773)).

amended contentions "in proceedings for the direct or indirect transfer of control of an NRC license," beyond the deadline, if a party's amendment satisfies § 2.309(c).

The Commission's regulations allow for a new contention to be filed upon a showing that:

(i) The information upon which the amended or new contention is based was not previously available;

(ii) The information upon which the amended or new contention is based is materially different than information previously available; and

(iii) The amended or new contention has been submitted in a timely fashion based on the availability of the subsequent information.

10 C.F.R. § 2.309(c)(i)-(iii).

Riverkeeper satisfies 10 C.F.R. § 2.309(c)(i)-(iii). These elements are satisfied because the material upon which Riverkeeper's amended contention is based on was not previously available, is materially different than the information used in Riverkeeper's initial petition, and is submitted in a timely fashion.

A. The Information Relied on by Riverkeeper Was Not Previously Available

The information outlined in section III of this motion was not available to Riverkeeper until late June of 2020 when: 1) NJEDA filed its motion to dismiss in the ongoing civil suit against Holtec and disclosed the ongoing criminal investigation, and 2) the Superior Court of New Jersey granted Lacey Township injunctive relief finding that Holtec had violated the law. The evidence of an ongoing criminal investigation into Holtec's misrepresentation with NJEDA and a Court order finding that Holtec violated the law, is based on court filings that post-date any information available to Riverkeeper prior to its February 12, 2020 petition to intervene and request for a hearing.

B. The Information Relied on by Riverkeeper is Materially Different

The evidence proffered in this motion also represent materially different information than what is currently before the Commission in this proceeding insofar as it shows both an *active* criminal investigation and a blatant disregard for a legal notice, which is directly relevant to whether Holtec can be trusted to abide by NRC regulatory requirements.

C. The Information Relied on by Riverkeeper is Timely Submitted

NRC regulation 10 C.F.R. § 2.309(c)(iii) requires petitioners to demonstrated that "amended or new contention has been submitted in a timely fashion based on the availability of the subsequent information." The term "timely" is not defined in the regulation, other than to say it must be "based on the availability of the information." Riverkeeper respectfully submits that the information cited in its contention is timely submitted, because it presents a set of developments, related to Holtec's business conduct in the State of New Jersey, that were not publicly known at the time that Riverkeeper filed its hearing request, and that are currently pending and unresolved. Holtec disclosed in June of 2020 that it was under criminal investigation. No report has been made regarding the investigation, and thus it is presumably ongoing. Holtec also revealed in June that its eligibility for a significant state tax credit is in jeopardy. Litigation regarding Holtec's suspended tax credit is ongoing, and thus Riverkeeper has timely raised the issue. Finally, litigation between Holtec and Lacey Township, New Jersey, is also pending and remains unresolved.

Riverkeeper also respectfully submits that the timeliness of its submission should be judged in relation to the overall scheduling framework of this proceeding. Riverkeeper submitted its hearing request on February 12, 2020; and the last pleading was submitted on March 23, 2020. Under NRC regulations, a decision on admissibility of contentions should have been

rendered by the Commission within 45 days of the last pleading, or by mid-May. 10 C.F.R. § 2.309(j). The fact that the Commission has not ruled on Riverkeeper's hearing request, or even granted itself an extension to do so as contemplated by 10 C.F.R. (j), suggests that the Commission considers this to be a complex proceeding requiring more extensive deliberation than the usual type of license transfer application.

As the Commission has previously stated, it expected that most license transfer applications could be expedited and decided within six to eight months of the notice of receipt of an application. Proposed Rule, Streamlined Hearing Process for NRC Approval of License Transfers, 63 Fed. Reg. 48,644, 46,646 (Sept. 11, 1998). But the Commission also recognized that some license transfer proceedings may raise complex issues, and therefore require additional procedures. *Id.* at 46,645. Here, Riverkeeper has raised extremely serious concerns regarding allegations of criminal conduct against Holtec. Criminal conduct bears on Holtec's qualifications to take responsibility for decommissioning of the Indian Point site. Thus, by bringing the new information to the Commission's attention during its pendency before state agencies and federal courts, Riverkeeper has timely acted.

Riverkeeper's supplement to its contention is being submitted in a timely fashion based on the availability of the subsequent information. The new evidence establishing an ongoing criminal investigation into Holtec, Holtec's significant financial harms, and its intentional violation of the law in Lacey Township was not made available to Riverkeeper or the public until late June of 2020. NRC regulations do not set a specific number of days whereby one can measure or determine whether a contention or new evidence is "timely." However, when considering the significant effort involved in (a) identifying new information, (b) assembling the required documents, and then (c) drafting a motion that satisfies the requirements set forth in 10

C.F.R. § 2.309, NRC should apply an appropriate standard that allows the Commission to have full information before it when taking difficult and highly consequential decisions. This is especially true here considering the serious safety and public health concerns raised by the evidence outlined above.[25] Here, the applicant's ability to follow federal law and NRC safety regulations is doubtful based its demonstrated record of bribery, misrepresentations, and failure to operate in accordance with local laws and regulations.

IV. CONCLUSION

For the foregoing reasons, the Commission should admit the foregoing evidence in considering Riverkeeper's Contention and the license transfer.

Respectfully submitted,

___/signed electronically by/__

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[25] Criteria for Reopening Records in Formal Licensing Proceedings, 51 Fed. Reg. 19, 535, 19, 536 (May 30, 1986) (Final Rule)

CERTIFICATE OF COUNSEL PURSUANT TO 10 C.F.R. § 2.323(b)

I certify that on October 19, 2020, I contacted counsel for all parties to this proceeding and the NRC in a sincere effort to resolve the issues raised in this motion. Counsel for applicant stated that it does not consent and will decide whether to oppose the motion upon viewing the contents. Counsel for the State of New York stated that it would decide how to respond upon seeing the motion.

/signed electronically by/
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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE COMMISSION

In the Matter of	)	
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CERTIFICATE OF SERVICE

I certify that on October 20, 2020, I posted copies of the foregoing RIVERKEEPER'S MOTION TO SUPPLEMENT THE BASIS OF ITS CONTETION WITH NEW EVIDENCE NOT PREVIOUSLY AVAILABLE on the NRC's Electronic Information Exchange System.

/signed electronically by/
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Exhibit A

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HOLTEC INTERNATIONAL, Plaintiff, - against - NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY, Defendant.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION MERCER COUNTY DOCKET NO.: MER-L-696-20 *Civil Action*

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS THE COMPLAINT

On the Brief:
Ricardo Solano, Jr., ID # 041121999
Eric Corngold (*pro hac vice admission pending*)
Nora Bojar (*pro hac vice admission pending*)
Blair R. Albom (*pro hac vice admission pending*)

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Defendant New Jersey Economic Development Authority ("NJEDA") respectfully submits this memorandum of law in support of its motion to dismiss the Complaint filed by Plaintiff Holtec International ("Holtec" or "Plaintiff"). For the reasons that follow, Holtec has failed to plead valid claims with respect to each of the counts alleged in its Complaint. Accordingly, the Complaint should be dismissed in its entirety pursuant to N.J. Ct. R. 4:6-2(e).

PRELIMINARY STATEMENT

Through its Complaint, Holtec seeks to compel NJEDA to approve a tax credit for the 2018 tax year pursuant to an incentive agreement awarded to it under the Grow New Jersey Assistance Act, N.J. Stat. Ann. § 34:1B-242 *et seq* (the "Grow Act" or "Grow NJ"). NJEDA, however, has not denied Holtec the tax credit at issue.

Rather, as Holtec concedes in its Complaint, the approval of Holtec's 2018 tax credit is pending while NJEDA evaluates Holtec's continued eligibility for a Grow NJ award, because of the company's recent admission that it made false statements to NJEDA when the company applied for the award. Holtec's misrepresentations – which include its failure to disclose a prior government debarment by the Tennessee Valley Authority (the "TVA") for bribing an official of that agency –

first came to light during an investigation conducted by the Governor's Task Force on the Economic Development Authority's Tax Incentive Program, and they are now the subject of an ongoing criminal investigation.

Holtec alleges that NJEDA does not have the authority to conduct a review of the facts and circumstances surrounding the company's misrepresentations, and that by withholding the 2018 tax credit pending such review, NJEDA is in breach of its obligations under the incentive agreement between the parties, dated February 2, 2017 (together with amendments thereto, the "Incentive Agreement"). Yet under the clear and unambiguous terms of the parties' contract and the Grow program regulations, NJEDA has not only the authority to perform this review, but the obligation to do so.

In Count One, Holtec alleges a breach of Section 11 of the Incentive Agreement, which requires NJEDA to authorize the issuance of a tax credit for the relevant tax year "upon satisfactory review" of information submitted annually by Holtec attesting to the company's compliance with the Incentive Agreement and Grow program regulations. On the facts as pled, there has been no breach of this provision. NJEDA's review is still ongoing, and NJEDA is not required to authorize the issuance of a credit absent a determination by NJEDA that Holtec

is in compliance with the Incentive Agreement and Grow program regulations.

Holtec contends that NJEDA's continued review "is without basis in law or fact" (Compl. ¶ 114) because the company's report "was satisfactory" (Compl. ¶ 111). But this is belied by the facts as pled. Holtec admits that it represented in its application that it had not been debarred by "any department, agency, or instrumentality of the State or Federal government" (Compl. ¶¶ 67-68). And Holtec admits that this representation was false (Compl. ¶ 64). These admissions are fatal to Holtec's Complaint. The TVA debarment itself, and, more significantly, the misrepresentation about the debarment, may constitute an event of default under Section 14 of the Incentive Agreement that would entitle NJEDA, in its sole discretion, to withhold the 2018 tax credit, and any future tax credits, and seek rescission of credits previously issued.

Specifically, the Incentive Agreement – the contract that is the subject of Holtec's Complaint – expressly states that if "[a]ny representation or warranty made by the Company [*i.e.*, Holtec] in its Application is false, misleading, or inaccurate in any material respect," then it shall constitute an "Event of Default," authorizing NJEDA, in its sole discretion, to, among other things, "require the surrender by the Company to

[NJEDA] of the Tax Credit Certificate for suspension or cancellation." Incentive Agreement § 14(b); § (15)(a)(1). Furthermore, as an express condition of the tax credits it received under the Incentive Agreement, Holtec "covenant[ed] that the representations, statements and warranties of the Company set forth in the Company Application . . . (1) are true, correct and complete in all materials respects, [and] (2) do not contain any untrue statement of a material fact." Incentive Agreement § 5(b).

Holtec asks this Court to disregard these clear and unambiguous provisions of the Incentive Agreement. Instead, Holtec seeks to halt NJEDA's review and force NJEDA to approve the issuance of a tax credit to the company before NJEDA can determine whether the TVA debarment and Holtec's misrepresentation about the debarment constitute an Event of Default that warrants rescission of tax credits awarded to date, and without knowing the outcome of the ongoing criminal investigation examining the same conduct. This attempt to circumvent the clear terms of the contract between the parties should not be permitted.

Count Two of the Complaint alleges a breach of the implied covenant of good faith and fair dealing based on the same conduct. That count must be dismissed because it is

precluded by the New Jersey Contractual Liability Act ("NJCLA"), which bars the assertion of any claim based upon an implied warranty, such as Holtec's claim based on an implied covenant of good faith and fair dealing. Count Two should also be dismissed because Holtec has failed to allege facts sufficient to state a claim for breach of the implied warranty.

Count Three, which alleges a claim for promissory estoppel must be dismissed because it, too, is precluded by the NJCLA, which bars assertions based on contracts implied in law, such as promissory estoppel. It also should be dismissed because it is precluded by the clear and unambiguous terms of the parties' contract and because Holtec has otherwise failed to allege facts sufficient to state a claim.

SUMMARY OF ALLEGED FACTS

1. The Grow NJ Tax Incentive Program

NJEDA "serves as the State's principal agency for driving economic growth. . . . Through partnerships with a diverse range of stakeholders, the NJEDA creates and implements initiatives to enhance the economic vitality and quality of life in the State and strengthen New Jersey's long-term economic

competitiveness."[1] As part of its mandate, NJEDA administers, *inter alia*, the Grow NJ tax incentive program. Grow NJ promotes economic development in New Jersey by awarding tax credits to qualifying businesses that create or retain jobs in the State. As such, it is a "powerful job creation and retention incentive program that strengthens New Jersey's competitive edge against tax incentive programs in surrounding states."[2]

2. Holtec's Application for a Grow NJ Award

On January 20, 2014, Holtec submitted an application for a Grow NJ tax incentive award. (Compl. ¶ 41.) As part of the application, Holtec was required to fill out a Legal Questionnaire, which included a question asking whether Holtec had been subject to "[d]ebarment by any department, agency, or instrumentality of the State or Federal government." (Compl. ¶ 67.) Holtec responded "NO" to this question. (Compl. ¶ 68.)

To ensure the integrity of the Grow NJ program, applicants are required to submit certifications from no less than their chief executive or equivalent officer indicating that

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[1] https://www.njeda.com/about/mission [last accessed on June 2, 2020]

[2] https://www.njeda.com/financing incentives/programs/grow nj [last accessed on June 2, 2020]

he or she had reviewed "the information submitted to [NJEDA] and that the representations contained therein are accurate." N.J. Stat. Ann. § 34:1B-244; N.J. Admin. Code § 19:31-4.4(b)(13). Holtec's application was accompanied by such a certification, signed under penalty of perjury by Holtec's then-President and CEO Dr. Kris Singh, stating that the contents of the application were true and accurate:

> I, the undersigned, **certify under penalty of law that the representations contained herein are accurate;** that I am familiar with the information submitted in this document, including all attachments, **and have personally exercised an appropriate degree of due diligence to reasonably ensure that the information contained in this document, and all attachments are true, accurate, and complete.**

Solano Cert.[3] at Ex. 2 (emphasis added).

Dr. Singh further certified that he understood that the submission of false or materially inaccurate information could result in the denial of the company's application, or the revocation or termination of tax credits if Holtec's application ultimately was granted:

> I am aware that there are significant penalties for submitting false information, including the possibility of fine and

[3] References to "Solano Cert." are to the Certification of Ricardo Solano Jr. In Support of Defendant's Motion to Dismiss the Complaint, dated June 22, 2019, submitted herewith.

> imprisonment. I understand that, in addition to criminal penalties, I may be liable for civil administrative penalties **and that submitting false information or submitting materially inaccurate information may be grounds for denial, revocation or termination of any award of tax credits** for which I may be seeking approval or now hold.

Solano Cert. at Ex. 2 (emphasis added).

On July 10, 2014, NJEDA approved Holtec's application (Compl. ¶ 46), relying, among other things, upon the accuracy and truthfulness of the information provided by Holtec.

3. The Incentive Agreement

Following approval of an application, the Grow Act states that NJEDA "shall require an eligible business to enter into an incentive agreement prior to the issuance of tax credits." N.J. Stat. Ann. § 34:1B-245. On February 2, 2017, NJEDA and Holtec thus entered into the Incentive Agreement, which governs the terms and conditions of the award. (Compl. ¶ 49.) The importance of the accuracy and truthfulness of the statements made in Holtec's application is reflected in several of the Incentive Agreement's provisions.

In Section 5, Holtec expressly covenanted that "the representations, statements and warranties of the Company set forth in the Company Application . . . (1) are true, correct and complete in all material respects, (2) do not contain any untrue statement of a material fact, and (3) do not omit to state a

material fact necessary to make the statements contained . . . therein not misleading or incomplete." (Incentive Agreement § 5(b).)

Section 11 of the Incentive Agreement requires Holtec annually to certify its ongoing compliance with Section 5 and all of the other provisions of the Incentive Agreement. The annual report must contain a "certification acceptable to [NJEDA] by [Holtec] indicating whether or not [Holtec] is aware of any condition, event or act which would cause [Holtec] not to be in compliance with the approval, the 2013 Act, this Agreement or the Regulations promulgated thereunder." (Incentive Agreement § 11.) Section 11 entitles Holtec to receive a "letter of compliance" – which the company presents to the State's Tax Department in order to receive its tax credit – only "upon satisfactory review" by NJEDA of the compliance information submitted by Holtec. (*Id.*)

Section 14, which enumerates grounds for default of the Incentive Agreement, provides that an "Event of Default" occurs if "[a]ny representation or warranty made by the Company in its Application, the approval letter or in [the Incentive] Agreement is false, misleading, or inaccurate in any material respect." (Incentive Agreement § 14(b).) Pursuant to Section 15, the occurrence of an Event of Default entitles NJEDA in its sole discretion to suspend or cancel Holtec's tax credits (*Id.*

§ 15(a)(1)), and to seek repayment of some or all previously issued credits. (*Id.* § 15(a)(2).)[4]

4. Holtec's Misrepresentations Come to Light

Holtec submitted annual compliance reports for fiscal years 2017 and 2018, the latter of which was submitted on or about January 15, 2019. (Compl. ¶¶ 55-56.) In neither of its submissions did Holtec seek to amend the debarment question on its application, despite the fact it has since conceded that its answer to the debarment question was not accurate. (Compl. ¶¶ 64, 69-70.)

On January 24, 2019, a few days after Holtec's January 2019 submission, Governor Murphy established a Task Force on the Economic Development Authority's Tax Incentive Programs, N.J. Admin. Code § EX. ORD. No. 52 (2019) (the "Task Force"). While NJEDA's review of Holtec's 2018 annual certification was pending, the Task Force reviewed Holtec's application and award, and identified the fact that Holtec had been debarred by the TVA. Task Force First Published Report, dated June 17, 2019

[4] Consistent with Grow program regulations, the Incentive Agreement also contains a limitation of liability clause, which provides that NJEDA "is not liable in damages for the issuance or use of the Grant of Tax Credits". (Incentive Agreement § 8; *see also* N.J. Admin. Code § 19:31-18.10(c).)

(the "Report")[5] at 4. At a subsequent public hearing, the Task Force's counsel elaborated on what it had learned: "basically Holtec, according to the US attorney's office and the OIG, paid . . . $54,000 to a TVA employee for, for maintaining or continuing to have its contract." Solano Cert. Ex. 4 at 22. At the public hearing the Task Force's counsel also noted, "this information suggests that Mr. Singh may have played a role in or at least at a minimum may have been aware of the underlying activity, according to his statements to the OIG." *Id.* at 30.

Ahead of the Report's public release, but after learning that the issue already had been discovered and was about to be reported in the media,[6] Holtec sent a letter to NJEDA, dated May 20, 2019, that attempted to amend its application and change the NO answer to the debarment question to YES. (Compl. ¶ 70.) In a one-paragraph letter from the

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[5] Available at https://www.politico.com/states/f/?id=0000016b-67c1-df00-a9fb-6fe1d7840001 (accessed June 4, 2020).

[6] *See* A False Answer, a Big Political Connection and $260 Million in Tax Breaks, *available at* https://www.propublica.org/article/holtec-international-george-norcross-tax-breaks (accessed June 13, 2020) ("Five days after WNYC and ProPublica contacted Holtec seeking comment about its incorrect answer on the application, an attorney representing the firm sent a letter asking the EDA to correct Singh's answer in the 2014 application. Kevin Sheehan, an attorney with the Parker McCay law firm, which represented Holtec in its application for tax breaks, wrote to the agency that the mistake was 'inadvertent.'").

company's lawyer – and not someone with firsthand knowledge of the underlying facts – Holtec claimed that its original answer was an "inadvertent mistake"; it did not, however, provide any explanation for that "mistake" or how it came to occur. (*Id.*) This was the first time that Holtec informed NJEDA of the TVA debarment.

On or about June 26, 2019, NJEDA requested that Holtec submit a written explanation for its failure to disclose the TVA debarment. (Compl. ¶¶ 74-76.)[7] In response, Holtec in a letter dated August 8, 2019 simply referred NJEDA back to its May 20, 2019 letter. (Compl. ¶ 78.) As noted above, Holtec's May 20, 2019 letter did not explain why the company answered the debarment question in the way it did. Indeed, to date, Holtec has never explained why its CEO, despite having knowledge of, and perhaps involvement in, events leading to the TVA debarment, executed a certification that falsely stated that all of the information contained in Holtec's application – including the denial of any debarment – was truthful, accurate, and complete, and that he "personally exercised an appropriate degree of due

[7] NJEDA also requested information about Holtec's receipt of certain Ohio tax credits. During the course of its review of Holtec's annual certification, NJEDA also discovered that one of Holtec's affiliates had received tax credits under the Ohio Job Creation Tax Credit Program, but had lost those credits when the affiliate was unable to maintain the requisite jobs at that Ohio facility. (Compl. ¶ 76.)

diligence to reasonably ensure" himself of that fact. Solano Cert. at Ex 2.

Following this exchange of letters, the parties' legal representatives discussed the issue, including the existence of the related criminal investigation into Holtec's conduct, but did not reach any agreement on how to proceed. (Compl. ¶¶ 84-88.) NJEDA expected Holtec to provide a substantive explanation addressing (1) why its CEO submitted a certification under penalty of perjury that contained a material misrepresentation, and (2) the events and circumstances leading to the TVA debarment as described at the Task Force's public hearing. Instead, Holtec elected to commence this litigation. NJEDA cannot make a decision about the status of Holtec's 2018 annual tax credit, or, indeed, Holtec's continued eligibility under Grow NJ, until Holtec either provides NJEDA the requested information or confirms that it will not provide anything more.

ARGUMENT

On a motion to dismiss a complaint under R. 4:6-2(e), the "court must dismiss the plaintiff's complaint if it has failed to articulate a legal basis entitling plaintiff to relief." *Sickles v. Cabot Corp.*, 379 *N.J. Super.* 100, 106 (App. Div. 2005). Although the Court must accept well-pleaded allegations as true and afford "every reasonable inference to the plaintiff," *Smith v. SBC Commc'ns Inc.*, 178 *N.J.* 265, 282

(2004), it should not give deference to conclusory or vague allegations. *Donato v. Moldow*, 374 *N.J. Super.* 475, 501 (App. Div. 2005); *see also Delbridge v. Office of Pub. Defender*, 238 *N.J. Super.* 288, 314 (Law Div. 1989) ("Complaints cannot survive a motion to dismiss where the claims are conclusory or vague and unsupported by particular overt acts."), *aff'd o.b. sub nom., A.D. v. Franco*, 297 *N.J. Super.* 1 (App. Div. 1993).

A motion to dismiss "should be granted if even a generous reading of the allegations [of the Complaint] does not reveal a legal basis for recovery." *Edwards v. Prudential Prop. & Cas. Co.*, 357 *N.J. Super.* 196, 202 (App. Div. 2003). Moreover, "[t]he motion may not be denied based on the possibility that discovery may establish the requisite claim; rather, the legal requisites for plaintiff[']s claim must be apparent from the complaint itself." *Id.*; *accord Teamsters Local 97 v. State*, 434 *N.J. Super.* 393, 413 (App. Div. 2014).

In considering a motion to dismiss, the Court may consider documents referred to in the Complaint without converting a motion to dismiss into a motion for summary judgment. *New Jersey Citizen Action, Inc. v County of Bergen*, 391 *N.J. Super.* 596, 605 (App. Div. 2007); *see also Teamsters Local*, 434 *N.J. Super.* at 412 ("In evaluating motions to dismiss, courts consider allegations in the complaint, exhibits attached to the complaint, matters of public record, and

documents that form the basis of a claim.") (internal quotation marks and citation omitted).

Here, as discussed in detail below, even a generous reading of Holtec's Complaint fails to allege facts sufficient to substantiate any of its claims. Moreover, Holtec's claims for breach of the implied covenant of good faith and fair dealing and for promissory estoppel are also barred by the New Jersey Contractual Liability Act.

I. THE CLAIM FOR BREACH OF CONTRACT (COUNT ONE) FAILS AS A MATTER OF LAW

"To establish a breach of contract claim, a plaintiff has the burden to show that the parties entered into a valid contract, that the defendant failed to perform his obligations under the contract and that the plaintiff sustained damages as a result." *Murphy v. Implicito*, 392 *N.J. Super.* 245, 265 (App. Div. 2007). As a matter of law, there cannot be a breach of contract unless the defendant has failed to perform an obligation it has under the contract. *See, e.g., EnviroFinance Grp., LLC v. Envtl. Barrier Co., LLC*, 440 *N.J. Super.* 325, 345 (App. Div. 2015) ("To prevail on a breach of contract claim, a party must prove . . . the opposing party's failure to perform a defined obligation under the contract).

Here, Holtec claims that NJEDA has breached the Incentive Agreement but fails to allege facts sufficient to

establish that NJEDA has failed to perform any of its obligations under the contract.

A. NJEDA Has Not Failed to Fulfill Its Obligation Under the Incentive Agreement

Section 11 of the Incentive Agreement obligates NJEDA to issue a letter of compliance authorizing the issuance of a tax credit only "[u]pon **satisfactory review** of all information submitted in the Annual Compliance Report." (Incentive Agreement § 11) (emphasis added). The relevant regulations similarly provide that "[a]nnually, upon **satisfactory review** of all information submitted, [NJEDA] will issue a letter of compliance." N.J. Admin. Code § 19:31-18.11(d) (emphasis added). According to the plain language of Section 11 and the regulations, if NJEDA has not completed this review and deemed the information submitted by Holtec satisfactory, NJEDA is under no obligation to issue a letter of compliance.

On the facts as pled, NJEDA has not completed the review to its satisfaction (*see* Compl. ¶¶ 12, 13, 56, 74-84, 88), and thus has not – as a matter of fact or law – breached the Incentive Agreement by not yet issuing a Certificate of Compliance. *See Namerow v. PediatriCare Assocs., LLC*, 461 *N.J. Super.* 133, 140 (Ch. Div. 2018) ("Under New Jersey law, where the terms of a contract are clear and unambiguous, there is no

room for interpretation or construction and the courts must enforce those terms as written.").

In responding to NJEDA's inquiry, Holtec failed satisfactorily to explain the misrepresentation in its application and subsequent annual certification. Instead, Holtec has merely asserted in a one-paragraph letter that its omission was an "inadvertent mistake." (Compl. ¶ 70.) NJEDA has sought, and still awaits, a full and detailed explanation from Holtec for its misrepresentation in the application and every annual certification submitted since then. Until NJEDA's review is complete, and unless at that time NJEDA denies Holtec its 2018 tax credit, no claim for breach of the Incentive Agreement can be sustained. *See, e.g.*, *Miller & Sons Bakery Co. v. Selikowitz*, 8 *N.J. Super.* 118, 122, (App. Div. 1950) ("Ordinarily no action for damages or for restitution can be maintained until the time for performance has come and there has been an actual failure to perform.").[8]

[8] Given Holtec's lack of response to NJEDA's inquiries and the seriousness of the possible consequences of Holtec's misrepresentations, the time NJEDA has taken to conduct its review is entirely reasonable. *See, e.g.*, *Hosp. Ctr. at Orange v. Guhl*, 331 *N.J. Super.* 322, 336 (App. Div. 2000) (holding that in the absence of any federal mandate or state legislative directive that a state agency issue its decision within a specific time, courts should review whether the agency made its decision "within a reasonable period of time"). Moreover, Holtec has suffered no prejudice, as it can use the 2018 tax

B. The TVA Debarment, and Holtec's Misrepresentations about the Debarment, Could Disqualify Holtec From Receiving Its 2018, And Future, Tax Credits

Holtec contends that further review is not warranted, and that NJEDA cannot withhold the tax credit, because a "brief debarment by an agency that has since signed a ~$300 million contract with the company does not qualify" as a basis to reject the company's Grow award. (Compl. ¶ 72.) In essence, Holtec argues that NJEDA must perform under Section 11 of the Incentive Agreement because even if Holtec had answered the debarment question truthfully, it would not have affected the company's eligibility for an award.

Holtec is wrong that the TVA debarment could not have been a cause for disqualification under the Grow Act, particularly in light of the egregious circumstances leading to the debarment described by the Task Force. (*See* Solano Cert. Ex. 4 at 19-31.) NJEDA's regulations expressly contemplate as cause for disqualification debarment by a federal or state agency, N.J. Admin. Code § 19:30-2.2(a)(10), or "[a]ny other cause of such serious and compelling nature as may be determined by the Authority to warrant disqualification." N.J. Admin. Code § 19:30-2.2(a)(9).

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credit for up to three years past the closing of the tax period, should it ultimately receive the credit. *See* N.J. Stat. Ann. § 34:1B-247(c)(1).

But Holtec's argument misses the point. The relevant question in assessing Holtec's qualification for a Grow NJ award is not simply whether Holtec would have been disqualified from the Grow program had it disclosed the TVA debarment in its application, but also whether "any representation or warranty made by [Holtec] in its application, the approval letter, or in [the Incentive Agreement] is false, misleading, or inaccurate in any material respect." (Incentive Agreement § 14(b).)

If NJEDA determines that Holtec's debarment or the facts surrounding the debarment would disqualify Holtec, or that Holtec's misrepresentations constitute an Event of Default under Section 14(b) of the Incentive Agreement, it may (though it is not required to) withhold the 2018 tax credit certification, and/or pursue other remedies available to it under the Incentive Agreement. (Incentive Agreement § 15(a).) An Event of Default undoubtedly would be a material breach that would excuse performance by NJEDA of the provisions of Section 11 of the Incentive Agreement. *See Magnet Res., Inc. v. Summit MRI, Inc.*, 318 *N.J. Super.* 275, 285, (App. Div. 1998) ("It is black letter contract law that a material breach by either party to a bilateral contract excuses the other party from rendering any further contractual performance").

In any event, NJEDA has not completed its review under Section 11 of the Incentive Agreement, has not made a

determination about Holtec's debarment, has not declared an Event of Default under Section 14 of the Incentive Agreement, and has not suspended or canceled Holtec's 2018 tax credit or otherwise sought any of the remedies available to it under Section 15 of the agreement. Indeed, as stated, *supra*, NJEDA cannot make a final determination about the status of Holtec's 2018 annual tax credit, or Holtec's continued eligibility under Grow NJ, until Holtec either provides NJEDA the information NJEDA has requested or, in the alternative, confirms that it will not provide anything more. If, after completing its review, NJEDA declares an Event of Default and withholds the 2018 tax credit or otherwise seeks to enforce any of its Section 15 remedies, that will be the appropriate time for Holtec to assert any breach of contract claim.[9]

II. THE CLAIM FOR BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING (COUNT TWO) IS PRECLUDED BY STATUTE AND FAILS AS A MATTER OF LAW

Count Two of Plaintiff's Complaint fails as a matter of law because it is precluded by the New Jersey Contractual Liability Act ("NJCLA"), which the Incentive Agreement

[9] And even in that case, such a claim could be upheld only if Holtec could show that NJEDA exercised the discretionary authority accorded it by the Incentive Agreement and the Grow Act arbitrarily or unreasonably.

incorporates by reference, and which Holtec invoked as a basis for this Court's jurisdiction (Compl. ¶ 15.) Specifically, Section 17(n) of the Incentive Agreement states:

> The rights and remedies of [Holtec] under this Agreement, including, but not limited to, any right with regard to the failure of [NJEDA] to observe or perform under this Agreement, shall be subject to the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq., the provisions of which are hereby incorporated herein by reference.

(Incentive Agreement § 17(n).)

The NJCLA prohibits recovery "for claims based upon implied warranties or upon contracts implied in law," N.J. Stat. Ann. § 59:13-3, such as a breach of the implied warranty of good faith and fair dealing. For this reason alone, Count Two must be dismissed.

But even if the claim was not barred as a matter of law, Holtec still has failed properly to plead a breach of the implied warranty. The Supreme Court in *Wilson v. Amerada Hess Corp.*, 168 *N.J.* 236, 244 (2001), articulated the test for a violation of the implied covenant as follows: "a party exercising its right to use discretion . . . under a contract breaches the duty of good faith and fair dealing if that party exercises its discretionary authority arbitrarily, unreasonably, or capriciously, with the objective of preventing the other party from receiving its reasonably expected fruits under the

contract." *Id.* at 251. *See also*, *JPMorgan Chase Bank, N.A. v. Gaspar*, No. A-4652-12T4, 2014 WL 6991728, at *4 (N.J. Super. Ct. App. Div. Dec. 12, 2014) (citing *Wilson*, and holding that a bank did not violate the implied covenant by withholding consent to sale of condominium and allegedly causing defendant to default on mortgage where defendant had defaulted on the mortgage, and where terms of mortgage stated that the bank would not "**unreasonably** withhold its consent to a sale, transfer, or other conveyance of the Property" provided no default had occurred) (emphasis added); *Stankovits v. Schrager*, No. A-0128-06T2, 2007 WL 4410247, at *7 (N.J. Super. Ct. App. Div. Dec. 19, 2007) (defendant's motion to dismiss should have been granted on issue of implied covenant of good faith and fair dealing, noting that "[a]bsent sufficient proof of bad motive or intention, discretionary decisions that happen to result in an economic disadvantage to plaintiff are not actionable.").

In its complaint, Holtec has not alleged that NJEDA exercised its discretionary authority "arbitrarily, unreasonably, or capriciously," or with an objective of depriving Holtec of receiving the reasonably anticipated benefits of the Incentive Agreement. Nor do the facts as alleged, even if true, support such a claim. To the contrary, NJEDA has exercised its contractually permitted discretion

"reasonably and with proper motive." *Wilson*, 168 *N.J.* at 247. Rather than deny Holtec its 2018 credit or terminate the Incentive Agreement altogether, NJEDA informed Holtec of the company's apparent breach of the Incentive Agreement and requested further information so that NJEDA could make an informed assessment of the impact of Holtec's misrepresentations on the company's continued eligibility under the Grow program. Accordingly, no reading of the facts as alleged can support a claim for breach of the implied warranty, and for that reason, too, Count Two should be dismissed.

III. THE CLAIM FOR PROMISSORY ESTOPPEL (COUNT THREE) IS ALSO PRECLUDED BY STATUTE AND FAILS AS A MATTER OF LAW

Count Three of Plaintiff's Complaint fails for three independent reasons: (1) the promissory estoppel claim is predicated upon an alleged contract implied in law, and is therefore barred under the NJCLA; (2) the promissory estoppel claim is barred by the integration clause of the Incentive Agreement; and (3) the Complaint fails to plead a clear and definite promise by NJEDA to Holtec. Consequently, Holtec's claim for promissory estoppel fails as a matter of law and should be dismissed.

A. The Claim for Promissory Estoppel Is Barred by the New Jersey Contractual Liability Act as It Is Predicated Upon an Alleged Contract Implied in Law

Count Three of Plaintiff's Complaint fails as a matter of law because the NJCLA bars claims "based upon . . . contracts implied in law." N.J. Stat. Ann. § 59:13-3.

Promissory estoppel, which is the allegation in Count Three, "is another name for an implied-in-law contract claim." *XP Vehicles, Inc. v. United States*, 121 *Fed. Cl.* 770, 782 (2015) (barring promissory estoppel claim pursuant to the Tucker Act, which "does not allow suits against the government based on contracts implied in law") (internal quotations omitted). Although NJEDA is not aware of any case in New Jersey that addresses the issue, claims based on promissory estoppel regularly are barred under identical sovereign immunity waiver statutes in other jurisdictions. *See, e.g., Tp. of Saddle Brook v. United States*, 104 *Fed. Cl.* 101, 111 (2012) ("Promissory estoppel theory does not fall within the jurisdiction granted to the court by the Tucker Act, and . . . the government has not waived its sovereign immunity with regard to a promissory estoppel cause of action." (citation and internal quotations omitted)); *Ellis v. United States*, No. 19-1489C, 2020 WL 831855, at *3 (Fed. Cl. Feb. 19, 2020) ("Claims based on promissory estoppel rely upon the existence of a contract that is implied in law"); *Jablon v. United States*, 657 *F.2d* 1064, 1070 (9th Cir.

1981) (promissory estoppel claim barred because it "cannot be characterized merely as an 'express or implied-in-fact' contract"); *Durant v. United States*, 16 *Cl. Ct.* 447, 450 (1988) ("Because the Tucker Act is interpreted to allow causes of action founded only on express or implied-in-fact contracts, the doctrine of promissory estoppel is not within the parameters of the Claims Court's jurisdiction."); *SilverWing at Sandpoint, LLC v. Bonner Cty.*, 164 *Idaho* 786, 800 (2019) ("Promissory estoppel is another name for an implied-in-law contract claim." (internal quotations omitted)); *Tiberi v. Cigna Corp.*, 89 *F.3d* 1423, 1432 (10th Cir. 1996) (Promissory estoppel is "a contract implied in law where no contract exists in fact" and, therefore, "is applied in lieu of a formal contract." (internal quotations omitted)); *Martens v. Minnesota Min. & Mfg. Co.*, 616 *N.W.2d* 732, 746 (Minn. 2000) ("Promissory estoppel is an equitable doctrine that impl[ies] a contract in law where none exists in fact." (internal quotations omitted)); *XTL-NH, Inc. v. New Hampshire State Liquor Comm'n*, 170 *N.H.* 653, 659 (N.H. 2018) (reviewing opinions of several jurisdictions and holding that claims for promissory estoppel did not come within limited waiver of sovereign immunity for contract claims).

This Court therefore need not reach the merits or sufficiency of the pleading in Count Three, and should dismiss it as outside of its jurisdiction.

B. The Claim for Promissory Estoppel is Barred by the Integration Clause of Holtec's Incentive Agreement

Even if Count Three were not barred by the NJCLA, it would still fail as a matter of law because it is premised upon a supposed promise that is not an express term of Holtec's Incentive Agreement.

A promissory estoppel claim requires four elements: 1) a clear and definite promise, 2) made with the expectation that the promisee will rely upon it, 3) reasonable reliance upon the promise, 4) which results in definite and substantial detriment. *Malaker Corp. Stockholders Protective Comm. v. First Jersey Nat'l Bank*, 163 *N.J. Super.* 463, 479 (App. Div. 1978) (holding, inter alia, that an alleged oral promise by a bank to provide additional loans to a creditor was unenforceable under principles of promissory estoppel). Here, the integration clause of the Incentive Agreement prevents Holtec from being able to claim reasonable reliance upon any promise to modify or expand the meaning of the terms of that agreement.

The Incentive Agreement states that, "together with the Approval Letter[10], [the Incentive Agreement] constitutes the

[10] The Approval Letter, dated September 2, 2014, contains near-identical language to the Incentive Agreement with respect to NJEDA's obligations to review the annual certifications, and

entire agreement between the Parties and supersedes all prior agreements and understandings, if any, both written and oral, between the Parties with respect to the subject matter hereto." (Incentive Agreement § 17(b).) This clause necessarily precludes Holtec's promissory estoppel claim. *See MLCFC 2007-9 ACR Master SPE, LLC v. Echo Farms, RV Resort LLC*, No. A-1692-13T1, 2014 *WL* 5506807, at *7 (N.J. Super. Ct. App. Div. Nov. 3, 2014) ("A promissory estoppel claim is deficient [if] the contract included a clause stating that it represented the entire understanding between the parties.") (internal quotations omitted).

The terms of the Incentive Agreement are clear and unambiguous and require no extrinsic evidence for interpretation. *See Namerow v. PediatriCare Assocs., LLC*, 461 *N.J. Super.* 133, 140 (Ch. Div. 2018) ("Under New Jersey law, where the terms of a contract are clear and unambiguous, there is no room for interpretation or construction and the courts must enforce those terms as written."). Under these circumstances, the promissory estoppel claim must be dismissed.

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similarly is devoid of any promise of review by March 1 or any other specific time frame.

C. The Complaint Failed to Plead a Clear and Definite Promise, so the Claim for Promissory Estoppel Fails

Finally, the promissory estoppel claim should be dismissed – even if not barred for the reasons set forth above – simply because the Complaint fails to plead a clear and definite promise.

Holtec asserts that NJEDA promised that "if Holtec constructed its state-of-the-art facility in Camden, delivered the promised jobs, **and otherwise met its obligations under the Grow Program**, [NJEDA] would issue Holtec its annual Letter of Compliance." (Compl. ¶ 127) (emphasis added). First, no such clear and definite promise was made, nor has Holtec properly alleged one in its Complaint. The Incentive Agreement unambiguously states that NJEDA will issue annual letters of compliance upon its satisfactory review of Holtec's submissions—which, as stated *supra*, it has not yet completed. Second, any such promise, if it existed, is, by Holtec's own admission, predicated upon Holtec having "met its obligations under the Grow Program." *Id.* Those obligations included a certification by Holtec's CEO that everything in Holtec's application was truthful and accurate. Given that Holtec admittedly failed to disclose the TVA debarment in response to a question asking about debarments, the CEO certification submitted alongside Holtec's application was false. Holtec further failed to meet

its obligations under Grow NJ when it failed to disclose this falsehood in either of its two annual certifications.

Holtec's assertion that NJEDA "further made a clear and definite promise to Holtec concerning the timing in which [NJEDA] would process the company's Annual Compliance Report so that Holtec would have its tax credits in hand prior to March 1 each year" similarly fails. NJEDA made no such promise in either the Incentive Agreement or otherwise, and Holtec has not pleaded anywhere else in the Complaint, beyond simple conclusory assertions, that such a promise ever existed. Count Three of the Complaint should therefore also be dismissed because it fails to state an actionable claim.

CONCLUSION

For the foregoing reasons, this Court should dismiss the Complaint in its entirety.[11]

Dated: June 22, 2020

Respectfully submitted,

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[11] Even if the Court does not dismiss the Complaint in its entirety, the Court should strike Holtec's demand for damages. (Compl. Prayer for Relief ¶ b.) Section 8 of the Incentive Agreement expressly provides that NJEDA 'is not liable for damages for the issuance or use of the Grant of Tax Credits." (Incentive Agreement § 8.) Holtec's purported damages claim relating to its sale of the tax credits (Compl. ¶ 93) is specifically precluded by this clause.

Exhibit B

Stacked files | Carl Court/Getty Images

Holtec under ‘criminal investigation,’ EDA says in since-redacted court filing

By **MATT FRIEDMAN** and **KATHERINE LANDERGAN** | 06/24/2020 12:40 PM EDT

Holtec International, which received one of the biggest tax credits in New Jersey history, is under criminal investigation, according to a legal brief filed Monday by the New Jersey

Economic Development Authority.

The brief was in response to a lawsuit Holtec — an energy technology company — filed against the EDA in March for holding up a $26 million payment on its $260 million tax incentive to build a facility in Camden. The delay was because of an allegedly false answer Holtec gave on its 2014 tax credit application.

"Holtec's misrepresentations — which include its failure to disclose a prior government debarment by the Tennessee Valley Authority (the 'TVA') for bribing an official of that agency — first came to light during an investigation conducted by the Governor's Task Force on the Economic Development Authority's Tax Incentive Program, and they are now the subject of an ongoing criminal investigation," reads the June 22 brief by attorney Ricardo Solano.

The June 22 brief, filed in Superior Court in Mercer County, includes two additional references to a "criminal investigation," but an otherwise identical brief Solano filed with the court on June 23 redacts all references to the investigation. The June 22 brief does not state which authorities are allegedly investigating the company, which received the tax credit to build a $300 million 47-acre factory and office complex in Camden.

It is not known why the references were redacted and both briefs remain available online. Solano declined to comment on the brief.

Holtec President & CEO Kris Singh said in a statement that the allegation is "blatantly untruthful" and the company is currently cooperating with the attorney general's office. Singh said he is confident their work will reveal "no wrongdoing" on the part of Holtec.

"It is Holtec's understanding that the New Jersey Attorney General's Office is reviewing certain matters raised by the Governor's Task Force in their public reports which were a potpourri of irresponsible and inflammatory allegations hurled at Holtec through the media," he said in a statement. "We have maintained a dignified silence in the face of the falsehoods spewed by the Task Force which should not be taken as a sign of weakness. We will expose the farce that the Task Force's shenanigans are in the right forum at the right time."

New Jersey's tax incentive program has been under intense scrutiny for the last year and a half. An investigative commission appointed by Gov. Phil Murphy exposed how the program was allegedly designed in part by a law firm to benefit clients it represented.

The existence of state and federal investigations into other aspects of the tax incentive

program have already been disclosed, and POLITICO reported that a state grand jury issued subpoenas to the EDA related to Holtec, among other companies.

It has not previously been disclosed that Holtec was the "subject" of any criminal investigation.

The Murphy-backed investigation of the tax incentive program intensified a long-simmering political feud with South Jersey Democratic power broker George Norcross, whose brother, Phil Norcross, leads the firm that helped write the tax credit law and whose other brother, Donald Norcross, was at the time a state senator who helped sponsor it. George Norcross, whose company built a gleaming Camden tower with the help of millions in tax credits, sits on Holtec's board.

Holtec sued the EDA for breach of contract in March after the agency withheld the second of 10 $26 million installments of its tax credit payment. Holtec claimed to have fallen victim to a political fight.

"The media have widely reported on the bitter infighting between the state's politicians that seems to have degenerated to the point where personal feuds outweigh sensible public policy," the company said in a March statement to The Philadelphia Inquirer. "By failing to honor its uncontestable obligation to deliver the required tax certificate, New Jersey is broadcasting to the world that it is an untrustworthy partner. By politicizing its business commitments, the state appears bent on discouraging future investors in its economy while scaring away those who are already here."

Holtec claimed the EDA's delay of its tax credit cost the company "tens of millions" of dollars in damages because it had borrowed money from other companies in advance of receiving the tax credits under an agreement that it would later transfer the credits to those companies to repay what it had borrowed.

Holtec answered "no" on its application when asked if it had been barred from work with a government agency, even though in 2010 it was briefly prohibited from working with the federal Tennessee Valley Authority over a bribery scandal from 2002.

While Holtec characterized its answer as an oversight and said the application never specified whether the debarment had to be active, Solano in his June 22 and June 23 briefs for the EDA suggested the omission wasn't so innocent.

Solano wrote in the briefs that Holtec only corrected its answer to the EDA in 2019, when it was aware the commission investigating the tax incentives knew of it and that

ProPublica/WNYC was about to publish an article about it.

“Indeed, to date, Holtec has never explained why its CEO, despite having knowledge of, and perhaps involvement in, events leading to the TVA debarment, executed a certification that falsely stated that all of the information contained in Holtec’s application — including the denial of any debarment — was truthful, accurate, and complete, and that he ‘personally exercised an appropriate degree of due diligence to reasonably ensure’ himself of that fact,” Solano wrote.

In reviewing Holtec’s tax incentive application, the EDA asked for more information, Solano wrote, but Holtec did not provide it.

“NJEDA has sought, and still awaits, a full and detailed explanation from Holtec for its misrepresentation in the application and every annual certification submitted since then,” Solano wrote. “Until NJEDA’s review is complete, and unless at that time NJEDA denies Holtec its 2018 tax credit, no claim for breach of the Incentive Agreement can be sustained."

Exhibit C

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March 23, 2020

Via Mail

Clerk of Court
Chancery Division, General Equity
Superior Court of New Jersey, Mercer County
PO Box 8068
Trenton, New Jersey 08650-0068

Re: Holtec International v. New Jersey Economic Development Authority

Dear Sir/Madam:

We represent Plaintiff Holtec International in this matter. Enclosed for filing please find the original and two copies of a Complaint and Case Information Statement. Please file the original of each document and return one copy stamped "filed" in the postage paid return envelope provided. Kindly charge any fees associated with this filing to our Superior Court of New Jersey account #0083800.

Very truly yours,

Michael P. O'Mullan

MOM/np
Enclosure

5121327v1

Side 2

Civil Case Information Statement
(CIS)

Use for initial pleadings (not motions) under *Rule* 4:5-1

CASE TYPES (Choose one and enter number of case type in appropriate space on the reverse side.)

Track I - 150 days discovery

151	Name Change	506	PIP Coverage
175	Forfeiture	510	UM or UIM Claim (coverage issues only)
302	Tenancy	511	Action on Negotiable Instrument
399	Real Property (other than Tenancy, Contract, Condemnation, Complex Commercial or Construction)	512	Lemon Law
		801	Summary Action
502	Book Account (debt collection matters only)	802	Open Public Records Act (summary action)
505	Other Insurance Claim (including declaratory judgment actions)	999	Other (briefly describe nature of action)

Track II - 300 days discovery

305	Construction	603Y	Auto Negligence – Personal Injury (verbal threshold)
509	Employment (other than Conscientious Employees Protection Act (CEPA) or Law Against Discrimination (LAD))	605	Personal Injury
		610	Auto Negligence – Property Damage
599	Contract/Commercial Transaction	621	UM or UIM Claim (includes bodily injury)
603N	Auto Negligence – Personal Injury (non-verbal threshold)	699	Tort – Other

Track III - 450 days discovery

005	Civil Rights	608	Toxic Tort
301	Condemnation	609	Defamation
602	Assault and Battery	616	Whistleblower / Conscientious Employee Protection Act (CEPA) Cases
604	Medical Malpractice		
606	Product Liability	617	Inverse Condemnation
607	Professional Malpractice	618	Law Against Discrimination (LAD) Cases

Track IV - Active Case Management by Individual Judge / 450 days discovery

156	Environmental/Environmental Coverage Litigation	514	Insurance Fraud
303	Mt. Laurel	620	False Claims Act
508	Complex Commercial	701	Actions in Lieu of Prerogative Writs
513	Complex Construction		

Multicounty Litigation (Track IV)

271	Accutane/Isotretinoin	601	Asbestos
274	Risperdal/Seroquel/Zyprexa	623	Propecia
281	Bristol-Myers Squibb Environmental	624	Stryker LFIT CoCr V40 Femoral Heads
282	Fosamax	625	Firefighter Hearing Loss Litigation
285	Stryker Trident Hip Implants	626	Abilify
286	Levaquin	627	Physiomesh Flexible Composite Mesh
289	Reglan	628	Taxotere/Docetaxel
291	Pelvic Mesh/Gynecare	629	Zostavax
292	Pelvic Mesh/Bard	630	Proceed Mesh/Patch
293	DePuy ASR Hip Implant Litigation	631	Proton-Pump Inhibitors
295	AlloDerm Regenerative Tissue Matrix	632	HealthPlus Surgery Center
296	Stryker Rejuvenate/ABG II Modular Hip Stem Components	633	Prolene Hernia System Mesh
297	Mirena Contraceptive Device		
299	Olmesartan Medoxomil Medications/Benicar		
300	Talc-Based Body Powders		

If you believe this case requires a track other than that provided above, please indicate the reason on Side 1, in the space under "Case Characteristics.

Please check off each applicable category ☐ **Putative Class Action** ☐ **Title 59** ☐ **Consumer Fraud**

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HOLTEC INTERNATIONAL, Plaintiff, vs. NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY, Defendants.	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION, GENERAL EQUITY MERCER COUNTY DOCKET NO. MER-L- CIVIL ACTION **COMPLAINT**

1. Plaintiff Holtec International ("Holtec") brings this action against defendant New Jersey Economic Development Authority ("EDA") for breach of contract and promissory estoppel, seeking specific performance and other relief.

2. Holtec is a diversified energy technology company, recognized as the foremost technology innovator in the field of carbon-free power generation, specifically commercial nuclear and solar energy. Holtec has operations in Florida, New Jersey, Ohio, Pennsylvania, and abroad.

3. The EDA is an independent authority formed by the State of New Jersey that, among other things, administers the Grow New Jersey Assistance Program (the "Grow Program"),

a program which was designed to incentivize companies through the issuance of tax credits to make capital investments and create or retain jobs in New Jersey rather than bring those opportunities to other states.

4. In the years leading up to 2014, Holtec, based upon growth expectations, was desirous of a new state-of-the-art research and manufacturing facility and was exploring whether to build the facility in a variety of locations, including New Jersey. The EDA and the New Jersey Department of State's Business Action Center ("BAC")[1] actively and aggressively courted Holtec and encouraged it to commit to build its new manufacturing and research facility—with its attendant high-paying jobs—in Camden, New Jersey.

5. Camden routinely ranks among New Jersey's poorest and most economically disadvantaged cities, and has historically experienced unique challenges attracting business development like that being contemplated by Holtec. Accordingly, in keeping with its legislative mandate, the EDA and the BAC aggressively sought to induce Holtec to commit to invest in Camden by building its multimillion-dollar, state-of-the-art facility there.

6. After extensive communications with the EDA and the BAC, in 2014 Holtec applied for and received an award of Grow Program tax incentives. Holtec would invest more than $300 million to construct the Krishna P. Singh Technology Campus in Camden and bring with it hundreds of high-paying jobs. Under the terms of an incentive agreement with the EDA, Holtec was to receive $260 million in tax credits over ten years following completion of the project and delivery of the promised jobs.

[1] The BAC is an arm of the state government of New Jersey that works with EDA and operates as a resource to assist businesses by, among other things, obtaining answers from government agencies, directing companies to appropriate officials or contacts, and facilitating meetings with regulatory agencies to attract and retain businesses in the State.

7. The Incentive Agreement between Holtec and the EDA was signed after six months of extensive vetting by the EDA, which concluded that Holtec was eligible for the award of tax credits.

8. Induced by the Incentive Agreement, Holtec spent more than $300 million to construct a state-of-the-art manufacturing and design facility in Camden, with associated office and support buildings. This provided an immediate infusion of construction-related revenue into Camden's economy—the single largest private investment in the history of the municipality—and has substantially contributed to Camden's revitalization efforts.

9. State officials publically praised Holtec at the time, stating, "your pledge to choose New Jersey to build the state-of-the-art 600,000 square foot manufacturing and design center is more than just an investment in your business, it is an investment in New Jersey and the renewal of manufacturing here in Camden."

10. Under the terms of the Incentive Agreement, the EDA is required to issue Holtec a Letter of Compliance each year for ten years if Holtec satisfies its contractual obligations. The annual Letter of Compliance enables Holtec to obtain the benefit of the annual portion of its tax credit under the Grow Program.

11. 2017 was the first tax year that Holtec was eligible to receive a tax credit under the Incentive Agreement. Holtec timely submitted its annual paperwork in January 2018, and the EDA thoroughly reviewed it, asking multiple follow-up questions to which Holtec responded. Fewer than three months later, the EDA issued Holtec its 2017 Letter of Compliance, which enabled Holtec to receive its 2017 tax credit.

12. In early 2019, Holtec timely submitted all of the required paperwork for its 2018 tax credit. More than a year has since gone by, and the EDA has not issued Holtec's required

Letter of Compliance, even though Holtec remains in full compliance with the Incentive Agreement. The apparent reason for this refusal is public criticism of the Grow Program and the EDA following the creation of the new administration's gubernatorial task force.

13. Over the past year, Holtec has tried repeatedly to engage with the EDA to see if a lawsuit could be avoided.

14. In disregard of its contractual obligations, the EDA has stalled and failed to approve Holtec's 2018 submission for its tax credits, which has caused Holtec tens of millions of dollars in damages. Holtec was thus left with no choice but to file this Complaint and seek an order requiring the EDA to comply with its duties under the Incentive Agreement.

JURISDICTION AND VENUE

15. This action is brought by Holtec pursuant to the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 to -10, and the common law.

16. The court has jurisdiction over Defendant EDA because the EDA is a New Jersey government entity.

17. Venue for this action properly lies in Mercer County, pursuant to Rule 4:3-2, because the causes of action arose in Mercer County where the EDA maintains its offices.

18. The matter is properly instituted in the Chancery Division pursuant to Rule 4:3-1 because the primary relief sought, specific performance, is equitable in nature.

PARTIES

19. Plaintiff Holtec is an S Corporation formed in the State of Delaware, with offices at 1 Holtec Boulevard, Camden, New Jersey (formerly known as 2500 Broadway, Camden, New Jersey).

20. Defendant EDA is an independent state agency created by the New Jersey Economic Development Authority Act, with offices at 36 West State Street, Trenton, New Jersey.

FACTUAL ALLEGATIONS

21. Holtec is a diversified energy technology company, recognized as the foremost technology innovator in the field of carbon-free power generation, specifically commercial nuclear and solar energy. Among other things, Holtec designs, manufactures, and supplies equipment and systems for the nuclear-, solar-, geothermal-, and wind-power generation sectors of the energy industry. The company is globally recognized for its innovation and design of equipment and services to commercial power plants.

22. Since 2009, Holtec has been at the forefront of developing a new generation nuclear reactor, called the SMR-160. The SMR-160 is designed to be a safer, more environmentally friendly, and economical small modular reactor that has the flexibility to be used in remote locations, in areas with limited water supplies or land, and in unique industrial applications where traditional large reactors are not practical.

23. In or around 2013, Holtec had global operation centers in Marlton, New Jersey; Pittsburgh, Pennsylvania; Orrville, Ohio; Lakeland, Florida; Jupiter, Florida; San Diego, California; and abroad.

24. Holtec wanted to open a new state-of-the-art research and manufacturing facility where its engineers working on the SMR-160 project would be on the same campus as the company's manufacturing operations in order to take advantage of productive synergies between various skilled workers that would be perfecting this cutting-edge technology. This would facilitate communication between engineers and manufacturing operations and improve company production.

25. The SMR-160 project would also require significantly advanced and modernized manufacturing capabilities, which would necessitate a new facility with state-of-the-art equipment. That new facility would also enable Holtec to expand its current line of nuclear products, heat-exchange equipment, and other weldments for delivery to the company's worldwide customers.

26. Wherever Holtec decided to build its new facility, it would provide well-paid, technical jobs with career opportunities in the growing energy field, making it an attractive entity for states to court as an employer.

27. In considering where to construct this new facility, Holtec evaluated various options, including Camden, New Jersey.

28. The EDA's promise to award tax credits under the Grow Program was a material factor in Holtec's ultimate decision to choose Camden.

The Grow New Jersey Assistance Program

29. The Grow Program was originally signed into law on January 5, 2012. It was designed "to encourage economic development and job creation and to preserve jobs that currently exist in New Jersey but which are in danger of being relocated outside of the State." L. 2011, c. 149, § 3 (N.J.S.A. 34:1B-244).

30. As initially enacted, program applicants needed to demonstrate that "the capital investment resultant from the award of tax credits and the resultant retention and creation of eligible positions will yield a net positive benefit to the State," and that "the award of tax credits will be a material factor in the business's decision to create or retain the minimum number of full-time jobs for eligibility under the program." Ibid.

31. To assist the EDA in making eligibility determinations under the law, applicants needed to certify that (i) "existing full-time jobs are at risk of leaving the State or being

eliminated," (ii) "any projected creation or retention, as applicable, of new full-time jobs would not occur but for the provision of the tax credits under the program," and (iii) the representations in the Grow Program application were accurate.

32. On January 14, 2013, the New Jersey Legislature introduced a bill that would eventually be signed into law known as the Economic Opportunity Act of 2013, L. 2013, c. 161 ("2013 Act"). The 2013 Act was signed into law on September 18, 2013.

33. The 2013 Act amended the earlier version of the Grow Program statute in numerous respects, most notably as it related to companies that proposed to construct facilities in Camden.

34. Camden routinely ranks among New Jersey's poorest and most economically disadvantaged cities. According to the New Jersey Municipal Revitalization Index (which serves as the State's official measure of municipal distress by ranking New Jersey's municipalities according to eight separate indicators of social, economic, physical, and fiscal conditions in each locality), in 2007 Camden ranked 566 out of 566 municipalities in the state.

35. Moreover, Camden has historically experienced unique challenges to attracting business development, stemming from a diverse array of problems such as record-high crime to deficiencies in public education.

36. Camden was (and still is) an economically distressed municipality that the Legislature determined needed heightened incentives to encourage companies to locate there. Accordingly, in addition to increasing certain of the award amounts that companies willing to relocate to Camden could receive under the Grow Program, the 2013 Act changed the eligibility requirements for companies seeking to locate there.

37. If an applicant was proposing to make a capital investment and locate in Camden, there was no need for it to demonstrate that any jobs were "at risk" of leaving New Jersey or that

a retention of jobs would not occur "but for" the provision of tax credits. Instead, Camden applicants were simply required to "indicate that the provision of tax credits under the program is a **material factor** in the business decision to make a capital investment and locate in [Camden.]" N.J.S.A. 34:1B-244(d) (emphasis added).

38. The award of tax credits was unquestionably a material factor in Holtec's decision to invest in Camden, as the EDA itself determined during its review of Holtec's application for tax incentives.

Holtec Decides to Apply for Tax Incentives

39. In the months leading up to the enactment of the 2013 Act, the EDA and BAC were in regular communication with Holtec concerning possible tax incentives available to it should Holtec decide to construct its then-contemplated new facility in Camden. The EDA and BAC were actively courting Holtec to convince the company to move to Camden.

40. As part of these extensive conversations, the BAC encouraged Holtec to apply for tax credits in excess of $350 million. Holtec decided, however, to apply for credits totaling only $260 million because Holtec was unwilling to accept tax credits above the amount Holtec felt it needed to construct its advanced manufacturing campus in Camden.

41. On January 20, 2014, Holtec submitted an application for financial assistance under the Grow Program. The extensive application described Holtec's future plans for the company and the SMR-160, and how the company's decision to construct a facility in Camden would be beneficial to the State of New Jersey and Camden.

42. Because Holtec was proposing to make a substantial capital investment and locate in Camden, it was not legally required that Holtec demonstrate that any jobs were "at risk," or that any retention of jobs would not occur "but for" the provision of tax credits.

43. Holtec's application nevertheless described for the EDA various alternatives that Holtec had considered outside of New Jersey as part of its search for a new facility, and informed the EDA that the provision of tax credits was a material factor in Holtec's decision to move forward with the Camden project.

44. For over six months following the submission of the January 2014 application, Holtec and the EDA engaged in discussions concerning the proposal. Based on those extensive communications and a thorough vetting of Holtec's submissions, the EDA was satisfied that Holtec was eligible to receive an award of tax credits under the Grow Program.

45. The tax credits awarded to Holtec could be used by the company itself to reduce its own tax liability, or they could be sold to other entities. It was common for companies that were unable to utilize the full amount of the tax credits to sell such credits for an immediate benefit.

46. On July 10, 2014, the EDA approved Holtec's application under the Capital Investment Alternative of the 2013 Act. The EDA notified the company of this approval, and Holtec executed an approval letter dated September 2, 2014.

47. In reliance on the award of tax credits, Holtec thereafter undertook construction of the Krishna P. Singh Technology Campus in Camden, expending in excess of $300 million. The new campus occupies approximately 47 acres in the southern end of Camden along the Delaware waterfront, and has transformed a series of abandoned buildings and vacant lots into a thriving business center with state-of-the-art facilities for hundreds (and in the future, anticipated thousands) of employees.

48. Although Holtec spent in excess of $300 million, Holtec decided to have its independent auditor begin the certification cost report as soon as its capital spend crossed the $260 million required amount.

49. On or about August 10, 2016 and February 1, 2017, respectively, Holtec and the EDA executed an Incentive Agreement under the Grow Program ("Incentive Agreement"). The Incentive Agreement was later amended on December 28, 2017 and March 4, 2019, respectively.

50. The Incentive Agreement recites that the EDA, after fully vetting Holtec's application, determined that the company satisfied the eligibility criteria under the Grow Program statutes and that the EDA approved Holtec to receive tax credits of up to $260 million.

51. The Incentive Agreement required that Holtec submit to the EDA certain Tax Credit Certificate Documents, as defined in Section 10 to the Incentive Agreement, on or before July 10, 2018, demonstrating that Holtec had lived up to its obligations to complete the project. Holtec submitted those documents on or about September 15, 2017. The EDA reviewed that submission and issued a Grow New Jersey Assistance Act Tax Credit Certificate to Holtec on or about January 18, 2018, in the amount of $260 million.

52. Section 11 of the Incentive Agreement states,

> After receipt of the Tax Credit Certificate, [Holtec] shall submit to the [EDA], no later than 120 days after the end of each Tax Period during the Commitment Period, the Annual Compliance Report . . . Upon satisfactory review of all information submitted in the Annual Compliance Report, the [EDA] will issue a Letter of Compliance indicating the amount of the tax credits that may be used for the relevant Tax Period. No Tax Credit Certificate will be valid without the Letter of Compliance issued for the relevant Tax Period.

53. These contractual obligations are mirrored in the New Jersey Administrative Code, which states, "Annually, upon satisfactory review of all information submitted [in the Annual Compliance Report], the Authority will issue a letter of compliance." N.J.A.C. 19:31-18.11(d).

54. The Incentive Agreement and Administrative Code thus establish a clear mechanism for Holtec to receive its tax credits over the contract's term. Each year Holtec must submit compliance paperwork to the EDA, which must then review the paperwork and timely

determine if it is satisfactory. If so, the EDA must issue to Holtec a Letter of Compliance that entitles Holtec to receive its annual tax credit. The Incentive Agreement contemplates ten annual credits, worth up to $26 million each.

55. The Incentive Agreement worked as intended by the parties for the first year. After Holtec completed the project, Holtec submitted to the EDA its first Annual Compliance Report for 2017 on January 15, 2018. The EDA reviewed that information and submitted its first Letter of Compliance to Holtec on April 11, 2018, along with a Grow New Jersey Assistance Act Tax Credit Certificate signed April 5, 2018, in the amount of $26 million for the 2017 tax period representing the Incremental Tax Credit Amount.

56. Although Holtec has undoubtedly lived up to its obligations by completing the project, delivering the promised jobs, and following the same process for the next tax year, the EDA has failed to deliver its promised tax certificate. On January 15, 2019, Holtec submitted its second Annual Compliance Report for 2018. Fourteen months have since gone by, and the EDA has continued to change the required documentation and thus far refused and failed to issue the Letter of Compliance as required by Section 11 of the Incentive Agreement. The apparent reason for the EDA's failure stems from public criticism of the Grow Program generally.

The EDA Fails to Honor the Incentive Agreement

57. After Holtec entered into the Incentive Agreement and delivered on its promise to invest in Camden as set forth above, State government experienced a change of administration. On January 16, 2018, Governor Murphy assumed office as New Jersey's 56th Governor after campaigning for, among other things, reform of the EDA's tax incentive process. On January 19, 2018, Governor Murphy signed Executive Order No. 3, which instructed the New Jersey State

Comptroller to conduct an audit of certain aspects of New Jersey's tax-incentive programs, including the Grow Program.

58. On January 9, 2019, the Comptroller issued a report entitled "New Jersey Economic Development Authority: A Performance Audit of Selected State Tax Incentive Programs." This report offered certain criticisms of New Jersey's tax-incentive programs and how they were administered, but did not mention or address anything about Holtec or its tax-incentive award.

59. On January 24, 2019, Governor Murphy signed Executive Order No. 52, in which he created the Task Force on EDA's Task Incentives ("Task Force"). The Task Force was instructed to perform an examination of the design, implementation, and oversight of the Grow Program.

60. On June 17, 2019, the Task Force issued its First Published Report ("First Report"). The First Report was critical of the EDA, and made allegations against numerous companies (with a clear focus on companies that had invested in Camden) that had received Grow Program awards.

61. With respect to Holtec, the First Report stated, "A simple internet search revealed that one company, Holtec International, had been debarred by the Tennessee Valley Authority, even though Holtec said it had never been debarred in its Grow NJ Application." The First Report criticized the EDA for allegedly not discovering this issue during its extensive due diligence and vetting of Holtec's January 2014 application.

62. The matter referenced by the Task Force in the First Report concerns the Tennessee Valley Authority ("TVA"), a corporation owned by the federal government for whom Holtec has done hundreds of millions of dollars of work since 2001.

63. On October 12, 2010, the Office of Inspector General for the TVA sent to Holtec a Notice of Proposed Debarment. The notice stemmed from an incident in 2002—nearly 18 years

ago—involving a former employee of the TVA who filed a false statement on a financial disclosure form related to a payment to that employee's company from a then-subcontractor of Holtec. Holtec acquired that subcontractor several years after the 2002 payments.

64. The TVA had conducted a full investigation into these 2002 transactions by the subcontractor, and thereafter temporarily placed Holtec on the General Services Administration Excluded Party List on December 3, 2010. Nine days later, on December 12, 2010, the TVA lifted the debarment, and removed Holtec from the Excluded Party List.

65. In 2012, the TVA board unanimously voted to award Holtec a ten-year contract valued at approximately $300 million. During the public-contracting process at that time, the TVA Vice President of Supply Chain publicly told the TVA board: "I stand before this board to tell you that Holtec today is in good standing with the federal government, in good standing with TVA, and in good standing with the market. Holtec is a market leader in dry cask storage." Holtec continues to be a vendor of the TVA to this day.

66. The fact of Holtec's brief debarment by the TVA, and its subsequent contract with that agency, was a matter of public record discoverable by simple internet searches.

67. At the time of Holtec's EDA application in 2014, the company was not subject to debarment. In Holtec's January 20, 2014 application, there was a question that stated: "Debarment by any department, agency, or instrumentality of the State or Federal government." In response to that question, Holtec was to check either "YES" or "NO" on the online application form.

68. The question did not specify whether the debarment needed to be active to be responsive, or whether any past debarment would also be responsive. In other public-contracting forms, a debarment must be active to be responsive to those forms. The Grow Program application submitted by Holtec stated "NO" in response to the EDA's question on its form.

69. In the early part of 2019, the Task Force was holding public hearings, criticizing various entities that had received tax credits during the prior administration, and inviting public scrutiny of all aspects of the Grow Program. As part of that invited scrutiny, members of the media reported in May 2019 that Holtec had been subject to a brief debarment by the TVA, but had checked "NO" in response to the debarment question on its application.

70. Upon learning of the issue, on May 20, 2019, Holtec proactively reached out to the EDA to clarify the situation surrounding the brief TVA debarment. To the extent that the previous debarment was responsive to the question on the application, Holtec amended its answer and explained that the failure to identify the issue was inadvertent.

71. Nothing about the publicly available TVA incident, which related to events dating back to 2002, undercut the undeniable fact that Holtec had invested more than $300 million and created hundreds of high-paying jobs in Camden, just as the EDA had bargained for.

72. Moreover, N.J.A.C. 19:30-2.2 and 2.3 justify disqualification from EDA programs only under certain circumstances, and a brief debarment by an agency that has since signed a ~$300 million contract with the company does not qualify.

73. Further, an EDA staff member testified at an October 2019 hearing that, even where there were instances where companies checked "NO" to a disqualification question that technically should have been "YES," the EDA staffer has never recommended disqualifying that company from receiving a grant from the EDA. Indeed, as the Task Force itself noted, sometimes EDA staff would observe such an issue as part of its due diligence, but deem it too insignificant even to follow up with the applicant. The application would instead be processed for approval.

74. After the Task Force issued its First Report criticizing Holtec, on June 26, 2019, the EDA sent to Holtec a letter that attached relevant excerpts of the First Report. Even though

Holtec had already explained the TVA issue to the EDA in May, the EDA asked Holtec to "submit a written explanation for failing to inform the Authority" of that matter, and to explain the "impact" that the issue would have on Holtec's application.

75. In the same letter, the EDA enclosed a Pro Publica article dated June 26, 2019, which stated that one of Holtec's affiliates had received tax credits under the Ohio Job Creation Tax Credit Program, but had lost those credits when the affiliate was unable to maintain the requisite jobs at that Ohio facility.

76. The EDA's June 26, 2019 letter stated that the EDA would review Holtec's written response and then would "invite the Company to the Authority's office for a meeting to discuss the information and explanation provided."

77. On August 8, 2019, Holtec responded to the EDA's correspondence. Holtec explained that the Ohio matter concerned a different company, Orrvilon, Inc. ("Orrvilon"), which does not have a physical presence in New Jersey and whose operations did not inform Holtec's application under the Grow Program. Holtec also pointed out that, per the plain language of the application, information about Orrvilon's tax credits in Ohio were not responsive to any question posed by the EDA.

78. With regard to the TVA debarment, Holtec reminded the EDA that this matter was already explained in the May 20, 2019 correspondence. Holtec also explained why, under the EDA's own regulations, the brief debarment would not have affected Holtec's eligibility to receive a Grow Program award.

79. Holtec concluded the August 2019 letter by accepting the EDA's invitation for an in-person meeting so that Holtec could address any remaining concerns that the EDA might have.

80. In the months that followed Holtec's August 2019 letter, the EDA took no action to set up the meeting that it itself had requested. Nor did it otherwise engage with Holtec to ask any legitimate follow-up questions concerning the matters addressed in Holtec's correspondence. The EDA instead chose to play a waiting game to ignore its contractual obligations.

81. Frustrated by the EDA's breach of the Incentive Agreement, but nevertheless hopeful that the EDA might eventually turn the "square corners" it is required to by law, on October 9, 2019 Holtec submitted to the EDA a Notice of Claim under the Contractual Liability Act, N.J.S.A. 59:13-1 to -10.

82. The Notice of Claim detailed the applicable history of interactions between the EDA and Holtec, reminded the EDA of its contractual obligations to review Holtec's Annual Compliance Report, and informed the EDA that its failure to issue the Letter of Compliance constituted a material breach of the Incentive Agreement. Holtec further informed the EDA that its actions were causing Holtec significant business disruption and damages in light of Holtec's own contractual obligations to transfer the 2018 tax credit to qualified purchasers.

83. The Notice of Claim reminded the EDA, again, that the EDA had requested a meeting with Holtec but had failed to schedule that meeting.

84. After the EDA received the Notice of Claim, the EDA advised Holtec through counsel that it wanted to conduct a further "review" of Holtec that would involve document demands, witness interviews, and the like. The EDA did not specify what issues it sought to "review," why those issues were relevant to the EDA's contractual obligations to issue the required Letter of Compliance, or what the legal basis was for the EDA conduct such an open-ended inquiry.

85. Holtec is aware of no legal authority for the EDA to conduct the sort of amorphous "review" that it proposed. Indeed, Holtec submits that there is no such legal authority and that the EDA proposed this framework as a delay tactic to avoid having to release Holtec's 2018 tax credits.

86. The EDA promised to share with Holtec a specific list of issues that the EDA believed were relevant and appropriate as part of this "review." The EDA never provided that list.

87. Near the end of 2019, Holtec reached out to the EDA to schedule the meeting that the EDA had itself originally requested in June 2019.

88. On January 6, 2020, the EDA's counsel replied that the meeting—i.e., the one that the EDA itself had requested and that Holtec had been trying for months to schedule—was "premature." The EDA repeated that it might want to perform some sort of amorphous "review," and proposed to discuss the matter further.

89. To date, Holtec still has not received any details about the proposed "review," the legal basis for the review, or how such issues could inform the EDA's obligations to issue the 2018 Letter of Compliance under the Incentive Agreement.

The EDA's Breach Is Costing Holtec Tens of Millions of Dollars In Damages

90. Pursuant to the statute that initiated the Grow Program, incentive recipients are entitled to securitize and transfer their tax-awards to other entities. This mechanism enables, for example, companies to obtain necessary financing to construct their Grow Program facilities in exchange for transferring future tax credits. It also permits companies to obtain the full benefit of their tax awards if their annual tax liability might be less than the yearly tax credit (such as in the case of nonprofits or startup companies).

91. Consistent with the Grow Program statute, Holtec entered into contracts of its own for the transfer of its yearly tax credits. Qualified purchasers lent to Holtec money that correlated

to the value of Holtec's Grow Program award. In exchange, Holtec agreed to reimburse the purchasers by transferring its annual tax credit each year.

92. The EDA was aware that Holtec entered into such contractual arrangements.

93. Because the EDA has not timely issued to Holtec the required Letter of Compliance for 2018, Holtec was unable to transfer those tax credits to the qualified purchasers in accordance with the timetables set forth in the applicable agreements. To avoid being in breach of its own contractual obligations, Holtec was thus forced to make cash payments of approximately $26 million to these purchasers. Unless the EDA is forced to comply or reverses its position, Holtec will be continue to be significantly harmed on an annual basis.

94. The EDA previously advised award recipients like Holtec that the EDA would work to process their annual filings expeditiously according to a certain timetable. Holtec relied on the EDA's representations when negotiating the terms of its own contracts with qualified purchasers.

95. The EDA understood that many purchasers of tax credits under the Grow Program are insurance companies, which have tax-filing deadlines of March 1 each year. For that reason, the EDA encouraged companies to submit their annual compliance reports no later than January 15 each year, which would normally allow the EDA sufficient time to complete its review and for the New Jersey Division of Taxation to prepare the annual tax credit certificate prior to March 1.

96. The EDA represented to companies that the "EDA will make every effort to assist all companies through this accelerated reporting period" so that companies would have their tax credits in hand prior to March 1 each year.

97. The EDA disregarded these promises, along with their contractual obligations, when it chose to delay and withhold the credits in breach of the Incentive Agreement.

98. The EDA also requires that each Company submit payment of the non-refundable annual servicing fee, which represents two percent (2%) of the annual tax credit amount. This fee is due at the time of Holtec's submission of its annual filings. Additionally, the EDA requires a non-refundable fee of $500,000 which is due prior to the receipt of the tax credit certificate and which was paid by Holtec.

99. Holtec has complied with the payment of all servicing fees to the EDA, but the EDA has nevertheless refused to conduct and complete the review of the 2018 Annual Compliance Report as mandated by the Incentive Agreement.

Holtec Is Entitled to Specific Performance and Direct Damages

100. The EDA, as a governmental entity, has a duty to "turn square corners" in its dealings with private parties and other governments. It is held to a high standard of integrity in the marketplace, and is not at liberty to engage in sharp tactics to disadvantage its business partners. Thus, in dealing with the public, a government agency must comport itself with compunction and integrity, and not conduct itself so as to achieve or preserve any kind of bargaining or litigation advantage.

101. While certain groups have criticized the Grow Program generally, and the EDA specifically, over the past year, such criticism does not relieve the EDA of its contractual obligations.

102. Holtec is proud of the investments it made in Camden, and its role in the revitalization of that city. Holtec is also proud of its (until recently) collaborative relationship with the EDA, in which the agency in years past acted as a true economic partner that encouraged business development using the grant programs created by the Legislature.

103. Holtec has satisfactorily performed each of its contractual obligations under the Incentive Agreement.

104. In reliance on the EDA's promise to provide $260 million tax credits, Holtec constructed its new facility, invested more than $300 million into Camden (far in excess of the obligated amount), and created hundreds of high-paying quality jobs in New Jersey's most distressed municipality.

105. Holtec timely submitted its 2018 Annual Compliance Report and promptly answered all legitimate questions from the EDA about the contents of that submission. Under the plain language of the Incentive Agreement, the EDA is required to issue Holtec the 2018 Letter of Compliance.

COUNT ONE

BREACH OF CONTRACT

106. Holtec incorporates each of the foregoing paragraphs as if fully set forth herein.

107. Holtec and the EDA entered into the Incentive Agreement, which is a valid and binding contract.

108. Section 11 of the Incentive Agreement states that, no later than 120 days after the end of each Tax Period during the Commitment Period, Holtec shall submit to the EDA its Annual Compliance Report.

109. Holtec completed its obligations regarding the Camden project and timely submitted its Annual Compliance Report for 2018 on January 15, 2019.

110. Section 11 of the Incentive Agreement requires the EDA to timely review the Annual Compliance Report and, if satisfactory, issue a Letter of Compliance indicating the amount of that tax credits that may be used for the relevant Tax Period.

111. Holtec submitted the required Annual Compliance Report for 2018, and that annual report was satisfactory, yet the EDA has refused timely to issue the Letter of Compliance for 2018.

112. The EDA's refusal to issue the Letter of Compliance for 2018 is a material breach of the Incentive Agreement.

113. The EDA's refusal to issue the Letter of Compliance for 2018 is not excused for any reason under the Incentive Agreement or otherwise by law.

114. The requests by the EDA to conduct an amorphous "review" prior to issuing the required Letter of Compliance is without basis in law or fact, and is instead an improper and unlawful delay tactic.

115. Holtec has been damaged by virtue of the EDA's breach of the Incentive Agreement and will continue to be damaged in future years if EDA continues to refuse to issue the mandated Letters of Compliance.

116. Under the circumstances and equities of this case, Holtec is entitled to specific performance of the Incentive Agreement and an order directing the EDA to issue the required Letter of Compliance for 2018.

117. Holtec is additionally entitled to direct damages flowing from the EDA's refusal to issue the Letter of Compliance. These damages include, but are not limited to, interest on the $26 million payment Holtec made to the qualified purchasers, any practical diminution of the 2018 tax credit's value given the EDA's delay, and any other such damages flowing from the EDA's actions.

COUNT TWO

BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

118. Holtec incorporates each of the foregoing paragraphs as if fully set forth herein.

119. Like all contracts governed by New Jersey law, the Incentive Agreement contains an implied covenant of good faith and fair dealing that requires, among other things, neither party to do anything that will have the effect of depriving the other party of the benefit of the bargain. Parties to a contract must adhere to community standards of decency, fairness, and reasonableness, and must refrain from exercising any contractual discretion in a manner that is arbitrary, unreasonable, or capricious.

120. The provision of tax credits under the Grow Program statute was a material factor in Holtec's decision to make an investment and locate in Camden.

121. Holtec has satisfactorily performed all of its obligations under the Incentive Agreement.

122. By indefinitely delaying the award of Holtec's 2018 Letter of Compliance, the EDA is breaching the implied covenant of good faith and fair dealing by, among other things, depriving Holtec of the benefit of the parties' bargain.

123. Holtec has been significantly damaged by virtue of the EDA's breach of the implied covenant of good faith and fair dealing, and will continue to be damaged in future years.

124. Under the circumstances and equities of this case, Holtec is entitled to specific performance of the Incentive Agreement and an order directing the EDA to issue the required Letter of Compliance for 2018.

125. Holtec is additionally entitled to direct damages flowing from the EDA's refusal to issue the Letter of Compliance. These damages include, but are not limited to, interest on the $26

million payment Holtec made to the qualified purchasers, any practical diminution of the 2018 tax credit's value given the EDA's delay, and any other such damages flowing from the EDA's actions.

COUNT THREE

PROMISSORY ESTOPPEL

126. Holtec incorporates each of the foregoing paragraphs as if fully set forth herein.

127. The EDA made a clear and definite promise to Holtec that if Holtec constructed its state-of-the-art facility in Camden, delivered the promised jobs, and otherwise met its obligations under the Grow Program, the EDA would issue Holtec its annual Letter of Compliance.

128. The EDA further made a clear and definite promise to Holtec concerning the timing in which the EDA would process the company's Annual Compliance Report so that Holtec would have its tax credits in hand prior to March 1 each year.

129. The EDA made these promises with the expectation that Holtec would rely on them. The EDA wanted to convince Holtec to make a capital investment and locate in Camden, and as part of that process, knew that Holtec needed predictability regarding the timing of its annual tax credits so Holtec could securitize them accordingly.

130. Holtec relied on the EDA's promises by making over $300 million in investments into the Camden facility, delivering the promised jobs, and by structuring its own agreements with qualified purchasers on the assumption that Holtec would receive its annual tax credit by March 1 each year.

131. Holtec's reliance on the EDA's promises was reasonable and foreseeable, and Holtec had no reason to suspect that the EDA would disregard its promises as it is currently doing.

132. Based on its reliance, Holtec has been damaged in a definite and substantial way. Holtec invested hundreds of millions of dollars into the Camden facility in the expectation of receiving its lawfully issued tax credits. Holtec entered into its own contracts with qualified purchasers for the transfer of those annual tax credits. And Holtec was required to make payments of approximately $26 million to those purchasers because of the EDA's refusal to issue the required Letter of Compliance.

133. Under the circumstances and equities of this case, Holtec is entitled to an order directing the EDA to issue the required Letter of Compliance for 2018.

134. Holtec is additionally entitled to direct damages flowing from the EDA's refusal to issue the Letter of Compliance. These damages include, but are not limited to, interest on the $26 million payment Holtec made to the qualified purchasers, any practical diminution of the 2018 tax credit's value given the EDA's delay, and any other such damages flowing from the EDA's actions.

PRAYER FOR RELIEF

WHEREFORE, based on the preceding allegations, Holtec respectfully requests that the Court enter judgment against the EDA and award the following relief:

a. Ordering the EDA to issue the Letter of Compliance for the 2018 tax year;

b. Awarding Holtec direct damages incurred because of the EDA's actions; and

c. Granting such other relief as the interests of justice may require.

RIKER DANZIG SCHERER
HYLAND & PERRETTI LLP
Attorneys for Plaintiff Holtec International

By: _____
Michael P. O'Mullan

Dated: March 23, 2020

RULE 4:5-1 CERTIFICATION

I certify, to the best of my information and belief, that there are no related pending matters. I further certify that the matter in controversy in this action is not the subject of a pending arbitration proceeding in this State, nor is any other action or arbitration proceeding contemplated. I certify that there is no other party who should be joined in this action at this time.

RIKER DANZIG SCHERER
HYLAND & PERRETTI LLP
Attorneys for Plaintiff Holtec International

By: _____
Michael P. O'Mullan

Dated: March 23, 2020

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:25-4, Michael O'Mullan is hereby designated as trial counsel for the Plaintiff in this action.

RIKER DANZIG SCHERER
HYLAND & PERRETTI LLP
Attorneys for Plaintiff Holtec International

By: _____
Michael P. O'Mullan

Dated: March 23, 2020

CERTIFICATION PURSUANT TO R. 1:38-7(c)

I hereby certify that confidential personal identifiers have been redacted from documents now submitted to the Court and will be redacted from all documents in the future in accordance with Rule 1:38-8(b).

RIKER DANZIG SCHERER
HYLAND & PERRETTI LLP
Attorneys for Plaintiff Holtec International

By: _____
Michael P. O'Mullan

Dated: March 23, 2020

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Exhibit D

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May 27, 2020

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Honorable Francis R. Hodgson, Jr., P.J.Ch.
Ocean County Court House
206 Courthouse Lane
Courtroom No. 18, 1st Floor
Toms River, New Jersey 08753

GL-29337

RE: Lacey Township v. Holtec International and Holtec Decommissioning International
Docket No.: TBD

Dear Judge Hodgson:

Please be advised that this office represents the Plaintiffs, Township of Lacey and Lacey Township Committee with regard to the captioned matter. Pursuant thereto we enclose the following documents:

1. Verified Complaint
2. Memorandum of Law
3. Proposed Order to Show Cause Seeking Temporary Restraints; and
4. Proposed Form of Order.

By copy of this letter one (1) copy of the enclosed has been forwarded to Richard Hunt, attorney for the Defendants.

Please review and if acceptable advise as to the return date of the Order to Show Cause. Please return one (1) copy of that Order to our office and we will promptly forward a copy to Mr. Hunt.

In the event that Your Honor has any questions or we could be of additional assistance, please do not hesitate to contact our office.

Respectfully yours,

JERRY J. DASTI

JJD/nc
Enclosures
Cc: Richard Hunt, Esquire (w/enc.) via email
Veronica Laureigh, Clerk/Administrator (w/enc.) via email
Honorable Steven Kennis, Mayor (w/enc.) via email
Christopher Reid, Director of Community Development (w/enc.) via email

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Attorneys for Plaintiffs, Township of Lacey, a body politic,
And the Township Committee of the Township of Lacey

TOWNSHIP OF LACEY, a body politic, and THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF LACEY Plaintiff(s) vs. HOLTEC INTERNATIONAL and HOLTEC DECOMMISSIONING INTERNATIONAL Defendant(s)	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION OCEAN COUNTY DOCKET NO.: Civil Action **VERIFIED COMPLAINT**

The Plaintiffs, Township of Lacey, a body politic and the Township Committee of the Township of Lacey (hereinafter collectively referred to as the "Township") by way of Complaint against each and both of the Defendants states as follows:

FACTUAL BACKGROUND

1. Upon information and belief, Holtec International is the current owner of property known and designated as 800-804 South Main Street, Lacey Township, New Jersey.

2. The site is the location of the former Oyster Creek Nuclear Generated Facility (hereinafter referred to as the "facility").

3. Upon information and belief, the Defendants have acquired the property from the prior owner with the intent of decommissioning the facility and as a result storing spent nuclear fuel rods on the property.

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4. Plaintiffs are the duly authorized and elected representatives of the Township of Lacey.

5. The predecessors of title were Jersey Central Power and Light Company and thereafter Exelon Generating Company, LLC (hereinafter referred to as "JCP&L" and "Exelon" respectively).

6. When the property was owned by, and the facility was generating electricity as a result of the nuclear power plant, JCP&L applied to the Lacey Township Board of Adjustment for an approval for an independent spent fuel storage installation at the facility (see Resolution of the Lacey Township Board of Adjustment Appeal No. 93-40 attached hereto as "Exhibit D").

7. Pursuant to the aforementioned Resolution, approvals were granted to JCP&L as requested.

8. Thereafter, the successor in interest to the property and the facility, Exelon, applied to the Lacey Township Planning Board for approval to expand "the independent spent fuel storage area by removing existing pavement and construction of two 26' wide x 159' long and 3' deep concrete bases to support 28 additional prefabricated horizontal storage modules to house spent fuel rods". (See "Exhibit E" attached hereto).

9. As a result of the application to the Lacey Township Planning Board, approvals were granted by the Planning Board in accordance with Resolution No. 10-SP-05 (See "Exhibit E" attached hereto).

10. In January of 2018 Exelon entered into an Administrative Consent Order (ACO) with the New Jersey Department of Environmental Protection (See "Exhibit F" attached hereto). The ACO, in general terms, provided for the closure of the facility in accordance with appropriate regulations, and the eventual disposing of the spent nuclear fuel rods.

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11. By letter dated April 13, 2020 a representative of the Defendant, Holtec Decommissioning International ("Exhibit G") authored the letter to Mayor, Steven Kennis indicating that Holtec would be looking for an "expansion to the IFSCI Pad". Mr. Jeffery P. Dostal, Vice President of Holtec indicated that "a permit application has been filed for with Lacey Township".

12. A "Controlled Decommissioning Equipment Change Package" (See "Exhibit H" attached hereto) (hereinafter "CDECP") at Page 1 of 19, stated that the "Problem Statement" was:

> For the remaining spent fuel in the fuel pool, Oyster Creek Nuclear Generating Station (OCNGS) will be shifting dry fuel storage activities from NUHOMS Horizontal Storage Modules (HSMs) over to Holtec's HI-STORM FW XL System. The existing Independent Spent Fuel Storage Installation (ISFSI) Facility at OCNGS is not able to adequately store the number of casks needed to support dry fuel storage operations during plant decommissioning. In addition, due to Holtec HI-TRAC transfer cask height and building clearance restrictions, transfer of the spent fuel loaded Multi-Purpose Canister (MPC) to the HI-STORM FW XL storage overpack cannot be performed inside the reactor building.

13. The "Solution Statement" on the same page of CDECP states:

> In order to transition spent fuel transfer and storage operations to Holtec's HI-STORM FW XL system, a new but separate ISFSI Pad will need to be constructed near the existing ISFSI facility. This new pad will be in accordance with applicable 10 CFR 72 requirements, site-specific design considerations and the Holtec HI-STORM FW XL Cask System and Final Safety Analysis Report (FSAR). The new pad will be designed to accommodate a maximum of 20 HI-STORM FW XL casks and 5 HI-SAFE casks. A Canister Transfer Pit (CTP) will be constructed adjacent to the ISFSI Pad for the purpose of transferring the MPC between the HI-TRAC transfer cask and HI-STORM overpack. In addition, a concrete Access Road/Approach Slab will also be designed and installed to accommodate the transport processes of the loaded transfer cask to the CTP, and of the storage overpack to the designated storage location on the new ISFSI Pad.

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14. As a result of the aforementioned, the Defendants applied to the Lacey Township Planning Board for site plan approval in order to obtain permission and approval to undertake the necessary work in order to comply with the requirements of the ACO and CDECP, as well as other Federal and State regulatory requirements.

15. The application for approval was submitted to the Lacey Township Planning Board in the Fall of 2019.

16. In the approximate 19 pages attached to the CDECP was Attachment 9. Attachment 9 listed the outside agency approvals which Holtec anticipated would be necessary in order to obtain approval for the new large concrete pad. Those permits which Holtec confirmed it would need, as of November of 2019, included Planning or Zoning Board approvals from the County of Ocean, Ocean County Soil approval, and CAFRA approval from NJDEP.

17. Attached as "Exhibit I" is the "Interface Department Comment / Impact Review Form". In paragraph 1, Holtec admits "Yes. The new pads can potentially impact the existing ISFSI facility".

18. Lacey Township has incorporated by reference the Uniform Construction Code into and therefore the UCC is part of the Lacey Township Building Code. The Uniform Construction Code, set forth in N.J.A.C. 5:23-1.4(a) provides in part:

> Construction Permits – When Required
>
> "It shall be unlawful to construct, enlarge, repair, renovate, alter, reconstruct of demolish a structure, or change the use of a building or structure, or portion thereof...".
>
> The Administrative Code at N.J.A.C. 5:23-1.4 defines a structure as

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> "A combination of materials to form a construction for occupancy, use or ornamentation, whether installed on, above, or below the surface of a parcel of land; provided the word "structure" shall be construed when used herein as though followed by the words "part of parts thereof and equipment therein" unless context clearly requires a different meaning."
>
> Therefore, permits are required before a "structure" as defined herein, can be permitted.

19. In 2020 the Defendants withdrew the application for site plan approval which had been submitted to the Lacey Township Planning Board. No further applications to the Lacey Township Planning Board or, upon information and belief, to the Ocean County Planning Board or the Ocean County Soil Conservation Commission have been submitted.

20. It became clear to the Plaintiffs, notwithstanding the refusal to obtain any necessary permits or approvals, that the Defendants were undertaking construction work to house the spent nuclear fuel rods on the site.

21. As a result thereof the Plaintiffs attorney authored a letter to the attorney for the Defendants, Richard W. Hunt, dated May 15, 2020 (Exhibit J) that letter provided in part on page 2:

> It is abundantly clear that a permit is needed to construct what we understand to be a large slab of concrete which will house the spent nuclear fuel rods. We are informed that your client is building structures into the ground, by excavating a substantial area which presumably will thereafter house the spent fuel rods. In addition, the application submitted on behalf of your client to the Lacey Township Planning Board for site plan approval in December of 2019 (see attached Exhibit A) included a permit issued by NJDEP on November 15, 2019 which described the authorized activities as:
>
> > "Construction of a new pad for independent spent fuel storage installation expansion, driveway alignment, and a new 40 ft. by 55 ft. security building. This project is entirely within the existing developed portions of the site. There will be no net increase in impervious coverage."

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22. Site plan approval and permit approvals are required for the Defendants to undertake the work which is currently being performed on the property, in accordance with the provisions of 285-1 of the Lacey Township Code (Exhibit B).

23. In addition, Section 297-17 of the Township Code requires permits for lot grading (Exhibit C). Notwithstanding the clear requirement to obtain approvals and permits from various regulatory agencies, Defendants continue to perform this illegal work on the site.

24. As a result thereof, Plaintiff was compelled to issue a Stop Work Order on March 27, 2020. The issuance of the Stop Work Order caused the Defendants to file an Appeal to the Ocean County Construction Board of Appeals on or about April 17, 2020.

25. A Hearing before the Ocean County Board of Appeals has not been scheduled.

26. Upon information and belief, as of May 20, 2020 Defendants continue to improperly perform work at the site which includes burying of spent nuclear fuel rods and expansion of the site to which the fuel rods are to be buried. Upon information and belief, Defendants have filled in the remainder of the transfer pit with concrete. It is a hole about 25' by 25' and 15' deep. It is intended to house 24 new casks with 6-8 nuclear rods in each cask.

COUNT I

1. Plaintiffs repeat and reiterate all of the allegations set forth hereinabove.

2. Defendants are clearly in violation of the Lacey Township Code and various regulations of and agreements with other regulatory agencies including but not limited to the County of Ocean and the New Jersey Department of Environmental Protection.

3. Defendants clearly are required to obtain appropriate approvals from various boards and agencies before undertaking the work which is now ongoing.

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4. Upon information and belief, notwithstanding the aforementioned Stop Work Order, Defendants continue to construct structures meant to house the spent nuclear fuel rods on the site.

5. The activities of the Defendants on the site are clearly a violation of law, and an Order must be entered compelling the Defendants to Show Cause why a Temporary and thereafter Permanent Injunction should not be issued until Defendants obtain all required regulatory approvals.

COUNT II

1. Plaintiffs repeat and reiterate all of the allegations set forth hereinabove.

2. The actions of the Defendants as set forth hereinabove are egregious and could cause substantial harm to the citizens of Lacey Township and adjoining Ocean Township, not to mention the citizens and residents of Ocean County.

3. Defendants must be compelled to stop any and all work on the site as set forth hereinabove until all regulatory agency approvals have been applied for and approved.

COUNT III

1. Plaintiffs repeat and reiterate all of the allegations set forth hereinabove.

2. As a result of the illegal and improper actions of the Defendants, the Township has been substantially damaged.

3. The Township has been required to expend substantial attorney's fees and costs of suit to restrain the Defendants from continuing illegal activities.

4. In addition the employees of the Township, including but not limited to the Building and Construction Department, Township Administrative Department, and other

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employees of the Township have been required to expend substantial amounts of time with regard to this issue.

5. All of the efforts expended have been at a substantial cost to the Lacey Township taxpayers.

6. As a result thereof the Township has been and continues to be damaged.

WHEREFORE, Plaintiff demands judgment against each and both of the Defendants as follows:

a. A Temporary and thereafter Permanent Restraining Order prohibiting the Defendants from continuing to undertake any work on the site unless and until all necessary approvals and permits have been obtained;

b Assessment of Counsel fees and costs of suit; and

c. Any other relief which this Court deems equitable and just.

DASTI, MURPHY, McGUCKIN, ULAKY, KOUTSOURIS & CONNORS
Attorneys for Plaintiffs, Township of Lacey, a body politic, and the Township Committee of the Township of Lacey

Dated: 2-7, 2020

By: _____
JERRY J. DASTI, ESQUIRE

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CERTIFICATION PURSUANT TO RULE 4:5-1

I hereby certify that to the best of my personal knowledge the within claims of Plaintiff are not the subject of any other action pending in any court or arbitration proceeding and no other action is contemplated. Plaintiff further certify that no parties are known who should be joined in the within action. Defendants are hereby requested to disclose, as required by Court Rule, whether said Defendants are aware of any pending actions involving the subject matter of Plaintiff's Complaint.

DASTI, MURPHY, McGUCKIN, ULAKY, KOUTSOURIS & CONNORS
Attorneys for Plaintiffs, Township of Lacey, a body politic, and the Township Committee of the Township of Lacey

Dated: 2-7, 2020

By: _____
JERRY J. DASTI, ESQUIRE

VERIFICATION BY CERTIFICATION

1. I am the Lacey Township Administrator and the Lacey Township Clerk. I am familiar with the facts concerning this matter. I have reviewed the Complaint herein.

2. I certify that the foregoing statements made by me and the statements set forth in the Complaint are true to the best of my knowledge, information and belief. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: _____, 2020

_____
VERONICA LAUREIGH, Township Administrator/Clerk

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620 WEST LACEY ROAD
P.O. BOX 1057
FORKED RIVER, N.J. 08731

required by Court Rule, whether said Defendants are aware of any pending actions involving the subject matter of Plaintiff's Complaint.

DASTI, MURPHY, McGUCKIN, ULAKY, KOUTSOURIS & CONNORS
Attorneys for Plaintiffs, Township of Lacey, a body politic, and the Township Committee of the Township of Lacey

Dated: _____, 2020

By: _____
JERRY J. DASTI, ESQUIRE

VERIFICATION BY CERTIFICATION

1. I am the Lacey Township Administrator and the Lacey Township Clerk. I am familiar with the facts concerning this matter. I have reviewed the Complaint herein.

2. I certify that the foregoing statements made by me and the statements set forth in the Complaint are true to the best of my knowledge, information and belief. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: 5/27, 2020

VERONICA LAUREIGH, Township Administrator/Clerk

DASTI, MURPHY
McGUCKIN, ULAKY,
KOUTSOURIS & CONNORS

COUNSELLORS AT LAW

600 WEST LACEY ROAD
P.O. BOX 1057
FORKED RIVER, N.J. 08731

EXHIBIT 'A'

2019-02

STATE OF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF LAND USE REGULATION
Mail Code 501-02A, P.O. Box 420, Trenton, New Jersey 08625-0420
Telephone: (609) 777-0454 or Fax: (609) 777-3656
www.nj.gov/dep/landuse

PERMIT

In accordance with the laws and regulations of the State of New Jersey, the Department of Environmental Protection hereby grants full permit to perform the activities described below. This permit is revocable with due cause and is subject to the terms, conditions, and limitations listed below and on the attached pages. For the purpose of this document, "permit" means "approval, certification, registration, authorization, waiver, etc." Violation of any term, condition, or limitation of this permit is a violation of the implementing rules and may subject the permittee to enforcement action.

Approval Date: November 15, 2019
Expiration Date: November 14, 2024

Permit Number(s):	Type of Approval(s):	Enabling Statute(s):
1512-07-0032.1 LUP190001	CAFRA Individual Permit-Commercial/Industry/Public	N.J.S.A. 12:3-1 et seq. N.J.S.A. 12:5-3 N.J.S.A. 13:19-1 et seq. N.J.S.A. 13:1D-1 et seq. N.J.S.A. 13:1D-29 et seq. N.J.S.A. 13:1D-9 et seq. N.J.S.A. 13:9A-1 et seq.

Permittee:
Exelon Generation
c/o Jeffery Dostal
741 Route 9
Forked River, NJ 08731

Site Location:
741 Route 9
Block(s) & Lot(s): [1001, 4.02]
Municipality: Lacey Township
County: Ocean

Description of Authorized Activities:

Construction of a concrete pad for independent spent fuel storage installation expansion, driveway alignment, and a new 40' x 55' security building. The project is entirely within the existing developed portions of the site. There will be no net increase in impervious surface.

Prepared by:
Gary Nickerson
Gary Nickerson

Received and/or Recorded by County Clerk:

If the permittee undertakes any regulated activity, project, or development authorized under this permit, such action shall constitute the permittee's acceptance of the permit in its entirety as well as the permittee's agreement to abide by the requirements of the permit and all conditions therein.

This permit is not valid unless authorizing signature appears on the last page.

EXHIBIT 'B'

[HISTORY: Adopted by the Township Committee of the Township of Lacey 5-17-1974 as Ch. 90 of the 1974 Code; amended in its entirety 12-17-1976. Subsequent amendments noted where applicable.]

INERAL REFERENCES

Municipal Utilities Authority — See Ch. **73.**
Planning Board — See Ch. **89.**
Land use procedures — See Ch. **215.**
Subdivision of land — See Ch. **297.**
Zoning — See Ch. **335.**

§ 285-1 Site plan required; review.

[Amended 12-18-1980 by Ord. No. 30-80; 6-24-1993 by Ord. No. 93-58; 12-8-1994 by Ord. No. 94-52; 12-22-1998 by Ord. No. 98-48; 2-9-2012 by Ord. No. 2012-05]

A. Approval required.

(1) Except as hereinafter provided, there shall be no building permit or certificate of occupancy issued for any new construction or for any enlargement, alteration or addition to any existing structure for any commercial or industrial use, office building, garden apartment, apartment or structure designed for multifamily use where such use or uses are permitted by the Chapter 335, Zoning, of the Code of the Township of Lacey, unless the developer submits a site plan to and final approval is granted pursuant to a resolution of the Planning Board; provided, however, that a resolution granting final site plan approval by the Zoning Board of Adjustment shall substitute for that of the Planning Board whenever the Zoning Board of Adjustment has jurisdiction over site plans pursuant to N.J.S.A. 40:55D-76(b) and Chapter 335, Zoning, of this Code. No certificate of occupancy shall be given unless all construction conforms with the approved site plan.

(2) Any change of use of an existing site requires site plan approval by the approving authority. The site must conform to the off-street parking requirement for the proposed new use as set forth elsewhere in this Code. Any addition, expansion or alteration to an off-street parking area, access drive or buffer shall require site plan approval. Any construction of a new off-street parking area, loading or storage area or drive which may or may not include the construction or alteration of a structure requiring issuance of a building permit shall also require site plan approval.

B. Site plan approval shall not limit the requirements for submission of an application to the appropriate Board for subdivision, conditional use approvals and/or any and all variances that may be required either by ordinance or pursuant to state statute.

C. Any change of an existing use to a use described above shall also require final site plan approval regardless of whether such change of use requires any new construction.

D. The provisions herein shall not apply to detached one- or two-family dwelling unit buildings.

E. Each application for site plan approval, when required pursuant to Section 8 of P.L. 1968, c. 285 (N.J.S.A. 40:27-6.6), shall be submitted by the applicant to the Ocean County Planning Board for review or approval as required by the aforesaid sections, and the Planning Board shall condition any approval that it grants upon timely receipt of a favorable report on the application by the Ocean County Planning Board or approval by the Ocean County Planning Board by its failure to report thereon within the required time period.

F. The Planning Board, when acting upon applications for preliminary site plan approval, shall have the power to grant such exceptions for the requirements for site plan approval as may be reasonable and within the general purpose and intent of the provisions herein and within the provisions of N.J.S.A. 40:55D-1 et seq., if the literal enforcement of one or more provisions of this chapter is impracticable or will exact undue hardship because of peculiar conditions pertaining to the land in question.

The Planning Board shall have the power to review and approve or deny conditional uses or subdivisions simultaneously with the review for site plan approval without the developer being required to make further application to the Planning Board or the Planning Board being required to hold further hearings. The longest time period for action by the Planning Board, whether it be for subdivision, conditional use or site plan approval, shall apply. Whenever approval of a conditional use is

EXHIBIT 'C'

§ 297-3 County approval; exceptions to requirements; simultaneous review and approval.

A. Each application for subdivision approval, when required pursuant to Section 5 of P.L. 1968, c. 285 (N.J.S.A. 40:27-6.3), shall be submitted by the applicant to the Ocean County Planning Board for review or approval as required by the aforesaid section, and the Planning Board shall condition any approval that it grants upon timely receipt of a favorable report on the application by the Ocean County Planning Board or approval by the Ocean County Planning Board by its failure to report thereon within the required time period.

B. The Planning Board, when acting upon an application for preliminary or minor subdivision approval, shall have the power to grant such exceptions from the requirements for subdivision approval as may be reasonable and within the general purpose and intent of the provisions for subdivision review and approval, if the literal enforcement of one (1) or more of the provisions of this chapter is impracticable or will exact undue hardship because of peculiar conditions pertaining to the land in question.

C. The Planning Board shall have the power to review and approve or deny conditional uses or site plans simultaneously with review for subdivision approval, without the developer being required to make further application to the Planning Board or the Planning Board being required to hold further hearings. The longest time period for action by the Planning Board, whether it be for subdivision, conditional use or site plan approval, shall apply. Whenever approval of a conditional use is requested by the developer pursuant to the Municipal Land Use Act,[1] notice of the hearing on the plat shall include reference to the request for such conditional use.

[1] *Editor's Note: See N.J.S.A. 40:55D-1 et seq.*

§ 297-4 Standards for consideration of subdivision applications.

The Planning Board shall consider applications for subdivision approval if the detailed drawings, specifications and estimates of application for subdivision approval conform to the standards established herein:

A. The details of the subdivision application are in accordance with the standards of Chapter 335, Zoning, and any and all other ordinances of the Township of Lacey which may be in existence at the time of the application, and in harmony with the officially adopted comprehensive Master Plan of the Township of Lacey which may hereafter be adopted.

B. The application complies with the requirements of N.J.S.A. 40:55D-38.

C. There are provisions, if required, for off-tract water, sewer, drainage and street improvements which are necessitated by the subdivision application, with any contributions for the cost of the same to be computed in accordance with N.J.S.A. 40:55D-42 and Chapter 215, Land Use Procedures, of this Code.

D. Provisions for standards to encourage and promote flexibility and economy in layout and design to the use of planned unit development, planned unit residential development and residential cluster, provided that such standards will be appropriate to the type of development permitted and provided further that an ordinance shall be adopted by the Township of Lacey setting forth the limits and extent of any special provisions applicable to such planned developments.

E. In the event there is a development which proposes construction over a period of years, provisions ensuring the protection of the interest of the public and the residents, occupants and owners of the proposed development in the total completion of the development.[1]

[1] *Editor's Note: Former § 93-5, Costs and fees, as amended, which immediately followed this section, was repealed 7-23-1987 by Ord. No. 33-87. For current provisions, see Ch. 211, Land Development Fees.*

§ 297-5 Minor subdivision applications.

In the event an application is made for a minor subdivision as heretofore defined, the Planning Board or its Subdivision Committee may waive notice and public hearing for an application for such development upon a finding that the application for development conforms to the definition of "minor subdivision" as defined in N.J.S.A. 40:55D-5 and § 297-2 of this chapter. Minor subdivision approval shall be deemed to be final approval of the subdivision by the Board, provided that the Board or

EXHIBIT 'D'

RESOLUTION OF THE
LACEY TOWNSHIP BOARD OF ADJUSTMENT
Appeal #93-40

WHEREAS, Jersey Central Power & Light Co., whose mailing address is 300 Madison Avenue, Morristown, New Jersey has applied for a use variance pursuant to N.J.S.A. 40:55D-70(d) and amended preliminary and final site plan approval for premises located at Block 1001, Lot 4 as shown on Tax Map 53 of the Township of Lacey; and

WHEREAS, such proof of services as may be required by the New Jersey Statutory Law and Township ordinance requirements upon appropriate property owners and governmental bodies has been duly furnished; and

WHEREAS, the application was declared complete on November 3, 1993; and the applicant consented to extend the statutory time limits to April 1, 1994; and

WHEREAS, Public Hearings were held on said application on February 28, 1994, March 7, 1994 and March 21, 1994, in the Municipal Building of the Township of Lacey and testimony and exhibits were presented on behalf of the applicant and all interested parties have been heard; and

WHEREAS, said Board having considered said application, testimony and exhibits submitted and inspection of the site, if any, makes the following findings:

APPLICANT TESTIMONY

1. The applicant, Jersey Central Power & Light Co. (JCPL) is the owner of Block 1001, Lot 4 in the Township of Lacey. The street address is known as 800 South Main Street, Route 9, Forked River, New Jersey. The present site consists of approximately 758 acres on which is located the Oyster Creek Nuclear Generating Plant, operated by GPU Nuclear Corporation (GPU). The property is located in the M-6 zone. The M-6 zone no longer allows for nuclear facilities or nuclear operating facilities as an approved

use. The present facility has been in operation since ... is presently a non-conforming use in the M-6 zone.

2. The applicant seeks a use variance, pursuant to N.J.S.A. 40:55D-70(d), as well as amended preliminary and final site plan approval for an independent spent fuel storage installation at the Oyster Creek facility. The applicant seeks to construct twenty (20) pre-fabricated concrete storage modules. These modules shall be placed on a base mat and approach slab. Each of the concrete storage modules can accommodate fifty-two (52) used spent fuel assemblies.

The Board's engineer prepared a report on the application and site plan dated November 30, 1993 which addressed the request for waivers and found that the site is comprised of 758 acres and significantly exceeds all the bulk requirements of the M-6 zone. All minimum required setbacks to the proposed facility are also exceeded in the proposal. The report also found the site plan application requirements were met with the exception of those wherein a waiver was requested.

3. The applicant presented the following testimony and evidence on its behalf:

A. Commencing in 1969, the Oyster Creek Plant's storage capacity for spent fuel rods in a wet pool was 840 assemblies. Initially it was anticipated that spent fuel would be stored on site for a short period of time and it would be shipped to a reprocessing facility. The initial capacity of the wet pool storage was determined based on the ability to reprocess some of the spent fuel. Because reprocessing was abandoned by the federal government and the nuclear community, additional storage at the site was needed and the wet pool was redesigned to accommodate additional fuel. By 1986 the maximum density racks were installed which provided for storage of 2,600 assemblies.

B. The federal government has mandated that the Department of Energy establish a permanent disposal facility for spent fuel. According to the applicant's expert, it appears very unlikely that the Department of Energy will comply with the 1998 deadline established by Congress. In the interim, federal legislation mandates that utilities are responsible for providing storage of spent fuel on the site of the existing reactors. The Nuclear Waste Policy Act specifically identifies dry storage as an available option. It is estimated that from the present time until the year 2009, Oyster Creek will have generated a total of 3,600 spent fuel assemblies. Oyster Creek's existing license from the Nuclear Regulatory Commission (NRC) expires in the year 2009. Accordingly, additional on-site storage for approximately 1,000 spent fuel assemblies is now required at Oyster Creek. The wet fuel pool must be maintained to off-load all fuel from the reactor core for safety reasons. After the last installation of new racks, it was determined from an engineering perspective that the wet pool could not be expanded further to provide additional storage.

C. The applicant testified that they evaluated both wet and dry storage alternatives available to provide additional spent fuel storage capacity. They found that while both wet and dry storage systems provide safe storage, the dry storage systems offer a simpler, less complicated design. The dry storage technologies are passive designs that do not require active components, such as pumps, motors, and fans to ensure proper operation. In addition, according to the applicant, the passive dry storage systems are less expensive to install and maintain than a new wet spent fuel pool.

D. The applicant through its parent company GPU sought

bids on the dry storage technology. They chose the Nuhoms dry storage technology design by Pacific Nuclear Fuel Services Company, Inc. The applicant believes that the Nuhoms system is a simple, reliable and passive system which stores spent fuel rods above ground in concrete modules. The Nuhoms system is subject to approval by the Nuclear Regulatory Commission.

E. The Nuhoms system is presently being utilized at three other nuclear generating plants, two in South Carolina and one in Maryland. According to the applicant these facilities have revealed no problems and they are confident that the Nuhoms system is the most technically advanced and safe available at present.

F. The applicant offered technical information that the dry storage technology is simple with relatively no maintenance. The concrete modules are impact resistant structures which can withstand normal and abnormal conditions, including earthquakes, tornados, flooding and other natural phenomena. These modules would be monitored in accordance with NRC regulations.

G. In addition, the applicant chose the Nuhoms design in the hopes that it may facilitate off-site shipment of the spent fuel to a permanent federal depository.

H. The applicant presented further testimony that the Nuhoms module complies with on-site and off-site radiation dose limits required by the appropriate regulations. Under present federal regulations, permissible radiation limits at the owner controlled boundary of Oyster Creek are 25 mrem/year and 100 mrem/year. Presently, the total radiation dose from the Oyster Creek facility is less than 1% of these limits. Even with the addition of the dry storage facility, Oyster Creek will continue to be below 1% of these limits.

I. JCP&L is planning on using [illegible] modules providing a total of 1,040 fuel assemblies storage. Each canister/module holds fifty-two (52) fuel assemblies. The NRC's policy, according to the applicant, is that dry storage facilities will only be licensed for a maximum of twenty (20) years. Representatives of the designer of the facility, Pacific Nuclear, indicated that the design lifetime was determined to be fifty (50) years. The selection of design materials and techniques allowed no degradation of any component in the system during a span of fifty (50) years under the most adverse environmental conditions. Moreover, as part of the design of the spent fuel facility, there will be radiation and temperature monitoring of the facility; including verification that the storage module vent screens are clear of debris.

J. The applicant next presented testimony concerning criteria used to evaluate the site as follows:

1. Current federal policy mandates that fuel storage facilities are to be located at the reactor's site. Other federally mandated requirements are that the facility be located more than 100 meters inside the owner controlled boundary; federal radiation dose limits must be maintained; the site must be in close proximity to the reactor building to facilitate transfer of spent fuel; the site must be accessible by heavy haul transporter; the soil must have suitable load bearing characteristics and finally the site must be suitable from a security perspective. The applicant presented testimony that the site is appropriate because it satisfies the federal criteria and contains existing paving with no trees. It is not located in a flood plain nor is it close to wetlands or other environmentally sensitive areas and no threatened or endangered plants or animals inhabit

the area. The impact to the environment, according to the applicant, would be insignificant.

K. The applicant presented testimony that the facility will satisfy all appropriate federal requirements respecting security at the same level of protection presently provided for the Oyster Creek Nuclear Plant. The applicant intends to provide lighting, surveillance cameras, physical barriers, a manned twenty-four hour alarm station, perimeter intrusion detection system, and a vehicle intrusion barrier.

In response to questions, the representatives of the applicant revealed that the present corporate policy was not to take any spent fuel rods from any other nuclear plant shall continue, notwithstanding current federal regulations which prohibit same.

L. In further testimony, the applicant stated that if the spent fuel facility is not constructed, the operations at Oyster Creek would be seriously jeopardized. The nuclear plant may have to close in advance of its license expiration scheduled for the year 2009. In that event, the non-production of electricity at the site would impose a hardship upon the consumers of electricity in general, upon Lacey Township, and the environs as a whole. Moreover, there would be an economic impact inasmuch as Oyster Creek employs approximately 1,000 full-time people, of whom 250 reside in Lacey Township.

M. The applicant presented testimony through its expert engineers concerning the site plan as follows: the storm water management plan meets all requirements of the Township and the storm flow would be within the existing capacity of the present storm sewer system. The environmental performance standard waiver request process is similar to that necessary for a formal environmental impact statement.

In their opinion, there were no concerns identified which would result in an adverse environmental impact due to the construction and operation of the facility. The actual site of the facility consists of an existing storage area and a paved parking lot. No residents are within 100 feet and no historic properties located on the site are within 500 feet of the construction location. The site is not located within the 100 year flood plain and there is no soil erosion now occurring on the site. No pedestrian access is currently needed. Vehicular traffic would not be effected by the construction of this facility and no tree removal will be necessary. No endangered animal or plant species were present or confirmed during a wetland evaluation of the area.

The proposed facility will not add to existing ambient noise levels and noise levels during construction would not be detected off-site.

N. Further evaluation indicated no wetland permits or transition area permits were required from the N.J. DEPE. No gaseous, liquid or solid effluents would be released from the proposed facility and, accordingly, no effluent permitting was necessary.

O. Spent nuclear fuel will be stored in the facility in accordance with all applicable requirements as regulated by the NRC. The NJ DEPE regulates the regular disposal of hazardous waste other than spent nuclear fuel. According to DEP regulations, there would be no hazardous or toxic waste other than the nuclear waste regulated by the NRC. Finally, according to the N.J. DEPE, no waterfront development, coastal wetland or CAFRA permits would be required for this facility.

P. The applicant presented further testimony through

management officials that additional storage capacity must be installed at Oyster Creek until the fuel can be permanently removed from the site. Moreover, if the dry spent fuel storage is not installed by 1996, the plant would not have the capability of totally off-loading fuel from the reactor to the in-plant spent fuel pools. In order to operate safely, fuel must be able to be removed from the reactor and stored in the spent fuel storage pool inside the plant. After 1996, the spent fuel storage pool would be filled to capacity and accordingly the fuel would not be able to be removed from the operating reactor. An additional safety concern would then be raised because the spent fuel would be located both in the reactor and storage pools simultaneously. In response to questions to management, witnesses testified that they view this facility as a temporary facility until the operation of a federal repository is in place. According to the federal legislation, the target date for that federal repository was 1998. According to recent Department of Energy information, however, it appears that it will be the year 2013 before the federal repository would be available.

Q. The applicant presented through a professional planner, testimony related to the special reasons necessary for a use variance to be granted, as follows:

1. In the planner's opinion, this is a public utility that is inherently beneficial because it is an energy provider that serves not only the immediate community but the region as well. Moreover, the planner testified that two other special reasons are promoted by the proposal. First is the promotion of the health, safety and welfare of the community inasmuch as the dry storage is by far the most technically preferred type

of storage for the spent fuel rods. In addition, it is clear that the Oyster Creek facility needs the dry storage in order to continue to operate as a public utility and in order to continue this inherently beneficial use, the dry storage method is preferred. The general health and safety of the community would be most effectively promoted by the selection of this better method for the storage of the material.

2. Finally, under the Municipal Land Use Law, this particular site on the much larger site of the Oyster Creek facility is uniquely suited for the construction of this unique dry storage facility which is virtually mandated by federal regulations. The planner concluded that the applicant meets the burden of proof for special reasons even if it was not an inherently beneficial use.

R. This application, according to the planner, also satisfied the negative criteria inasmuch as it does not pose substantial detriment to the public good. Safety measures taken at the site are reflective of the latest technology and must be approved by the federal nuclear regulatory commission. He also concluded that there would be no impact from a site standpoint with regard to storm water systems, traffic, congestion, or other site plan considerations. Further, the expert concluded that this is an extraordinarily minor expansion of a pre-existing non-conforming use. These containers will be situated in an 84'x108' concrete slab within the 700 odd acre facility. Finally, this generating facility is noted in the Master Plan as important existing utilities to service both the immediate area, the Township and the region. In his opinion this application, if approved, would not substantially

impair the intent and purpose of the zone plan and zoning ordinance of the Township of Lacey.

TESTIMONY OF MEMBERS OF THE PUBLIC

The Board received the following testimony from members of the public:

A. Persons objected to the application on the basis that there was no reasonable assurance that the nuclear fuel here would be stored on a temporary basis on the site. The United States Government has failed in its mission to find a permanent storage place for this nuclear fuel.

B. Other concerns expressed were that the Zoning Board did not require the applicant to submit an environmental impact statement (EIS) in accordance with the application requirements of the Township's ordinance.

C. Other concerns expressed were the proximity of the storage site to Route 9 and the security problems that may be posed by this relationship.

D. Other citizens concerned with the application believed the Board required the services of an expert in order to render a decision particularly as it effects technical details.

E. Further, regarding safety, there was testimony that aircraft in the area, particularly of a military variety may be flying close to the plant and may present a threat to the integrity of the fuel storage facility.

F. One member of the public submitted an exhibit which showed a reconfiguration of the siting of the concrete modules complete with berming and greater spacing between the concrete modules. There was testimony that by incorporating this wall, the soil around the sides of the module will eliminate the possibilities of a direct hit or ramming of all the modules.

G. Other testimony concerned the consistency of the stainless steel metal being used on the canisters and the quality of that material.

H. There was testimony from a representative of an adjoining municipality who expressed concerns about a waiver of an environmental impact statement and inconsistencies on the waiver application.

I. Finally there were requests that the Board attach conditions of approval such as radioactive and thermal monitoring, security improvements; and that the immediate area be made a "no fly" zone by request to the FAA.

J. It was also requested that a condition be imposed requiring physical inspection of the vents be more than every four (4) days as had been testified to before the Board by the applicant.

FINDINDGS AND CONCLUSIONS

The Board after reviewing and weighing all the evidence, testimony and exhibits presented before it, makes the following findings and conclusions:

1. The applicant has met the burden of proof for use or special reasons variance pursuant to N.J.S.A. 40:55D-70(d) based on the following findings:

A. The applicant is a utility regulated by the State of New Jersey which provides electricity and power for its customers and is an inherently beneficial use which satisfies the promotion of the general welfare and positive criteria in accordance with the requirements of the Municipal Land Use Law.

B. Notwithstanding that the Board finds that the use inherently serves the public good, the Board further finds that the proposed site is particularly suitable for the proposed use. There is a pre-existing non-conforming

nuclear generating plant on-site. According to federal regulations, spent fuel must be stored on a temporary basis at the site where it is generated. The testimony presented by the applicant has been weighed and is given credit that this particular site meets all requirements with regard to safety and environmental impact. Moreover, the Board finds that this is an expansion of the non-conforming use inasmuch as the plant is already storing spent fuel rods on-site and this application proposes to maintain that storage but utilize a different on-site facility and technology.

C. The Board further finds that without the ability to store the spent fuel rods on-site, the future operation of the nuclear reactor is placed in jeopardy which would cause undue hardship to the owner utility and moreover, the property cannot reasonably be developed as a conforming use under the present zoning ordinance. There is no other reasonable use for the property other than a nuclear generating facility.

D. Granting the application would further promote the public safety by providing for a means of maintaining operation of the Oyster Creek plant in a safe and secure manner by allowing for the maintenance of the wet pool storage system to handle shut-downs and other operations required during the normal course of generating electricity.

E. The proposed site appears to be ideal for the location of the storage facility within the applicant's property.

F. The Board further finds that the approval of the use variance will not cause any substantial detriment to the public good. This is a pre-existing nuclear power plant and this dry storage facility will ensure that the applicant can continue to generate electricity without interruption and

continue to provide economic benefits to the Township and the State.

G. The Board is satisfied that with specific conditions to be imposed herein, the dry storage facility will be operated in a safe and environmentally sound manner. The Board recognizes that this facility must be licensed by the NRC and its continued use will be monitored by the State Department of Environmental Protection and Energy. A continuous radiation sensing network around the plant coupled with the sampling of air and water from the plant and the storage facility will be required and continued by State agency. The Board further finds that based on the testimony presented, the use of the dry spent fuel storage facility will not result in a significant additional radiation dose emanating from the nuclear plant.

H. The Board finds that the approval of this use variance would not substantially impair the intent and purpose of the zone plan and zoning ordinances of the Township of Lacey. The dry storage facility appears, based on the evidence brought before this Board, to be a necessary accessory structure and use to the existing nuclear generating plant. Adjoining and adjacent property owners will not be adversely impacted by this project inasmuch as there already is on site an operating non-conforming use and the storage facility proposes an expansion of this non-conforming use for a temporary, interim period. The Board further finds that failure of the federal government to build and operate a final spent fuel storage facility has militated the request of the applicant to build this temporary facility.

I. The Lacey Township Master Plan as updated addresses includes within the plan for the Township, the

continued use of the nuclear power plant. Accordingly there appears to be no substantial conflict with the land use element of the Township's Master Plan.

2. The applicant's request for amended preliminary and final site plan approval may be APPROVED based upon the following findings:

A. In accordance with the Township Engineer's findings, the site plan conforms with all applicable standards of the Lacey Township site plan ordinance except where the waivers are requested.

B. The Board finds that the site plan waivers can be granted because the condition of the property and what is proposed is satisfactory and meets the requirements of the Township's site plan ordinance.

C. The Board grants a waiver from the environmental impact statement inasmuch as it adopts the findings of the Board Engineer and testimony of the applicant that the applicant's submission to the Board for a waiver of the EIS addressed in detail those environmental concerns which may be presented by the proposed facility. Those particular items required by the environmental impact waiver application presented the Board with sufficient information to make a judgment for waiver of the environmental impact statement. The Board further finds that was substantial technical testimony, which the Board closely examined with regard to the safety of the proposed dry storage facility and its potential impact on the environment during the course of the hearings. This substantial evidence would not have been required in the environmental impact statement if submitted in accordance with the Township's site plan ordinance requirements.

D. Those waivers not specifically granted herein or

in the Board Engineer's review letters, whose recommendations are adopted herein, are hereby deemed to be denied.

NOW, THEREFORE, BE IT RESOLVED, by the said Board that on this 21st day of March, 1994, based on the findings herein above stated, the application for special reasons variance and preliminary and final amended site plan approval with waivers is hereby GRANTED subject to the following conditions and stipulations of the applicant:

1. There shall be no deviation or change in the proposed use of the facility on the subject premises as set forth in the plans submitted by the applicant to this Board. In the event there is any such deviation from any of the plans as submitted or documents or testimony presented, the applicant shall re-submit the entire application.

2. The applicant shall also secure any and all other necessary applications, permits or approvals as may be required by any other appropriate governmental agency including but not limited to the Nuclear Regulatory Commission and the New Jersey Department of Environmental Protection and Energy.

3. The applicant shall install permanent, suitable and reliable temperature and radiation monitors on the or near the modules and maintain written record thereof for inspection by representatives of the Township of Lacey.

4. Spent nuclear fuel of any consistency or quality shall not be stored on any other site owned and operated by the applicant within the Township of Lacey other than the site which is the subject of this proceeding.

5. All airflow vents situated on the concrete modules shall be inspected for blockage by debris every three days.

6. All spent fuel rods shall be out of commission a minimum of ten (10) years before they may be stored in the dry

storage modules.

7. The applicant shall install sufficient landscaping to completely block view of the modules and transport pad from State Highway #9. Vehicle intrusion obstacles shall be installed in accordance with Nuclear Regulatory Commission requirements.

8. The wet pool storage system must be kept in operation, in the nuclear facility, while fuel rods are located on the site.

9. All spent dry fuel storage rods must be removed from the concrete modules once a permanent federal storage repository is available in accordance with regulations provided by law.

10. The applicant shall provide to the Township on a yearly basis, written records revealing all temperature and radiation measurements. The applicant shall further advise of any and all repairs made to the concrete modules.

11. The applicant shall provide to the Township on a yearly basis, the specific number of spent fuel rod assemblies which have been moved into the dry storage facility.

12. No radioactive material from off-site shall be stored at the Oyster Creek site.

13. Any environmental impact statement or environmental assessment prepared by the applicant and/or the Nuclear Regulatory Commission in conjunction with the application before the Nuclear Regulatory Commission shall be submitted in a timely fashion to the Township of Lacey.

MOVED BY: Fenton

SECONDED BY: McDonald

ROLL CALL

Those in Favor: Fenton, McDonald, Gudgeon, Mick, Koukous, Moore, Stawski

Those Opposed: N/A

Those Absent: Ernest, Bradley

Those Not Voting: Ernest, Bradley

The foregoing is a true copy of a Resolution adopted by said Board at its meeting of April 4th, 1994 as copied from the minutes of said meeting.

Susan Stackles, Secretary

Dated: April 11, 1994

EXHIBIT 'E'

MINOR SITE PLAN
EXELON GENERATION COMPANY, LLC
(OYSTER CREEK NUCLEAR GENERATING STATION)
EXPANSION OF SPENT FUEL STORAGE
ROUTE 9, FORKED RIVER
Block 1001, LOT 4.02
Zone: M-100 - INDUSTRIAL

Application No. 10-SP-05

RESOLUTION OF APPROVAL 10-SP-05
PLANNING BOARD, TOWNSHIP OF LACEY

WHEREAS, an application has been made by **EXELON GENERATION COMPANY, LLC** for approval of a Minor Site Plan application for Block 1001, Lot 4.02, as set forth on the Tax Maps of the Township of Lacey

WHEREAS, the Planning Board, after carefully considering the evidence presented by the applicant, and the report from its professional staff, hereby makes the following findings of fact:

1. The applicant has a proprietary interest in the property.

2. The applicant has requested approval in accordance with the Ordinances of the Township of Lacey.

3. The site in question is located in the M-100, Industrial Zone, on Route 9 in Forked River.

4. The applicant is requesting approval of a minor site plan application from the Lacey Township Land Use and Development Regulations for the purpose of expanding the independent spent fuel storage area by removing existing pavement and construction of two 26' wide x 159' long x 3' deep concrete bases to support 28 additional prefabricated horizontal storage modules to house spent fuel rods. Concrete trench drains are proposed between the existing and the proposed bank of storage modules to channel surface runoff from the 18" thick concrete aprons to an existing drainage basin. The applicant also proposes to relocate the existing security fence along the westerly side of the storage area.

5. The board engineer, Bruce A. Jacobs, P.E., P.P., C.M.E. of Gravatt Consulting Group, prepared a report to the Board dated August 12, 2010. The Board hereby adopts the findings in that report and incorporates the report in this Resolution by reference.

6. The applicant was represented by Richard Hluchan, Esq. The applicant presented the testimony of the project manager, Adam Sparks and its professional engineer, Bruce Connell, P.E., who testified as to the need for the added storage area. Mr. Connell testified that the proposed expansion of the independent spent fuel storage area is in keeping with the area and neighborhood. The testimony also reflected that, in the opinion of the applicant's professionals, the granting of the application would in no way be detrimental to the public good and, in fact, would be a direct benefit to the area.

The Lacey Township Planning Board concurs with these representations and so finds.

WHEREAS, the Planning Board has determined that the applicant should be granted the requested relief for the following reasons:

1. The proposed minor site plan will pose no danger to the surrounding area.

2. The granting of the application will not have any variances from Zoning Ordinances of the Township of Lacey.

3. The neighboring municipality, Ocean Township's requested a postponement of the hearing, however, the applicant did not consent to the postponement and the Board voted to deny that request.

4. Interested neighboring property owners attended the hearing and commented on the record. Those comments have been taken into consideration by this board in rendering this decision.

5. The safety and well being of the immediate area will not be adversely affected by the proposed minor site plan.

6. The application is in substantial compliance with the Zone Plan, and will not unduly impact upon the neighborhood scheme.

NOW, THEREFORE, BE IT RESOLVED, **by the Lacey Township Planning Board that the application is hereby approved subject to the following conditions:**

1. The applicant must submit proof of payment of all currently due taxes to the Lacey Township Planning Board.

2. The applicant must post all bonds and guaranties as required and recommended by this Board and said Planning Board Engineer. Moreover, the applicant must post all required engineering inspection fees.

3. All representations and statements made by the applicant, as well as applicant's representatives and witnesses, shall be considered and deemed to be relied upon by the Board in rendering this decision and to be an expressed condition of this Board's actions in approving the subject application. Any misstatement or misrepresentation, whether by mistake or change in circumstance, shall be deemed a breach of this condition of approval and shall subject this application to further review of this Board's own motion.

4. In the event the Planning Board determines that it reasonably relied upon any misstatement or misrepresentation, then and in that event, any approvals previously given may be rescinded and any improvements at the time in place on the premises in question shall not be in compliance with the ordinances of the Township of Lacey.

5. The applicant must comply with all conditions as contained in the Board Engineer's Report dated August 12, 2010.

6. No building permit shall be issued until the Board Secretary confirms that the Planning Board professional fees have been paid in full. In the event a building permit is issued and there are outstanding Planning Board professional fees, a stop work order will be filed against the applicant/contractor until all professional fees have been paid.

7. In the event there is an *existing* violation, the applicant shall have thirty (30) days from the date the Notice of Decision was published to correct the violation. Failure to correct the existing violation within the time proscribed will result in the issuance of a summons.

NOW, THEREFORE, BE IT RESOLVED, the application, limited to the terms and conditions as set forth more fully in the preamble of this Resolution, be and hereby is approved.

BE IT FURTHER RESOLVED that notification of this favorable Resolution shall be published in an official newspaper of Lacey Township by the applicant within ten (10) days of its passage.

CERTIFICATION

I, **SUSAN CONNOR**, Secretary to the Planning Board of the Township of Lacey, County of Ocean, State of New Jersey, do hereby certify that I am duly authorized to certify Resolutions. I certify that the foregoing Resolution was adopted by the Planning Board of the Township of Lacey at a meeting held on the 12 day of October 2010.

SUSAN CONNOR, SECRETARY
LACEY TOWNSHIP PLANNING BOARD

EXHIBIT 'F'

State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION
OFFICE OF THE COMMISSIONER
Mail Code 401-07
P.O. BOX 402
Trenton, NJ 08625-0420
TEL: (609) 292-2885
Fax: (609) 292-7695

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

BOB MARTIN
Commissioner

IN THE MATTER OF:

EXELON GENERATION COMPANY, LLC.
OYSTER CREEK GENERATING STATION
741 ROUTE 9
FORKED RIVER, NEW JERSEY 08731
NEA# 170001-757910

ADMINISTRATIVE CONSENT ORDER

This Administrative Consent Order (hereinafter "ACO") is entered into pursuant to the authority vested in the Commissioner of the New Jersey Department of Environmental Protection (hereinafter "NJDEP" or "Department") by N.J.S.A. 13:1D-1 et seq., the Radiation Protection Act, N.J.S.A. 26:2D-1 et seq., and the Radiation Accident Response Act (the "Act"), N.J.S.A. 26:2D-37 et seq.

FINDINGS

1. Exelon Generation Company, LLC ("Exelon") owns and operates the Oyster Creek Nuclear Generating Station ("Station" or "Facility"), a nuclear fueled electric generating station (SIC Code 4911) that is a "nuclear facility" within the meaning of the Act, N.J.S.A. 26:2D-39(c). The Facility is located at 741 Route 9, Forked River, New Jersey 08731 on the west side of Route 9, between the South Branch of the Forked River and Oyster Creek, two tributaries of Barnegat Bay. The Facility consists of a single boiling water reactor rated to produce 670 megawatts, and was constructed between December 1964 and September 1969 and operation commenced in December 1969. The Facility

operates under a license issued by the United States Nuclear Regulatory Commission ("NRC"), which most recently renewed the license on April 1, 2009 for a 20-year time period, to 2029.

2. Exelon has agreed that it will permanently cease power generation operations at the Facility no later than December 31, 2019 under the terms provided in an Administrative Consent Order executed on December 9, 2010 by Exelon and the Department ("the 2010 ACO," Attachment 1 hereto). For purposes of this ACO, the terms "Termination" and "Terminate Operations" shall be used to refer to the permanent cessation of power generation operations at the Facility. Notwithstanding the preceding sentence or any other provisions of this ACO, the parties agree that other ongoing and necessary operations and activities at the Station, such as decommissioning activities including the activities contained in the Facility's Post-Shutdown Decommissioning Activities Report ("PSDAR"), shall continue after Termination and may require the use of spent fuel pools and Independent Spent Fuel Storage Installations ("ISFSI"), also known as "dry cask storage".

3. Upon Termination, Exelon will initiate actions in accordance with NRC regulations, including 10 C.F.R. § 50.82(a), to certify the permanent cessation of power operations at the Facility. Such actions include the removal of all reactor fuels from the reactor core and placing the fuels into the spent fuel pool and/or dry cask storage for continued cooling and secured storage purposes.

4. Upon certification of permanent defueling, Exelon will initiate decommissioning activities at the Facility in accordance with the Facility's PSDAR filed with the NRC

under 10 CFR 50.82(a)(4)(i). The PSDAR is to be filed no later than December 31, 2018, as specified in the 2010 ACO.

5. It is anticipated that Exelon will file exemption requests with the NRC seeking an exemption from certain radiological emergency planning requirements of 10 CFR 50.47 and 10 CFR Part 50, Appendix E. It is further anticipated that the NRC will grant Exelon's exemption requests, as it has done with regard to exemption requests filed by other recently shut down nuclear power plants.

6. Regardless of any request by Exelon for an exemption from the Emergency Planning ("EP") requirements of 10 CFR 50.47 et. seq. and Appendix E and regardless of any relief NRC may provide, in order to ensure that the Department and N.J State Police Office of Emergency Management ("SPOEM") continue to meet their collective statutory mandate to provide the maximum protection to the citizens of New Jersey from threats to their health and welfare which may result from a radiation accident at the Oyster Creek nuclear Facility or ISFSI, Exelon and the Department have agreed to entry of this ACO and to be bound by its terms and conditions.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:

I. TERMINATION REQUIREMENTS

7. Exelon shall continue to meet its obligations as set forth in the 2010 ACO, including its obligation to terminate power generation operations on or before December 31, 2019. Except with respect to the obligations set forth in paragraph 2, second sub-paragraph, and paragraph 35 of the 2010 ACO, which obligations are modified by Section VI of this

ACO, nothing herein shall alter the obligations set forth in the 2010 ACO or the Department's authority to enforce those obligations.

8. Exelon agrees that:

A. After Termination, Exelon will retain spent fuel, high-level waste, and other materials in the reactor vessel, spent fuel pool and/or its ISFSI as authorized by the Facility's NRC license, for a period of time that is consistent with NRC regulations and license requirements.

B. Exelon will transfer all fuel to the ISFSI as soon as technically and financially feasible and in accordance with the Facility's PSDAR.

C. Once the U.S. Department of Energy ("DOE") begins acceptance of waste for interim storage, long-term disposal or other purpose, Exelon will invoke, exercise, pursue, and/or demand all available legal priorities and avenues for expedited removal of the spent fuel rods and other high level radioactive waste from the site, to the extent consistent with the existing terms of the DOE Standard Contract (see 10 CFR Part 961) and any settlement between DOE and Exelon.

II. POST-SHUT DOWN EMERGENCY PLANNING REQUIREMENTS

9. Following Termination and until all spent fuel is secured into the ISFSI, Exelon shall comply with the following obligations, subject to and in accordance with the regulatory requirements of the NRC:

A. Continue to provide unescorted access for authorized Bureau of Nuclear Engineering (BNE) personnel to all Facility protected areas

and owner controlled areas;

B. Continue to provide an on-site office for BNE staff;

C. Continue to provide onsite and remote access to BNE staff of Exelon's computer network in order to access work plans, daily update reports, and decommissioning progress reports;

D. Initially and annually, provide BNE staff with a point of contact person that has direct knowledge of the Facility's radiological safety systems and equipment. Exelon shall notify BNE in writing within ten calendar days of any changes in point of contact personnel;

E. Copy BNE on all of Exelon's formal submittals to the NRC related to decommissioning and on decommissioning reports to outside agencies;

F. Continue to monitor and provide remote access to BNE staff to Oyster Creek's Effluent and Safety Data including but not limited to: ventilation exhaust monitoring, area radiation monitoring, spent fuel pool level and temperature, and water discharge monitoring;

G. Continue to maintain on-site meteorological equipment and provide BNE remote access to collected real-time and meteorological data in accordance with site Emergency Plan procedures. Meteorological data shall include wind speed, direction and temperature at the 380 and 33 foot elevations. In the event data from onsite equipment is not available, the equipment shall be returned to service as soon as

technically feasible;

H. Provide BNE staff with a roster of emergency personnel including their position within the site emergency plan. Identify Oyster Creek Site staff members who will meet quarterly with BNE staff to coordinate schedules for drills and exercises, review and discuss any changes to Exelon's onsite security plan or the state's offsite response plan, and ensure lines of communication are functioning through training and exercises as needed;

I. Provide notification within one hour of initiation of any emergency event to both the BNE and to the SPOEM through the currently established means of communication with the Regional Operations and Intelligence Center Duty Officer;

J. Maintain operability of notification sirens for state or county office of emergency management use as specified in the RERP to alert the public of any emergency conditions at the site and maintain siren operability until all spent fuel is in dry cask storage;

K. Identify qualified personnel responsible for making offsite dose projections and coordinating the development of dose projections with the BNE assessment team and notify BNE in writing within ten calendar days of any changes in such qualified personnel;

L. Continue to maintain full participation in state, county or local (onsite and

offsite) exercises annually and testing of communications capabilities quarterly;

M. Continue to maintain availability of electrical power and other physical requirements in support of the operation of the on-site Continuous Radiological Environmental Surveillance Telemetry (CREST) monitors;

N. Provide access to BNE to, and permit the installation of, additional CREST monitor(s) should the ISFSI need to be expanded;

O. Support state efforts in performing routine testing of a public alert and notification system;

P. Annually, provide communication on the Facility's emergency plan to the public located within a 10-mile radius of the Facility via brochures through the summer of 2020 and the Site's external website after that time; and,

Q. Conduct annual Stakeholder Information Forums to inform the public of Emergency Management Plans and Facility operating and decommissioning status and to solicit public comments. Establish and maintain a website that is accessible to the public as another venue to disseminate this information.

10 From the point when all spent fuel is secured into the ISFSI and until all spent fuel is removed from the site, Exelon shall comply with the following obligations, subject to and in accordance with the regulatory requirements of the NRC:

A. Continue to maintain and provide unescorted access for BNE personnel to the ISFSI. For all other areas of the Facility, upon request, provide access to BNE personnel for the purposes of observing progress towards decommissioning and determining compliance with this ACO;

B. Provide BNE, at its request, reasonable access to Facility work plans related to decommissioning activities and planned work;

C. Copy BNE on all of Exelon's formal submittals to the NRC related to decommissioning and on decommissioning reports to outside agencies;

D. Provide BNE staff with a point of contact who has direct knowledge of the Facility's radiological safety systems and equipment. Exelon shall notify BNE in writing within ten calendar days of any changes in point of contact personnel;

E. Continue to maintain availability of electrical power and other physical requirements to support operation of the ISFSI CREST monitors; and,

F. Conduct annual Stakeholder Information Forums to inform the public of Emergency Management Plans and Facility decommissioning status and to solicit public comments. Establish and maintain a website that is accessible to the public as another venue to disseminate this information.

11. Exelon will establish an environmental monitoring program in accordance with all state and federal requirements.

III. ASSESSMENTS

12. In order to defray the expenses of State agencies in discharging their responsibilities under the Act after Exelon Terminates Operations, Exelon shall pay the assessments set forth in paragraphs 13-15 below.

13. Exelon shall pay $2,500,000.00 the first fiscal year after it Terminates Operations. Exelon shall make payment no later than July 31 of the first fiscal year after it Terminates Operations. For purposes of this ACO, a fiscal year begins July 1 and ends June 30 of the following year.

14. Each subsequent July 1st in which spent fuel remains within the reactor vessel or spent fuel pool, Exelon shall pay $1,500,000.00, which shall cover the fiscal year beginning that July 1 and ending the following June 30. Payment shall be made no later than July 31 of each fiscal year. The Department may adjust this amount periodically based on the Bureau of Labor Statistics's Consumer Price Index or other generally recognized method of measuring inflation. If, at any time after July 1 and before the next fiscal year, all of the spent fuel has been moved to the ISFSI, the Department agrees to pro-rate, on a monthly basis, the assessment paid for that fiscal year and to give Exelon a credit equal to the prorated amounts for each full month in the applicable fiscal year in which all of the spent fuel is located at the ISFSI. The Department will issue a reimbursement to Exelon in the full amount of the credit or apply the full amount of the credit to future assessments due pursuant to paragraph 15 below.

15. Exelon shall pay $75,000.00 each fiscal year following movement of all spent fuel to the ISFSI and until the Facility is decommissioned. Payment shall be made no later than July

31 of each fiscal year, unless a credit is owed to Exelon pursuant to Paragraph 14 above, in which case the amount due by Exelon will be reduced by the amounts to be credited until such time as the credit is reduced to zero. The Department may adjust this assessment amount periodically based on the Bureau of Labor Statistics's Consumer Price Index or other generally recognized method of measuring inflation.

16. Payment of assessments listed in paragraphs 13, 14 or 15 above shall be made by cashier's or certified check payable to "Treasurer, State of New Jersey" and shall be submitted with the appropriate assessment invoice to the following address:

Division of Revenue
New Jersey Department of Treasury
P.O. Box417
Trenton, New Jersey 08625-0417

IV. STIPULATED PENALTIES

17. Except as provided in Section V (Force Majeure) of this ACO, Exelon may be subject to stipulated penalties for failure to comply with Paragraphs 9 through 16 and/or Section VI of the ACO in accordance with the following:

Calendar Days Not in Compliance	Stipulated Penalties Per Calendar Day
1st through 7th day	$250
8th through 14th day	$1000
15th day and beyond	$2500

18. All stipulated penalties shall be due and payable twenty-one (21) calendar days following Exelon's receipt of a written demand for stipulated penalties from the Department.

Payment of stipulated penalties shall be made by check payable to "Treasurer, State of New Jersey" and shall be submitted to the following address with the appropriate penalty invoice:

Division of Revenue
New Jersey Department of Treasury
P.O. Box417
Trenton, New Jersey 08625-0417

19. If Exelon disputes its obligation to pay part or all of a demanded stipulated penalty, it may avoid the imposition of a separate stipulated penalty for failure to pay the disputed penalty by depositing the disputed amount in a commercial escrow account pending resolution of the matter. If the dispute is thereafter resolved in Exelon's favor, the escrowed amount, plus any accrued interest, shall be returned to Exelon. If the dispute is resolved in NJDEP's favor, NJDEP shall be entitled to the escrowed amount determined to be due by the Court, plus any accrued interest.

20. If Exelon fails to pay stipulated penalties, NJDEP may institute civil proceedings to collect such penalties pursuant to N.J. Court Rules R. 4:67-6 and R. 4:70, access civil administrative penalties for the violations of this ACO, or take any other appropriate enforcement action authorized by law. Exelon reserves the right to appeal or otherwise challenge any assessment of or demand for stipulated penalties and any associated enforcement action under this ACO.

21. The payment of stipulated penalties does not alter Exelon's responsibility to complete all requirements of this ACO.

V. FORCE MAJEURE

22. For the purpose of this ACO, a "Force Majeure Event" means an event which causes a delay in performing or an inability to perform any requirement or obligation of this ACO which has or will be caused by circumstances beyond the control of Exelon, and which Exelon could not have prevented by the exercise of due diligence.

23. If a Force Majeure Event occurs, Exelon shall notify NJDEP in writing as soon as practicable, but in no event later than seven (7) business days following the date Exelon first knew, or within ten (10) business days following the date Exelon should have known by the exercise of due diligence -- whatever comes earlier – that the Force Majeure Event caused or may cause such delay or inability to perform. In this notice Exelon shall reference this Paragraph and describe the anticipated length of time that the delay or inability to perform may persist, the cause or causes of the delay or inability to perform, the measures taken or to be taken by Exelon to prevent or minimize the delay or inability to perform, and the schedule by which those measures will be implemented. Exelon shall adopt all reasonable measures to avoid or minimize such delays or inability to perform. NJDEP shall notify Exelon in writing regarding its claim of Force Majeure within fifteen (15) business days of receipt of the Force Majeure notice provided under this section. If NJDEP determines that a) a delay or inability to perform has been or will be caused by a Force Majeure Event, and b) Exelon has taken all necessary actions to prevent or minimize the delay or inability to perform, the Parties shall stipulate to an extension of the required deadline(s) for all requirement(s) affected by the delay or inability to perform for a period of time equivalent to the delay or inability to perform actually

caused by such circumstances.

24. Exelon shall not be liable for stipulated penalties for a period where the delay or inability to perform is caused by a Force Majeure Event under this Section V.

25. If NJDEP denies Exelon's claim that a Force Majeure Event prevented it from performing the requirements set forth in paragraphs 9-16 or Section VI herein, Exelon must pay the penalties as stipulated in Section IV of this ACO. For any stipulated penalties that Exelon may be subject to because of NJDEP's denial of Exelon's claim of Force Majeure, Exelon may refuse NJDEP's demand for payment of such stipulated penalties and may raise whatever defenses it is otherwise entitled to assert in any action brought by NJDEP to enforce any demand for payment.

26. Exelon shall bear the burden of proving that any delay in performing or failure to perform any requirement of this ACO was caused or will be caused by a Force Majeure Event. Exelon shall also bear the burden of proving the duration and extent of any delay attributable to a Force Majeure Event. An extension of one compliance date based on a particular Force Majeure Event may, but will not necessarily, result in an extension of a subsequent compliance date.

27. Unanticipated or increased costs or expenses associated with Exelon's performance of its obligations under this ACO shall not constitute a Force Majeure Event. A breach of any of Exelon's contracts may, but shall not automatically, constitute a Force Majeure Event.

28. The Parties agree that, depending upon the circumstances related to an event and Exelon's responses to such circumstances, the following kinds of events could also qualify as a Force Majeure Event within the meaning of this Section: acts of God, acts of

war, and acts of terrorism.

VI. APPLICABILITYAND SALE OR TRANSFER OF FACILITY OWNERSHIP

29. The provisions of this ACO shall apply to and be binding upon the Department, upon Exelon and its successors and assigns, and upon Exelon's officers, employees, and agents solely in their capacities as such. Exelon's obligations under this ACO are independent of, and in addition to, any applicable requirements under federal and state law.

30. If Exelon sells or transfers all or part of its Operational or Ownership Interest in the Facility or ISFSI to an entity or entities unrelated to Exelon ("Third Party"), at least thirty (30) days prior to the closing date of any such sale or transfer, Exelon shall advise the Third Party in writing of the existence of this ACO and shall provide a copy of this ACO to the Third Party. Exelon shall provide written notice of such sale or transfer to NJDEP, pursuant to Section VII (General Provisions) of this ACO, at least thirty (30) days prior to the closing date of such sale or transfer. For purposes of this ACO, "Operational or Ownership Interest" means Exelon's legal or equitable operational or ownership interest.

31. This ACO shall not be construed to prohibit a contractual allocation – as between Exelon and any Third Party – of the burdens of compliance with this ACO based on an allocation of Operational or Ownership Interest. This ACO shall not be construed to impede Exelon's right to sell or transfer all or any part of its Operational or Ownership Interest in the Facility or ISFSI to a Third Party as long as the requirements of this Article VI are met.

32. Provided the NRC approves a transfer of all or a part of Exelon's Operational or Ownership Interest in the Facility or ISFSI to a Third Party, Exelon shall require as an

explicit, written condition of said transfer that the Third Party assume, for the benefit of NJDEP, all of the rights, obligations and liabilities of the ACO applicable to the purchased or transferred Ownership or Operational Interests in the Facility or ISFSI. Upon the closing date of any transfer of an Operational or Ownership Interest in the Facility or ISFSI, Exelon shall provide NJDEP with a copy of the section or provision of the transfer agreement pursuant to which the Third Party agrees to assume the obligations and liabilities of the ACO for the benefit of NJDEP.

33. Provided the NRC approves a transfer of all or a part of Exelon's Operational or Ownership Interest in the Facility or ISFSI to a Third Party, Exelon and the Third Party may execute an amendment to this ACO, which NJDEP shall agree to and acknowledge, that relieves Exelon of liability under this ACO for, and makes the Third Party liable for, all obligations and liabilities of this ACO applicable to the purchased or transferred Ownership or Operational Interests in the Facility or ISFSI.

34. In the event that Exelon and a Third Party execute an amendment to this ACO as provided in paragraph 33, above, Exelon thereafter shall not be responsible for the actions or omissions of the Third Party pertaining to the ACO.

35. If Exelon decides to sell or transfer its Operational or Ownership Interest, in whole or in part, in the Facility or ISFSI to a Third Party, the State of New Jersey will not intervene in any proceeding as long as Exelon complies with all statutory or regulatory requirements and this Article VI.

VII. GENERAL PROVISIONS

36. Obligations or penalties imposed by this ACO are imposed pursuant to the police powers

of the State of New Jersey for the enforcement of law and the protection of public health, safety, welfare and the environment. No obligations imposed by this ACO are intended to constitute a debt, claim, penalty or other civil action that could be limited or discharged in a bankruptcy proceeding. Obligations imposed by this ACO are not subject to the automatic stay of 11 U.S.C. § 362(a), but, instead, fall within the exemption from the automatic stay at 11 U.S.C. § 362(b)(4).

37. Notwithstanding any exemption requests Exelon files with the NRC or exemption terms granted by the NRC, Exelon agrees to comply with the conditions of this ACO.

38. Nothing contained in this ACO restricts the ability of the Department to raise the above Findings in any other proceeding.

39. This ACO shall be fully enforceable as a final Administrative Order in the New Jersey Superior Court upon the filing of a summary action for compliance pursuant to N.J.S.A. 13:1D-1 et seq. and R. 4:67-6, and may also be enforced in the same manner as an Administrative Order issued by the Department pursuant to these same authorities.

40. Exelon agrees not to contest the terms or conditions of this ACO except that Exelon may contest the Department's interpretation or application of such terms or conditions in any action brought to enforce this ACO.

41. This ACO shall not relieve Exelon from any obligation to obtain and comply with all required federal, state and local permits, or from any obligation to comply with all applicable statutes, codes, rules, regulations and orders. Nothing in this ACO precludes the Department from taking enforcement action against Exelon for any violation of applicable law or precludes Exelon from raising any and all objections and challenges to

the Department's jurisdiction or authority over any matter at issue or enforcement action which is outside the scope of obligations set forth in this ACO.

42. Nothing in this ACO shall relieve Exelon from its obligations to remediate the Facility site or ISFSI as required by applicable federal and state law.

43. No modification or waiver of this ACO shall be valid except by written amendment executed by Exelon and the Department.

44. Unless otherwise specifically provided herein, any communication made by Exelon to the Department pursuant to this ACO shall be sent by certified mail and email to:

Bureau of Nuclear Engineering
PO Box 420, Mail Code 25-01
33 Arctic Parkway
Trenton, New Jersey 08625-0420
Attention: Patrick Mulligan
E-mail: patrick.mulligan@dep.nj.gov

Unless otherwise specifically provided herein, any communication by the Department to Exelon pursuant to this ACO shall be sent by certified mail and by email to:

Senior Vice President Regulatory Affairs and General Counsel
Exelon Generation Company, LLC
4300 Winfield Road
Warrenville, Illinois 60555
Attention: Bradley Fewell
E-mail: bradley.fewell@exeloncorp.com

With a copy to

Site Decommissioning Plant Manager
Oyster Creek Nuclear Generating Station
Exelon Generation Company, LLC
741 Route 9
Forked River, New Jersey 08731
Attention: Jeffrey Dostal
E-mail: Jeffrey.dostal@exeloncorp.com

45. Exelon shall not construe any unwritten or informal advice, guidance, suggestions, or comments by the Department, or by persons acting on behalf of the Department, as relieving Exelon of its obligations under this ACO.

46. In addition to the Department's statutory and regulatory rights to enter and inspect, Exelon shall allow the Department and its authorized representatives access to the site at all times for the purpose of determining compliance with this ACO.

47. The Department reserves all statutory and common law rights to require Exelon to take additional action(s) if the Department determines that such actions are necessary to protect public health, safety, welfare and the environment. Nothing in this ACO shall constitute a waiver of any statutory or common law right of the Department to require such additional measures should the Department determine that such measures are necessary. However, nothing in this ACO creates authority within the Department to regulate in the field of radiological health and safety to the extent such regulation may be preempted, and Exelon has not, and is not, waiving any right to challenge Department action that intrudes upon that preempted field.

48. This ACO shall be governed and interpreted under the laws of the State of New Jersey.

49. If any provision of this ACO is found invalid or unenforceable, the remainder of this ACO shall not be affected thereby and each provision shall be valid and enforced to the fullest extent permitted by law. The Department does, however, retain the right to terminate this ACO if, after such finding, it determines that the remaining ACO does not serve the purpose for which it was intended.

50. This ACO, together with the December 9, 2010 ACO, represents the entire integrated

agreement between the Department and Exelon on the matters contained herein. The parties to this ACO acknowledge that there are no representations, agreements or understandings relating to this ACO other than those expressly contained herein or in the December 9, 2010 ACO.

51. The Department reserves the right to unilaterally terminate this ACO in the event Exelon violates its terms and to take any additional enforcement action it deems necessary.

52. This ACO shall terminate when all spent fuel is removed from the site.

53. This ACO shall become effective upon the execution hereof by both parties, subject to completion of any required public participation process.

54. Each undersigned representative of Exelon and the Department certifies that he or she is fully authorized to enter into and execute this ACO and legally bind the entity for which he or she signs. This ACO may be executed in one or more counterparts, each of which shall be deemed an original as to any party having executed it, but all of which together shall constitute one and the same document.

[SIGNATURE PAGE ON PAGE 20]

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NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

DATE: 1/9/2018

BY: _____
Bob Martin, Commissioner

By this signature, I certify that I have full authority to execute this document on behalf of NJDEP.

EXELON GENERATION COMPANY, LLC

DATE: 1-8-2018

BY: _____
M. Bradley Fewell,
Senior Vice President Regulatory Affairs
and General Counsel

By this signature, I certify that I have full authority to execute this document on behalf of EXELON GENERATION COMPANY, LLC

EXHIBIT 'G'

HOLTEC
DECOMMISSIONING
INTERNATIONAL

Krishna P. Singh Technology Campus, 1 Holtec Blvd., Camden, NJ 08104
Telephone (856) 797-0900
Fax (856) 797-0909

April 13, 2020

Mayor Steven Kennis
818 W. Lacey Road
Forked River, NJ 08731

Oyster Creek Nuclear Generating Station
Renewed Facility Operating License No. DPR-16
NRC Docket No. 50-219

Subject: Oyster Creek Independent Spent Fuel Storage Installation (ISFSI)

Oyster Creek Nuclear Generating Station (OCNGS) will move spent fuel from its Spent Fuel Pool to the ISFSI pad per our Post Shutdown Decommissioning Activities Report filed with the Nuclear Regulatory Commission (NRC). This is being done to place the fuel in a passive storage system that is less vulnerable to external influences that may challenge cooling of the fuel.

An expansion to the ISFSI pad is planned for which a permit application has been filed for with Lacey Township. Preparatory work for the construction of the pad expansion is in progress. The Pad Expansion and supporting systems will be constructed in accordance with applicable 10 CFR 72 requirements, site-specific design considerations, and the HI-Storm FW XL Cask System Final Safety Analysis. Inspections and assurance of meeting build requirements will be performed by the NRC in accordance with NUREG-1536 Rev. 1, "Standard Review Plan for Spent Fuel Dry Storage Systems at a General License Facility".

Based on the Federal guidelines and inspection criteria, Holtec Decommissioning agrees to indemnify and hold the Township of Lacey, its agents, servants and/or employees harmless from and against all claims arising out of or in connection to construction of the ISFSI Pad expansion and supporting systems.

If any further information or assistance is needed, please contact me or OC Regulatory Assurance Manager, James Frank at (609) 971-4114.

Sincerely,

Jeffrey P. Dostal
Oyster Creek Site Vice President
Holtec Decommissioning International, LLC
(609) 971-4572

HDI-20-OC-031

EXHIBIT 'H'

Controlled Decommissioning Equipment Change Package (CDECP)			
Change Number: 628170	Revision: 0	Facility and Unit: OC / 1	Page 1 of 19

Title: ISFSI Expansion for Holtec HI-STORM System
Permanent Change [X] Temporary Change ☐

A) Problem Statement and Change Package Approval

Problem Statement:

For the remaining spent fuel in the fuel pool, Oyster Creek Nuclear Generating Station (OCNGS) will be shifting dry fuel storage activities from NUHOMS Horizontal Storage Modules (HSMs) over to Holtec's HI-STORM FW XL System. The existing Independent Spent Fuel Storage Installation (ISFSI) Facility at OCNGS is not able to adequately store the number of casks needed to support dry fuel storage operations during plant decommissioning. In addition, due to Holtec HI-TRAC transfer cask height and building clearance restrictions, transfer of the spent fuel loaded Multi-Purpose Canister (MPC) to the HI-STORM FW XL storage overpack cannot be performed inside the reactor building.

Solution Statement:

In order to transition spent fuel transfer and storage operations to Holtec's HI-STORM FW XL system, a new but separate ISFSI Pad will need to be constructed near the existing ISFSI facility. This new pad will be in accordance with applicable 10 CFR 72 requirements, site-specific design considerations and the Holtec HI-STORM FW XL Cask System Final Safety Analysis Report (FSAR). The new pad will be designed to accommodate a maximum of 20 HI-STORM FW XL casks and 6 HI-SAFE casks. A Canister Transfer Pit (CTP) will be constructed adjacent to the ISFSI Pad for the purpose of transferring the MPC between the HI-TRAC transfer cask and HI-STORM overpack. In addition, a concrete Access Road/Approach Slab will also be designed and installed to accommodate the transport processes of the loaded transfer cask to the CTP, and of the storage overpack to the designated storage location on the new ISFSI Pad.

Note: The Approach Slab acts as the Access Road as part of the haul path. With the design as issued in this EC, Rev. 0, they are a single slab hereinafter described as the Approach Slab.

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Scope:

The scope of this EC Package is to provide the design, installation, and testing requirements for the new concrete ISFSI Pad, Canister Transfer Pit (CTP), and connecting the Approach Slab to support future spent fuel transfer and storage operations with Holtec's HI-STORM FW XL System. This ISFSI expansion will be constructed adjacent to the existing ISFSI site.

Notes:

1) The design, licensing and operational requirements of the new Holtec Dry Cask Storage Systems (on the pad) are NOT in the scope of this EC and will be addressed in a separate package. This EC alone does not authorize any casks to be placed on the new pad.

2) The reconfiguration of electrical and I&C cables, including lighting, Crest Monitoring System and cameras, and fencing in the affected area is not in the scope of this EC but will be addressed within EC 628307.

3) The rerouting of domestic water underground piping is not within the scope of this EC but will be addressed in EC 628353.

4) Existing haul path evaluation is not included in this EC.

Screened out per DC-AA-300-1011, Attachment 1: Yes [X] No [ ]

EC 628170 has no impact on the PSDAR, available decommissioning fund, environmental impact assessment, or the unrestricted use of the site after decommissioning.

Category:

SR: [X] ITS (Augmented): [ ] Other Controlled: ☐

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Prepared by: Tedd Nickerson	Signature:	Date: 10/28/19
Reviewed by: Michael Hand	Signature:	Date: 11/6/19
Owner Acceptance Review (if req'd): N/A	Signature:	Date:
Approved by (Vendor, if applicable): N/A	Signature:	Date:
Approved by (Utility): Jeff Dostal	Signature:	Date: 11-7-19
Other Approval (if applicable): Herb Tritt	Signature:	Date: 11/6/19

Controlled Decommissioning Equipment Change Package (CDECP)			
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A.1 Revision Log:

Revision No.	Revision Summary
0	Initial Issue

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B) Design

B.1 Description of the Change:

General Description of Change:

This EC is to design and install a new concrete ISFSI Pad, CTP, and accompanying Approach Slab just west of the existing ISFSI facility. See Holtec General Arrangement Drawing 11570 [10] for details.

The ISFSI Pad is being designed for 30 storage locations (5 x 6 array) to accommodate a total of 24 HI-STORM FW XL and 6 HI-SAFE storage casks. The pad will be approximately 3' thick and 103' x 85' [10]. The design will meet the requirements prescribed in the HI-STORM Final Safety Analysis Report (FSAR) [15] and applicable 10 CFR 72 regulatory requirements.

The CTP is a subterranean cylindrical steel weldment which will be designed to allow Multi-Purpose-Canister (MPC) transfer to be performed at the new ISFSI location between the Holtec HI-STORM overpack and HI-TRAC transfer cask. The CTP's main components consist of bottom and top reinforced concrete pads and transfer cavity formed by 12'-2" diameter cylindrical steel shell [12]. The CTP will be located within, and on the east side of the Approach Slab and will be 25 feet square.

The Approach Slab located south of the ISFSI Pad and containing the CTP, is a concrete apron which provides the space needed for the vertical cask transporter (VCT) to maneuver and access various areas of the pad. The Approach Slab will be 18 inches thick and 70' x 85' [11]. The Approach Slab will be designed to handle loads from the modular transporter (HI-PORT), VCT and loaded HI-STORM FW XL.

Note: An overview of the Engineering Analysis, including a brief description of the purpose and results of the calculations supporting this EC have been provided in Section 23 of Attachment 1 (Design Attribute Review).

To install these modifications, the following general activities are necessary:

- Clear the area above the ground
- Excavate the new pad, CTB and apron areas
- Prepare the base mat (engineered fill, mud mat)
- Install concrete steel reinforcement and forms
- Install expansion joints between pad
- Pour, level and test new concrete
- Grade soil to provide proper drainage

Controlled Decommissioning Equip		
Change Number: 628170	Revision: 0	Fa

Notes:

1) Government (State and Local) permits r
   Attachment 9 for list of applicable perm
2) ECs 628307 and 628353 need to be p
   installation.
3) See Attachment 4 of EC for further d

B.2 Attachment 2 Completed: Yes [X] No [ ]

B.3 Separate 50.59 / 72.48 Required: Yes [X] No [ ]

Numbers: *OC-2019-E-0001* (Evaluation) & *OC-2019-S-0011* (Screening)

Based on Question 1 of the Screening Criteria for Determination of Decommiss Configuration Change Process (DC-AA-410 Rev 001, Attachment 2), the chang impact the existing ISFSI facility (See Attachment 8 of the EC). Therefore, a 10CFR72.48 review for the NUHOMS system is required. It is noted that no pla SSCs are modified by this EC, so a 10CFR50.59 review is not needed.

From the 10CFR72.48 (NUHOMS) Screening, the installation of the new conor ISFSI Pad, CTP, accompanying Approach Slab just west of the existing ISFSI does require an Evaluation but prior NRC approval is not required.

Notes:

1) The 10CFR72.48 (NUHOMS) Screening (OC-2019-S-0011) and Evaluatio 2019-E-0001) are performed separate from the EC.

2) ECs 628307 and 628353 which need to be performed prior to or in conjunc this EC installation will affect plant electrical and piping components as we fencing. Individual 10CFR50.59 reviews will be performed (as appropriate) these ECs.

B.4 Design Attribute Review:

See Attachment 1 of the EC for discussions on the pertinent design attributes inputs for this activity.

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Notes:

1) Government (State and Local) permits need to be addressed prior to installation. See Attachment 9 for list of applicable permits.
2) ECs 628307 and 628353 need to be performed prior to or in conjunction with this EC installation.
3) See Attachment 4 of EC for further details of the changes.

B.2 Attachment 2 Completed: Yes [X] No ☐

B.3 Separate 50.59 / 72.48 Required: Yes [X] No [ ]

Numbers: *OC-2019-E-0001* (Evaluation) & *OC-2019-S-0011* (Screening)

Based on Question 1 of the Screening Criteria for Determination of Decommissioning Configuration Change Process (DC-AA-410 Rev 001, Attachment 2), the change could impact the existing ISFSI facility (See Attachment 8 of the EC). Therefore, a 10CFR72.48 review for the NUHOMS system is required. It is noted that no plant SSCs are modified by this EC, so a 10CFR50.59 review is not needed.

From the 10CFR72.48 (NUHOMS) Screening, the installation of the new concrete ISFSI Pad, CTP, accompanying Approach Slab just west of the existing ISFSI facility does require an Evaluation but prior NRC approval is not required.

Notes:

1) The 10CFR72.48 (NUHOMS) Screening (OC-2019-S-0011) and Evaluation (OC-2019-E-0001) are performed separate from the EC.

2) ECs 628307 and 628353 which need to be performed prior to or in conjunction with this EC installation will affect plant electrical and piping components as well as fencing. Individual 10CFR50.59 reviews will be performed (as appropriate) for these ECs.

B.4 Design Attribute Review:

See Attachment 1 of the EC for discussions on the pertinent design attributes and inputs for this activity.

Controlled Decommissioning Equipment Change Package (CDECP)			
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B.5 Affected Equipment / Component List (AEL / ACL):

Component ID / No.	Description
N/A	

Note: The Concrete Pads and CTP themselves are not given unique component numbers.

B.6 Affected Documents List (ADL):

B.6.1 Documents to be added by this EC:

Document Number	Document Type	Title	Document Revision
11570, Sh.1	Vendor Drawing	Oyster Creek ISFSI Expansion General Arrangement	Rev. 4
11571, Sh.1, 2, 3, & 4	Vendor Drawing	Oyster Creek, ISFSI and Approach Details	Rev. 3
11573, Sh.1	Vendor Drawing	Oyster Creek ISFSI Expansion CTP Details	Rev. 3
11669, Sh. 1 - 17	Vendor Drawing	CTP Fabrication Drawing	Rev. 0
HI-2188519	Vendor Specification	Oyster Creek Construction Specification	Rev. 1
HI-2188548	Calculation	OCNGS ISFSI Access Road and Approach Slab Calculations	Rev. 2
HI-2188552	Calculation	Impact of Construction and Added Mass on Existing TN Modules and ISFSI Pads	Rev. 1
HI-2188### (TBD)	Calculation	Structural Qualification of Existing and New ISFSI Storage Pads (unverified assumption, ref tracking ACIT OYS-00077-02)	Rev. 0

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B.6.2 Documents to be revised by this EC:

Document Number	Doc Type	Title	Document Mark-up No. and Rev. *(If applicable)*	Doc Update Requirements (Turnover or Closeout)	Tracking Mechanism/No. *(If applicable)*
JC 19702, Sh.1	Drawing	Site Plan	See Attach. 5 of EC	Turnover	ACIT # OYS-00077-03
DJP 3E-915-01-1000, Sh.1	Drawing	ISFSI Site Plan	See Attach. 5 of EC	To be posted at Closeout	N/A

B.7 Department Interfaces:

Department	Performing Design Activity	Stakeholder/ Impacted Department	Name of Person Performing the Interdisciplinary/Interdepartmental/ Impact Review
Engineering	X		Michael Hand
Operations		X	Peeter Must
Maintenance / Planning		X	Rich Lanning / Mike Bethune
Radiation Protection		X	John Murphy
Environmental / Chemistry		X	Ed O'Brien / Jerry Chrisman
Security		X	Joe Dwyer / Tom Miller
Regulatory Assurance		X	James Frank

Note: See Attachments 3, 6, and 7 of the EC for interface sign-offs.

C) Bill of Materials

See Attachment 4 and 10 of the EC for the construction and fabrication sketches that identify the new parts required as well as the Bill of Materials for them.

Controlled Decommissioning Equipi		
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D) Work Planning Instructions

This section includes implementation guidelines to aid w change. The steps provided are not intended to be the ot enhanced by the work planners to ensure that the applica practices and policies are incorporated into the work pack 2188519, "Oyster Creek Construction Specification" [16], A activities required for the construction and installation of the and Asphalt Roadway.

D.1 General Instructions are as follows:

a) Prerequisites / Precautions:

- ENSURE all appropriate government (state & local) permits, as listed in Attachment 9, have been approved/obtained prior to commencing installation.
  - All applicable provisions and requirements set by the permits in Attachment 9 must be met.
- ENSURE separate ECs 628307 and 628353 have been approved prior to start of work.
- ENSURE the appropriate excavation (dig) permit has been approved.
- CONTACT Security and Radiation Protection prior to start of work and coordinate efforts ahead of time.

b) Excavation General Instructions

- REROUTE the underground piping lines as per EC 628353.
- RELOCATE the underground electrical and security cable/conduit as per EC 628307.
- IF an underground commodity is encountered that was not originally addressed in the dig permit, THEN STOP work and CONTACT the project manager and/or engineering for further instruction.
- Excavated material is to be separated into like piles to the extent possible (i.e. soil, asphalt, stone, concrete, etc).
- The height and location of spoils is to be at the discretion of Security, so that sight lines and proper distances are maintained.
- Any soil to be transported off-site shall be sampled/surveyed first by Radiation Protection and/or Environmental for contamination before it is released.
- Due to the depth of excavation, ground water may be encountered. Any ground water or weather-related water may need to be sampled prior to pumping it out. Contact Environmental/Chemistry for further guidance on water removal and disposition.

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c) New Concrete Installation General Instructions

- CONSIDER/ADDRESS the following before pouring concrete:
  - Distance the concrete needs to be pumped
  - Weather conditions
  - Curing process
  - Curing time
  - Concrete testing station and cylinder storage
  - Concrete cleanout area
  - Concrete pump and truck spoils location/storage
- TEST the concrete per Section E of the EC.

d) Fire hazard and transient combustible fuel limits within, and in proximity to, the existing ISFSI Pads, as described in Section 7 of Attachment 1 (Design Attribute Review), must be maintained during construction activities.

e) Sequence of work:

Construction sequence to be performed in accordance with the Project Schedule. Work shall be planned and coordinate so to not interfere with other station activities. The construction of the following ISFSI expansion components can be performed in the recommended sequence or in parallel:

1. CTP
2. ISFSI Pad
3. Approach Slab
4. Asphalt Roadway

The Construction of the above components will generally consist of the following general steps:

- Clear the area above ground
- Excavate the new pad, CTB and apron areas
- Prepare the base mat (engineered fill, mud mat)
- Install structural forms and reinforcement steel
- Install expansion joints between pads
- Pour, level and test new concrete
- Grade the soil and provide proper drainage

e) Access to the existing loaded HSMs needs to be maintained for daily operator tours. If temporary periods of obstruction are expected, notify Operations.

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f) Task scheduling, coordination and Installer's Walkdown(s) must be planned with the appropriate pre-job briefs held to ensure personnel safety and preclude schedule delays.

D.2 Specific Instructions are as follows:

1. Clearing
   a) PERFORM a construction and interference walkdown of area to ensure nothing has changed since EC was approved.
   b) CLEAR the area as necessary to allow construction of the new ISFSI base-pad, approach slab and CTP.
   c) REMOVE asphalt and stone/gravel along the ground surface as required.
   d) Temporarily REMOVE the affected light posts, electric pole, and fencing (PA and/or Radiation Protection) in accordance with EC 628307.
   e) LOCATE existing underground commodities based on the excavation (dig) permit and previous ground penetrating radar results. PERFORM new GPR as necessary.

2. CTP Installation (Refer to Attachment 4, Holtec Drawing #11573 for Details)
   a. Excavation
      - REFER to the Excavation General Instructions in D.1
      - EXCAVATE the ground soil in the area of the CTP in accordance with the excavation (dig) permit and procedure 8A-AA-117.
      - EXCAVATE to base elevation per Attachment 4 (Holtec Drawing #11573) [12]
   b. INSTALL Temporary Dewatering System
   c. PREPARE Subgrade
      - BACKFILL excavated area with Common Engineered Fill per Attachment 4
   d. INSTALL 4" Mud Mat
   e. INSTALL Concrete Framework and Reinforcement for Base Mat
   f. Concrete Pour of Base Mat
      - POUR new concrete slabs (lower and then upper when appropriate) for the CTP as per Attachment 4 (Holtec Drawing # 11573) of EC.
      - LEVEL concrete with proper slopes shown per Attachment 4 (Holtec Drawing #11573) of EC.
      - CONCRETE Curing- Confirmation for Strength
      - TEST the concrete per Section E of the EC.

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g. Staging of the CTP Shell
   - INSTALL and LEVEL in accordance with Holtec Project Procedure HPP-2948-001 [26].

h. CTP Shell Grouting Activity
   - PERFORM CTP Shell Grouting Activity to be performed in accordance with Holtec Project Procedure HPP-2948-058 [28].

i. FILL Excavation Pit with CSLM

j. STAGE Structural Angle Iron for Top Pad
   - INSTALL new structural (angle) steel forms with nelson studs as well as straight and U-bars for the upper concrete slab of the CTP per Attachment 4 (Holtec Drawing # 11573) of EC.

k. STAGE Mechanical Attachments according to Attachment 4 (Holtec Drawing # 11573) of EC.

l. POUR concrete of Top Pad

3. ISFSI Base Pad (See Attachment 4, Holtec Drawing #11571 for details)
   a. Excavation
      - REFER to the Excavation General Instructions in D.1
      - EXCAVATE the ground soil in the area of the new ISFSI base-pad in accordance with the excavation (dig) permit and procedure SA-AA-117.
      - EXCAVATE to base elevation per Attachment 4 (Holtec Drawing #11571) of EC [11].
   b. INSTALL Temporary Dewatering System
   c. PREPARE Subgrade
      - BACKFILL the excavated areas for the ISFSI Base-pad with engineered fill and compact per Attachment 4 (Holtec Drawing #11571) of EC [11].
   d. PERFORM Static Plate Load Test
   e. INSTALL 4" Mud Mat
   f. INSTALL Concrete Form Work and ISFSI Reinforcement
   g. STAGE Structural Steel Angle Iron
      - INSTALL new structural (angle) steel forms with nelson studs and rebar for the new concrete base-pad per Attachment 4 (Holtec Drawing # 11571) of EC [11].
   h. Concrete Pour for ISFSI Pad
      - POUR new concrete into forms for the ISFSI base-pad per Attachment 4 (Holtec Drawing # 11571) of EC.
      - LEVEL concrete with proper slopes shown per Attachment 4 (Holtec Drawing # 11571) of EC.
      - TEST the concrete per Section E of the EC.
   i. ISFSI Concrete Curing and Thickness Survey

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- Thickness Survey will be a part of Holtec QA

4. Approach Slab (See Attachment 4, Holtec Drawing #11571 for details)
   a. Excavation
      - REFER to the Excavation General Instructions in D.1
      - EXCAVATE the ground soil in the area of Approach Slab in accordance with the excavation (dig) permit and procedure SA-AA-117.
      - EXCAVATE to base elevation per Attachment 4 (Holtec Drawing #11571) [11]
   b. PREPARE Subgrade
      - BACKFILL excavated areas with engineered fill and compact per Attachment 4 (Holtec Drawing #11571) [11]
   c. INSTALL 4" Mud Mat
   d. INSTALL formwork and expansion joints between pads
      - INSTALL ½" preformed expansion joints between the following per Attachment 4 (Holtec Drawing 11571) of EC:
        - ISFSI Pad and Approach Slab
   e. INSTALL Steel Reinforcement
      - INSTALL new structural (angle) steel forms with nelson studs and rebar per Attachment 4 (Holtec Drawing # 11571) of EC.
   f. Concrete pours
      - POUR new concrete into forms for the approach slab as per Attachment 4 (Holtec Drawing # 11571) of EC.
      - TEST the concrete per Section E of the EC.
      - LEVEL concrete with proper slopes shown per Attachment 4 (Holtec Drawing # 11570) of EC.
   g. CURE and FINISH concrete

5. Grading and Drainage
   a. PERFORM final grading of the foundations and site areas around the new concrete pads.
   b. Any disturbed areas that have not been covered with concrete or asphalt shall be CLEANED UP and RESTORED.

6. Asphalt Roadway
   a. PREPARE and compact subgrade
   b. INSTALL base coarse layer
   c. INSTALL tack coat layer
   d. INSTALL surface coarse layer

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7. FINALIZE lighting, cables, cameras, and fencing changes in accordance with EC 628307.

AWA Issued: Yes ☐ Describe: _____ No [X]

D.3 ANI Required: Yes ☐ Describe: _____ No [X]

E) Testing Requirements

E.1 Testing Overview:

Testing and QA/QC:

- Minimum strength requirements for the soil shall be checked and confirmed prior to commencing construction. Planner shall provide a work order sign off for the installer to verify these requirements have been met.
- The following critical aspects of the installation are suggested for QA surveillance:
  - Final ground excavation depth(s) and layout
  - Field testing of earthwork
  - Field testing of concrete including collection of concrete test cylinders
  - Flatness and finish criteria
  - Fill placement and compaction

Notes:

1) All of the testing requirements shall be in accordance with Holtec Report HI-2188519, "Oyster Creek Construction Specification" [18].
2) Significant requirements are reiterated in Section E.2 Testing Requirements below.
3) QA/QC requirements will be in accordance with Holtec Quality Program

E.2 Testing Requirements:

Critical Characteristic	Acceptance Criteria	Test Method
Soil Testing		
Soil Compaction	All backfill shall be compacted to 95 % (minimum) of the maximum dry density	Compaction Test per ASTM D1557 [3] as required.
Concrete Testing		
ISFSI Pad Concrete Compressive Strength	≥ 4500 psi ≤7000 psi at 28 days	Compressive Test per ASTM C39 [2]

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F) Design Verification/Engineering Review

[X] Independent Design Review	
Design Review Method	[redacted]
☒ Design Review	
☐ Qualification Testing	
Summary of Review: Design review performed by vendor (Holtec) per their QA Plan. Owner Acceptance Review performed IAW DC-OC-410, Att. 15. See calcs referenced in B.6.1 (Attachments 11 and 12).	

G) Other References

1. IR 04245961
2. ASTM C39 – Standard Test Method for Compressive Strength of Cylindrical Concrete Specimens
3. ASTM D1557 – Standard Test Methods for Laboratory Compaction Characteristics of Soil Using Modified Effort ((56,000ft-lbf/ft^3) or (2,700kN-m/m^3))
4. ASTM A615 – Standard Specification for Deformed and Plain Carbon- Steel Bars for Concrete Reinforcement.
5. Not used
6. Not used
7. ACI 318-14, "Building Code Requirements for Structural Concrete."
8. Not used
9. ASTM A706, "Standard Specification for Deformed and Plain Low-Alloy Steel Bars for Concrete Reinforcement."
10. Holtec Drawing 11570, Sh.1, Rev 3, "Oyster Creek ISFSI Expansion General Arrangement"
11. Holtec Drawing 11571, Sh.1, 2, 3 & 4, Rev 2, "Oyster Creek ISFSI Approach Road Details"
12. Holtec Drawing 11573, Sh.1, Rev 2, "Oyster Creek ISFSI Expansion CTP Details"
13. Holtec Drawing 11669, Sh. 1-17, Rev 0, "Canister Transfer Pit (CTP)"
14. Holtec Report HI-2188515, Rev. 2, "Oyster Creek Nuclear Generating Station - Civil Design Criteria Document"

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15. Holtec Report HI-2114830, Rev 5, "Final Safety Analysis Report on the HI-STORM FW MPC Storage System".
16. Holtec Report HI-2188519, Rev 1, "Oyster Creek Construction Specification"
17. Holtec Report HI-2188548, Rev 2, "Oyster Creek Nuclear Generating Station ISFSI Access Road and Approach Slab Calculation,"
18. Holtec Report HI-2188552, Rev 1, "Impact of Construction and Added Mass on Existing TN Modules and ISFSI Pads"
19. OC Decommissioning Technical Specifications (DTS), Rev. 0
20. Site Area Drawing JC 19702 Sh.1, Rev. 38
21. ISFSI Plan Drawing DJP 3E-915-01-1000 Sh. 1, Rev. 0
22. ECR #09-00716, Rev. 1
23. Oyster Creek DSAR, Rev. 0
24. OCGS 10 CFR 72.212 Evaluation Report, R10, 10 CFR 72.212 Evaluation Transnuclear NUHOMS 61BT and 61BTH Cask System (OYS)
25. Transnuclear, Inc. "Final Safety Analysis Report for the Standardized NUHOMS Horizontal Modular Storage System for Irradiated Nuclear Fuel", Rev 7, 8, 10 ,11, and 12.
26. Holtec Procedure HPP-2948-001, Rev. 0, "Oyster Creek Canister Transfer Pit (CTP) Installation Procedure"
27. Holtec Procedure HPP-2948-056, Rev. 1, "Backfill Placement Procedure for Oyster Creek ISFSI Expansion Project"
28. Holtec Procedure HPP-2948-058, Rev. 1, "Canister Transfer Pit (CTP) Leveling Grout Installation"
29. Holtec Procedure HPP-2948-101, Rev. 2, "Rebar Placement and Inspection Procedure for Oyster Creek ISFSI Expansion"

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H) **Attachments** (to be transmitted to RM with EC)

Attachment 1: Design Attribute and Input Review (DAR), *DC-AA-410 Rev 001 Attachment 4* (13 pgs)

Attachment 2: Screening for Approved Fire Protection Program (AFPP) Impact, *DC-AA-410 Rev 001 Attachment 6* (1 pg.)

Attachment 3: Environmental Screening Checklist, *EN-AA-103-F-02 Rev 002* (4 pg.)

Attachment 4 (6 pgs):
Drawing 11570, Sh. 1, Rev. 4, OC ISFSI Expansion General Arrangement
Drawing 11571, Sh. 1-4, Rev. 3, OC ISFSI and Approach Details
Drawing 11573, Sh. 1, Rev. 3, OC ISFSI Expansion CTP Details

Attachment 5: Markups to Site Drawings (4 pgs)

Attachment 6: ALARA Review Forms, *CC-AA-212-1001 Rev 002 Attachments 1 and 2* (2 pgs)

Attachment 7: Impact Review Forms (8 pgs)

Attachment 8: Screening Criteria for Determination of Decommissioning Configuration Change Process, *DC-AA-410 Rev 001 Attachment 2* (1 pg.)

Attachment 9: List of Permits (1 pgs)

Attachment 10: Drawing 11669, Sh. 1-17, Rev. 0, OC Canister Transfer Pit (CTP) Fabrication Drawing (17 pgs)

Attachment 11: Construction Specifications (HI-2188519, Rev. 1) (156 pgs)

Attachment 12: Calculation HI-2188548, Rev. 2, ISFSI Access Road and Approach Slab Calculation (1 pg)

Attachment 13: Calculation HI-2188552, Rev. 0, Impact of Construction and Added Mass on Existing TN Modules and ISFSI Pads (1 pg)

Attachment 14: Tracking Actions (1 pg)

DESIGN ATTRIBUTE AND INPUT REVIEW

The following Design Attributes and Inputs from procedure DC-AA-410 Attachment 4 were deemed pertinent or affected by the subject activity:

Scope of Activity:

The scope of this EC is to provide the design, installation, and testing requirements for the construction of a new concrete ISFSI Pad, Canister Transfer Pit (CTP), and connecting Approach Slab to support spent fuel transfer and storage operations at Oyster Creek with Holtec's HI-STORM FW System. This ISFSI expansion will be constructed adjacent to the existing ISFSI site.

This EC alone will not permit the placement or installation of Holtec's HI-STORM FW Systems.

Note:

References in this EC attachment are captured in brackets [#] that are tied to Section 6.

1. **Basic SSC Functions**

The function of the ISFSI System (915) is to store spent nuclear fuel in accordance with the general license provisions of 10CFR72, Subpart K.

The new ISFSI Pad is a reinforced concrete storage pad for Holtec's HI-STORM FW Cask Systems, supported by engineered fill. The primary function of the ISFSI Pad is to provide a foundation for 24 loaded HI-STORM FW Casks and 6 HI-SAFE Casks to be stored on pad in a 5 x 6 array. The pad will be 36 inches thick with foot print dimensions of 103 feet x 85 feet.

The CTP is a subterranean cylindrical steel weldment, which allows Multi-Purpose Canister (MPC) transfer operations to be performed at the ISFSI Site between the Holtec HI-STORM overpack and HI-TRAC transfer cask. The primary function of the CTP is to support the stack-up configuration of the HI-STORM, Mating Device, and HI-TRAC during MPC transfer operations. The CTP's main components consist of bottom and top reinforced concrete pads and a transfer cavity formed by a cylindrical steel shell. Controlled Low-Strength Material (CLSM) then surrounds the CTP shell.

The ISFSI Approach Slab is a concrete apron that is designed to support loads from loaded Multi-Purpose Canister (MPC) during transport operations and live loads. The Approach Slab allows the Cask Transporter (VCT) with loaded HI-STORM to access and align with designated storage location on the ISFSI Pad for long-term storage. The Approach Slab footprint dimensions will be 70 feet x 85 feet and located adjacent to the southern edge of the ISFSI Pad. The Approach Slab is designed to sustain loads of the HI-PORT with the loaded HI-TRAC, the VCT with the loaded HI-TRAC or HI-STORM, and HI-STORM placed directly on the concrete slab. Note: The Approach Slab acts as the Access Road as part of the haul path. With the design as issued in this EC, Rev. 0, they are a single slab hereinafter described as the Approach Slab.

The function of the existing ISFSI remains unchanged.

2. Configuration Change Classification

The EC (628170) is given the conservative quality classification of Safety Related as there are potential impacts to the existing NUHOMS system.

Also, the overall ISFSI system (915) is classified as Safety Related (SR). However, the new ISFSI Pad and CTP themselves are to be classified as Important-to Safety (ITS)/ Augmented (AQ), with further designations below:

The CTP is classified as Important-to-Safety Class C (ITS-C). The appropriate safety classification levels of the CTP components are shown below:

- CTP Concrete and Rebar are classified as ITS-C
- All other components that are not essential for transferring loads are classified as Not-Important-to Safety (NITS), including Rebar Wire Ties, Rebar Chairs, Mud Mat, Leveling Grout, and CLSM

The ISFSI Pad is classified as Important-to-Safety Class C (ITS-C). The appropriate safety classification levels of the ISFSI components are shown below:

- ISFSI Pad Concrete and Rebar are classified as ITS-C
- All other components associated with the construction of the ISFSI Pad are classified as Not- Important- to- Safety (NITS), including Rebar Chairs, Rebar Wire Ties, Engineering Fill and Mud Mat

As for the Approach Slab, it is classified as Not-Important-to-Safety (NITS).

ITS designations are determined using Holtec Standard Procedure HSP-345 (which is based on the methods and descriptions of NUREG/CR-6407).

Note, the ITS classification of the new ISFSI Pad and CTP is different from the existing pad for the NUHOMS casks. The NUHOMS Pad is not credited in an accident, so it is not safety related.

3. Seismic Classification

The seismic classification categories, as defined in the OCGS DSAR, are not applicable to the ISFSI Pad, Approach Slab and CTP.

However, the ISFSI Pad and CTP are required to perform their intended function during and after a design basis earthquake. Therefore, they are given the classifications of:
W – (Seismic Class 1 – Operable During and After SSE)

The Approach Slab is NITS and are not evaluated to support dynamic (seismic) loads. Therefore, they are classified as non-seismic.

4. Performance Requirements and Design Conditions

Geotechnical Design Criteria

All geotechnical design parameters and soil subsurface conditions used for the design of the ISFSI Pad, Approach Slab and CTP are provided in reports generated by Holtec which reference inputs given

Permit List for EC 628170

Organization	Permit
Lacey Township	Planning or Zoning Board
Ocean County	Planning Board
Ocean County	Soil Conservation District for Soil Erosion and Sediment Control
NJDEP	CAFRA Individual Permit

Note:

- These Government (State and Local) permits need to be addressed prior to installation

EXHIBIT 'I'

Interface Department Comment / Impact Review Form

	Facility and Unit: QC / 1
EC Number: 628170	Revision: 0
Department: OPERATIONS	
Reviewer: Peter Must	

Impact Review Meeting Feedback/Comments:

Provide any feedback or comments that will improve the overall completeness or functionality of the change/modification. This includes:

- any operating experience related to your program or department (e.g., functional problems, maintenance issues, reliability, etc.)
- any additional design features that are necessary for your program or department (e.g., environmental, radiological, operational, structural, human factors, etc.)

Conceptual Impact Review Meeting

Feedback / Comments:

None

Detailed Impact Review Meeting

Feedback / Comments:

None

Final Impact Review Meeting

Feedback / Comments:

None

Interface Department Comment / Impact Review Form

	Facility and Unit: DC / 1
EC Number: 628170	Revision: 0

B) Additional Plant Impact Review:

List the documents within your department that require addition, deletion or revision as a result of this change/modification. This includes any changes to departmental documents, drawings, evaluations, commitments, calculations, procedures, training, etc. that will be required to support this modification. Additional department guidance for performing the stakeholder impact reviews is provided in the Standard Design Process Resource Manual. All of the department documents listed will be included in the Affected Documents List of the change package to ensure these documents are properly issued to support the change/modification.

Affected Document Number	Document Type	Title	Document Mark-up Number and Rev. (if applicable)	Doc Update Requirements (Turnover or Closeout)	Tracking Mechanism/No. (if applicable)
N/A					

C) Final Impact Review:

(Required to be signed for the Final Impact Review Meeting. This section is not required for the Conceptual or Detailed Impact Review Meetings.)

I have reviewed the proposed modification and identified any additional document changes, design requirements, or operational experience related to my program or department. Any additional design requirements, references, program changes, and operational experience have been identified and documented on (or are attached to) this form.

Department Reviewer:			
Peter Must	[signature]	6-13-19	OPS
Print	Signature	Date	Department or Org.

D) Return completed form to the Responsible Engineer.

Interface Department Comment / Impact Review Form

	Facility and Unit: OC / 1
EC Number: 628170 (9090 ISFSI)	Revision: 0
Department: Maintenance / Planning	
Reviewer: R. Laning	

A) Impact Review Meeting Feedback/Comments:

Provide any feedback or comments that will improve the overall completeness or functionality of the change/modification. This includes:

- any operating experience related to your program or department (e.g., functional problems, maintenance issues, reliability, etc.)
- any additional design features that are necessary for your program or department (e.g., environmental, radiological, operational, structural, human factors, etc.)

Conceptual Impact Review Meeting

Feedback / Comments:

Provided comments at review meetings. All comments and feedback were incorporated in the action items as required.

Detailed Impact Review Meeting

Feedback / Comments:

Final Impact Review Meeting

Feedback / Comments:

Interface Department Comment / Impact Review Form

	Facility and Unit: OC / 1
EC Number: 628170	Revision: 0

B) Additional Plant Impacts

List the documents within your department that require addition, deletion or revision as a result of this change/modification. This includes any changes to departmental documents, drawings, evaluations, commitments, calculations, procedures, training, etc. that will be required to support this modification. Additional department guidance for performing the stakeholder impact reviews is provided in the Standard Design Process Resource Manual. All of the department documents listed will be included in the Affected Documents List of the change package to ensure these documents are properly issued to support the change/modification.

Affected Document Number	Document Type	Title	Document Mark-up Number and Rev. (if applicable)	Doc Update Requirements (Turnover or Closeout)	Tracking Mechanism/No. (if applicable)
N/A	N/A	N/A	N/A	N/A	N/A

C) Final Impact Review:

(Required to be signed for the Final Impact Review Meeting. This section is not required for the Conceptual or Detailed Impact Review Meetings.)

I have reviewed the proposed modification and identified any additional document changes, design requirements, or operational experience related to my program or department. Any additional design requirements, references, program changes, and operational experience have been identified and documented on (or are attached to) this form.

Department Reviewer:			
R. Lanning		6/17/19	MOTE
Print	Signature	Date	Mail Code or Org.

D) Return completed form to the Responsible Engineer.

Interface Department Comment / Impact Review Form

	Facility and Unit: OC / 1
EC Number: 628170	Revision: 0
Department: SECURITY	
Reviewer: [illegible] SITE SECURITY DECOMMISSIONING LEAD	

A) Impact Review Meeting Feedback/Comments:

Provide any feedback or comments that will improve the overall completeness or functionality of the change/modification. This includes:

- any operating experience related to your program or department (e.g., functional problems, maintenance issues, reliability, etc.)
- any additional design features that are necessary for your program or department (e.g., environmental, radiological, operational, structural, human factors, etc.)

Conceptual Impact Review Meeting

Feedback / Comments:

Detailed Impact Review Meeting

Feedback / Comments:

Final Impact Review Meeting

Feedback / Comments:

Interface Department Comment / Impact Review Form

	Facility and Unit OC / 1
EC Number: 628170	Revision: 0

B) Additional Plant Impacts

List the documents within your department that require addition, deletion or revision as a result of this change/modification. This includes any changes to departmental documents, drawings, evaluations, commitments, calculations, procedures, training, etc. that will be required to support this modification. Additional department guidance for performing the stakeholder impact reviews is provided in the Standard Design Process Resource Manual. All of the department documents listed will be included in the Affected Documents List of the change package to ensure these documents are properly issued to support the change/modification.

Affected Document Number	Document Type	Title	Document Mark-up Number and Rev. (if applicable)	Doc Update Requirements (Turnover or Closeout)	Tracking Mechanism/No. (if applicable)
N/A					

C) Final Impact Review

(Required to be signed for the Final Impact Review Meeting. This section is not required for the Conceptual or Detailed Impact Review Meetings.)

I have reviewed the proposed modification and identified any additional document changes, design requirements, or operational experience related to my program or department. Any additional design requirements, references, program changes, and operational experience have been identified and documented on (or are attached to) this form.

Department Reviewer: [signature] 6-17-19 [signature]

Print / Sign / Date / Workgroup/Org

D) Return completed form to the Responsible Engineer.

Interface Department Comment / Impact Review Form

	Facility and Unit: OC / 1
EC Number: 628170	Revision: 0
Department: RAD PROG ENG ASSOC.	
Reviewer: JAMIE FRANE	

A) Impact Review Meeting Feedback/Comments

Provide any feedback or comments that will improve the overall completeness or functionality of the change/modification. This includes:

- any operating experience related to your program or department (e.g., functional problems, maintenance issues, reliability, etc.)
- any additional design features that are necessary for your program or department (e.g., environmental, radiological, operational, structural, human factors, etc.)

Conceptual Impact Review Meeting
Feedback / Comments:

Detailed Impact Review Meeting
Feedback / Comments:

Final Impact Review Meeting
Feedback / Comments: Comments provided were received + incorporated

Interface Department Comment / Impact Review Form

	Facility and Unit: OC / 1
EC Number: 628170	Revision: 0

B) Additional Final Impact

List the documents within your department that require addition, deletion or revision as a result of this change/modification. This includes any changes to departmental documents, drawings, evaluations, commitments, calculations, procedures, training, etc, that will be required to support this modification. Additional department guidance for performing the stakeholder impact reviews is provided in the Standard Design Process Resource Manual. All of the department documents listed will be included in the Affected Documents List of the change package to ensure these documents are properly issued to support the change/modification.

Affected Document Number	Document Type	Title	Document Mark-up Number and Rev. (If applicable)	Doc Update Requirements (Turnover or Closeout)	Tracking Mechanism/No. (If applicable)

C) Final Impact Review:

(Required to be signed for the Final Impact Review Meeting. This section is not required for the Conceptual or Detailed Impact Review Meetings.)

I have reviewed the proposed modification and identified any additional document changes, design requirements, or operational experience related to my program or department. Any additional design requirements, references, program changes, and operational experience have been identified and documented on (or are attached to) this form.

Department Reviewer:			
JAMES FRANK		6-17-19	Ray Navarro
Print	Signature	Date	Discipline or Dept.

D) Return completed form to the Responsible Engineer.

ATTACHMENT 2
Screening Criteria for Determination of Decommissioning Configuration Change Process
Page 1 of 1

- If it is unclear as to why any question is answered "Yes" or "No," then a reason why that answer was chosen should be included in the Description of Change.
- If the answer to any question 1 through 5 is "Yes," then a 50.59 screening per LS-AA-104, or 72.48 per LS-AA-114 is required.
- If the answer to any question is "Yes," then FOLLOW Section 4.8 for Controlled Decommissioning Equipment.
- If all answers to all questions are "No," then FOLLOW Section 4.9 for Commercial Changes.

NOTE: Questions 1 through 5 define an operating boundary that ensures that the Configuration Change does not or cannot adversely impact a system, structure, or component as described in the Defueled Safety Analysis Report (DSAR) or Independent Fuel Storage Safety Analysis Report (IFSSAR).

1. Could the change affect the design function or method of performing the function of a SSC described in the DSAR/IFSSAR? Yes The new pads can potentially impact the existing ISFSI facility
2. Does the change involve any change to a design basis limit for fission product barriers? No
3. Does the change involve a change to a procedure that affects how DSAR/IFSSAR described design functions are performed or controlled? No
4. Does the change require a change in the Permanently Defueled Technical Specifications? No
5. Does the proposed change involve a change to the Certificate of Compliance or site-specific ISFSI License? No
6. Is the affected SSC classified as safety-related, Important to Safety, ASME Boiler & Pressure Vessel Code I, III, or XI, or Controlled Decommissioning Equipment? Yes
7. Are any affected SSCs required to be seismically mounted, in order to protect systems or components located below (seismic 2 over 1; seismic anti-fall down) that could be damaged if the affected SSC were to fall during a seismic event? No
8. Does the change have the potential to impact the plant masonry block walls analysis, or impact any design feature credited in that analysis with preventing or mitigating damage due to such failures? No
9. Does the change reduce the effectiveness of the Nuclear Emergency Plan as concluded by 10 CFR 50.54(q)? No
10. Does the change reduce the effectiveness of the Site Security Plan as concluded by 10 CFR 50.54(p)? No

EXHIBIT 'J'

DASTI, MURPHY, McGUCKIN, ULAKY, KOUTSOURIS & CONNORS

Jerry J. Dasti †
Gregory P. McGuckin
Christopher K. Koutsouris ◊ Δ
Robert E. Ulaky ∞‡
Christopher J. Connors
Timothy J. McNichols ‡
Martin J. Buckley
Kelsey A. McGuckin-Anthony
Thomas E. Monahan π
Patrick F. Varga

πCertified Civil Trial Attorney
◊Certified Municipal Court Law Attorney
∞Member, National Academy of Elder Law Attorneys
†NJILGA Municipal Law Diplomate
ΩMember of NJ and FLA Bar
‡Member of NJ and PA Bar
ΔMember of NJ and NY Bar

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May 14, 2020

GL-29337

Via Federal Express Overnight Delivery

Richard W. Hunt, Esquire
Parker McCay, PA
9000 Midlantic Drive
Suite 300
Mt. Laurel, NJ 08054

RE: Lacey Township – Holtec International

Dear Mr. Hunt:

As you are aware this office serves as Solicitor for Lacey Township. I would like to address the serious concerns about the manner in which your client, Holtec International, is undertaking work at the Oyster Creek Generating facility (the "Property").

As you are well aware Lacey Township issued a Stop Work Order for the work that was ongoing at the Property. The Stop Work Order was issued on or about March 27, 2020. On behalf of your client your office has filed an appeal with the Ocean County Board of Appeals dated April 17, 2020.

Frankly, we fail to understand how Holtec cannot accept the fact that a permit is needed for the work that Holtec has now undertaken at the Property. We state this based upon documents which are of record, many of which have been authored by your client in conjunction with the decommissioning project now being undertaken at the Property.

As you may be aware Lacey Township has incorporated by reference the Uniform Construction Code into and therefore part of its Building Code. The Uniform Construction Code, set forth at N.J.A.C. 5:23-2.14(a) provides in part:

Construction Permits - When Required

> "It shall be unlawful to construct, enlarge, repair, renovate, alter, reconstruct or demolish a structure, or change the use of a building or structure, or portion thereof...".

The Administrative Code at N.J.A.C. 5:23-1.4 defines a structure as:

> "A combination of materials to form a construction for occupancy, use or ornamentation, whether installed on, above, or below the surface of a parcel of land; provided the word "structure" shall be construed when used herein as though followed by the words 'part or parts thereof and equipment therein' unless the context clearly requires a different meaning."

Therefore, permits are required before a "structure" as defined herein, can be permitted.

It is abundantly clear that a permit is needed to construct what we understand to be a large slab of concrete which will house the spent nuclear fuel rods. We are informed that your client is building structures into the ground, by excavating a substantial area which presumably will thereafter house the spent fuel rods. In addition, the application submitted on behalf of your client to the Lacey Township Planning Board for site plan approval in December of 2019 (see attached **Exhibit A**) included a permit issued by NJDEP on November 15, 2019 which described the authorized activities as:

> "Construction of a new pad for independent spent fuel storage installation expansion, driveway alignment, and a new 40 ft. by 55 ft. security building. This project is entirely within the existing developed portions of the site. There will be no net increase in impervious coverage."

We are uncertain at this time whether or not an enclosure will be constructed over the slab. However, it is abundantly clear that the simple construction of a concrete slab is defined as a "structure" and therefore requires a building permit to be issued by the Township. In addition, we presume there will be electrical work undertaken on site which will require electrical permits to be submitted to the Township. All of the above requires site plan approval from the Township, in accordance with the provisions of Chapter 285-1 (**Exhibit B**) of the Lacey Township Code. We also draw your attention to Section 297-17 (**Exhibit C**) of the Township Code which requires permits for lot grading. In addition to the above we believe it will be necessary for your client to obtain approvals from the Ocean County Soils Commission. Certainly it cannot be reasonably denied that even simply constructing a concrete slab to house these spent fuel rods, whether or not there is a structure constructed over the slab, requires a building permit.

The history of this Property is such that it is abundantly clear, when necessary and when a permit was required, the owner of the Property obtained appropriate approvals from the Township before undertaking the work.

I have attached hereto Resolution #93-40 (**Exhibit D**) adopted by the Lacey Township Zoning Board of Adjustment on April 4, 1994. The then owner of the Property, Jersey Central Power & Light Company, correctly applied to the Zoning Board of Adjustment to undertake the construction of an "independent spent fuel storage installation at the Oyster Creek facility".

In addition, your client's predecessor owner of the Property, Exelon, applied to the Lacey Township Planning Board for minor site plan approval. That application was approved by the Lacey Township Planning Board on October 12, 2010 (**Exhibit E**). That application sought approval to expand the "independent spent fuel storage area...".

We have reviewed the Administrative Consent Order entered into by Exelon Generation Company, LLC, and the New Jersey Department of Environmental Protection (**Exhibit F**). That approval involves the decommissioning of the former generating facility. The Administrative Consent Order, in paragraph 41, states:

> "This ACO shall not relieve Exelon from any obligation to obtain and comply with all required federal, state, and local permits, or from any obligation to comply with all applicable statutes, codes, rules, regulations and orders."

As you are aware your client thereafter authored a letter to Mayor Steven Kennis dated April 13, 2020 (**Exhibit G**). The letter was signed by Jeffrey Dostal. The letter provided in part that Holtec intended to construct "an expansion to the ISFSI pad". Mr. Dostal confirmed that in order to undertake the expansion of the pad Holtec had submitted a "permit application" with Lacey Township. That application was required in accordance with the "Controlled Decommissioning Equipment Change Package (CDECP)". That document confirmed that Holtec would be constructing a "new pad" which would "be designed to accommodate a maximum of 20 HI-STORM FW XL casks and 5 HI-SAFE casks". That document was also signed by Jeff Dostal on November 7, 2019, on behalf of Holtec (**Exhibit H**). The document included approximately 19 pages of attachments. One of the attachments, Attachment #9, listed the outside agency approvals which Holtec anticipated would be necessary in order to obtain approval for the new large concrete pad. Those permits which Holtec confirmed it would need included Planning or Zoning Board approval from Lacey Township, Planning Board approval from the County of Ocean, Ocean County Soil approval, and CAFRA approval from NJDEP.

In addition, Attachment 2 of the "Interface Department Comment / Impact Review Form" states in part in paragraph 1 that Holtec admits "Yes. The new pads can potentially impact the existing ISFSI facility." (**Exhibit I**)

Clearly Holtec is thereby admitting and conceding there could be a potential adverse impact to the existing ISFSI facility.

It is clear that Holtec needs to apply for a zoning and building permit to Lacey Township. The Township Code requires that a site plan application be submitted to the Planning Board. The Lacey Township Code also requires that all applicable outside agency approvals be obtained.

Your client cannot continue to construct an enlarged concrete slab to house the spent fuel rods without receiving the aforementioned approvals.

When we last spoke by telephone I believe it is fair to state that you were unsure exactly what activities were or were not being undertaken at the site by Holtec. Unless we have spoken within the last few days I respectfully request that you provide a writing confirming what your understanding is as to the work being undertaken on the site, if any.

However, please be advised that if any work is being undertaken on the site in accordance with the aforementioned documents which have been submitted to various regulatory agencies, we will continue to demand that appropriate permits and approvals be applied for and granted by Lacey Township, as well as other outside agencies.

We acknowledge the filing of an appeal by your office on behalf of your client to the Ocean County Construction Board of Appeals. We have had preliminary discussions with the attorney for the Construction Board of Appeals. At this point he is unable to determine whether or not a hearing could be held in June, or perhaps July. Nevertheless, work cannot continue while the appeal is pending. Unless you can assure us that no additional work will be ongoing until the appeal is decided, we will have no alternative but to advise our client to consider filing a Complaint in the Superior Court of New Jersey seeking a Temporary Restraining Order from allowing Holtec to continue to perform this work on the site.

We respectfully request that you give this matter your immediate attention. If you have any questions after reviewing the enclosed or I can be of additional assistance, please do not hesitate to contact our office.

Very truly yours,

JERRY J. DASTI

JJD/nc
Enclosures
cc: Honorable Steven Kennis, Mayor
Veronica Laureigh, Administrator/Clerk
Douglas Donahue, Construction Code Official

DASTI, MURPHY, McGUCKIN, ULAKY, KOUTSOURIS & CONNORS

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Gregory P. McGuckin
Christopher K. Koutsouris ◊ Δ
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May 26, 2020

Honorable Francis R. Hodgson, Jr., P.J.Ch.
Ocean County Court House
206 Courthouse Lane
Courtroom No. 18, 1st Floor
Toms River, New Jersey 08753

GL-29337

RE: Lacey Township v. Holtec International and Holtec Decommissioning International
Docket No.: TBD

Dear Judge Hodgson:

Please be advised that this office represents the Plaintiffs, Township of Lacey and the Township Committee of the Township of Lacey (hereinafter collectively referred to as the "Plaintiffs) with regard to the captioned matter. Please accept this Letter Memorandum in support of the Plaintiffs' request for a temporary injunction so as to prohibit the Defendants from continuing to undertake any "work" at the Oyster Creek Nuclear Generating Facility (the "Facility") without obtaining appropriate and required approvals and permits. Upon information and belief the work being undertaken is the decommissioning of the facility with includes the burying of spent nuclear fuel rods.

The work undertaken clearly requires, as the property owners have obtained in prior filings and agreements, approvals from the Township of Lacey, Ocean of Ocean, Ocean County Soil Conservation District and NJDEP. Defendants have failed to obtain approvals from Lacey Township, notwithstanding the fact that the Defendants have previously filed in or about December of 2019 an application for site plan approval to perform

the work which is now ongoing. Upon information and belief the Defendants have not filed any application for approval with the County of Ocean or the Ocean County Soil Conservation District.

The need for the permits before undertaking the work is amply demonstrated by reviewing the attachments to the Plaintiff's Verified Complaint. The Defendant's two predecessors in title, Jersey Central Power and Light and Exelon International both applied to the Township of Lacey for the required permits in order to store spent nuclear fuel rods on the site. Both applications were granted. The Resolution of the Lacey Township Planning Board (attached hereto as "Exhibit E") permitted the construction of 28 "additional prefabricated horizontal storage modules to house spent fuel rods". Those modules have been constructed with approvals granted by the Lacey Township Planning Board in 2010. No further approvals have been granted in this regard.

The proof that the Defendants are aware of the fact that they require approvals is evident. In fact the Defendants applied to the Lacey Township Planning Board in or about December 2019 so as to obtain approvals to house additional spent nuclear fuel rods. In fact the letter authored by Jeffrey Dostal to the Township Mayor, in April of 2020, confirmed that the Defendants would be applying for approvals to undertake this work.

Notwithstanding the obvious need to obtain approvals from various regulatory agencies, Defendants continued to perform work on the site without the required approvals and permits.

POINT I

A TEMPORARY RESTRAINING ORDER MUST BE ISSUED BY THIS HONORABLE COURT TO PREVENT THE DEFENDANTS FROM UNDERTAKING ANY WORK ON THE SITE TO HOUSE SPENT NUCLEAR FUEL RODS UNTIL APPROPRIATE APPROVALS AND PERMITS HAVE BEEN ISSUED

Under New Jersey Court Rule 4:52-2, temporary restraints of an interlocutory injunction may be applied for by motion. R. 4:52. "New Jersey has long recognized, in a wide variety of contexts, the power of the judiciary to 'prevent some threatening, irreparable mischief, which should be adverted until opportunity is afforded for a full and deliberate investigation of the case." *Crowe v. De Gioia*, 90 N.J. 126, 132 (1982) (quoting *Thompson v. Paterson*, 9 N.J. Eq. 624, 625 (E. & A. 1854)). This power is embodied in New Jersey Court Rule 4:52-2, which permits the entry of a preliminary injunction with temporary restraints through the filing of a motion.

According to the New Jersey Supreme Court, injunctive relief is appropriate where:

(1) There is a showing of immediate and irreparable harm to the applicant;
(2) The legal right underlying the applicant's claim rest on settled principles of law;
(3) There is a reasonable probability that the applicant will ultimately prevail on the merits; and
(4) The balance of hardships if the requested relief is granted favors the applicant.

Crowe, supra, 90 N.J. at 132-134.

When considering these factors it is critical to note that the purpose of the injunctive relief "is to maintain the parties in substantially the same condition 'when the final decree is entered as they were when the litigation began." *Id.* At 134 (quoting *Peters v. Pub. Serv. Corp. of N.J.*, 132 N.J. Eq. 500 (Ch. 1942)). Thus, the Appellate Division has made it clear that "a court may take a less rigid view in its consideration of these factors

when the interlocutory injunction sought is designed merely to preserve the status quo." *McKenzie v. Corzine*, 396 N.J. Super. 405, 414 (App. Div. 2007). Put differently, "when the proposed injunction seeks only to preserve the status quo, these factors 'are not to be looked upon as hard and fast and sharply defined in scope; rather they are but factors, among others, which must be weighted, one with another, all going to the exercise of an exacting judicial discretion as to whether or not to issue a preliminary injunction". *Waste Mgmt. of N.J., Inc. v. Union Cnty Utl, Auth.*, 399 N.J. Super. 508, 534-35 (App. Div. 2008) (quoting *Gen. Elec. Co. v. Gem Vacuum Stores, Inc.*, 36 N.J. Super. 234, 237 (App. Div. 1955)).

a. Issue of Immediate and Irreparable Harm

Harm is generally considered irreparable in equity if it cannot be adequately redressed by monetary damages. *Crowe*, supra, 90 N.J. at 132-133. However, even where pecuniary damages might provide some relief to the applicant, the Supreme Court has recognized that they may be inadequate in some cases because of the nature of the inquiry or the right affected. *Id.* At 133 (citing *Outdoor Sporting Corp. v. A.F. of L. Local* 23123, 6 N.J. 217, 229-30 (1951); *Scherman v. Stern*, 93 N.J. Eq. 626 631 (E. & A. 1922)).

Under the *Crowe* test, a party seeking injunctive relief must demonstrate that there exists a likelihood of irreparable harm if a preliminary injunction is not granted. "Harm is generally considered irreparable in equity if it cannot be redressed by monetary damages." *Subcarrier Communications, Inc., v. Day, et. al*, 229 N.J. Super. 634, 638 (App. Div. 1997), *quoting Crowe*, 90 N.J. at 132-133).

The harm that threatens to befall the Plaintiff herein is much more egregious than monetary damages could ever possibly compensate the Plaintiff for. Defendants are, without appropriate oversight and approval, burying spent nuclear fuel rods in a large pit. Defendants are well aware of the fact that the history of the ownership and operation of the facility, when it is generating electrical power, was to make application to the

Township to the Zoning Board of Adjustment or the Planning Board as well as outside agency approvals, in order to obtain all necessary approvals. In fact the Defendants made an application to the Lacey Township Planning Board to obtain approval for the current construction work. Defendant advised the Lacey Township Mayor, in writing, that they will obtain all necessary approvals. Defendant is well aware of the need to obtain approvals, but has refused to make the appropriate applications.

The last Resolution adopted by the Lacey Township Planning Board was conditioned upon no more than 28 casks being constructed. Defendants are now violating the terms and conditions of that Resolution.

Money damages cannot possibly compensate for the harm being caused by the Defendants. We therefore respectfully suggest and urge this Court to accept that the irreparable harm will be imposed upon the Township and its citizens if the relief requested herein is not granted.

b <u>The Applicable Law in this area is well-settled. In fact the history of the ownership and control of the facility is well settled.</u>

Without doubt the Defendant is constructing structures on the property which require building permits. Building permits are issued for this type of work only after site plan approval is applied for. Defendants are well aware of the fact they need to apply for those approvals. In fact they preliminarily began making an application to the Lacey Township Planning Board for site plan approval.

Defendants are well aware of their obligations and responsibilities but have simply refused to abide by them. A building permit is required for the work that is being undertaken by the Defendants. Before a building permit could be issued for this commercial activity, site plan approval must be granted by the applicable Zoning Board and/or Planning Board of the Township.

c. The material facts cannot be disputed and the Plaintiffs are likely to succeed on the merits.

We do not believe that the Defendants can or will dispute the facts set forth in the Verified Complaint or in this Memorandum of Law. It is abundantly clear that permits are required and have not been applied for.

The question remains for this prong as to whether the Plaintiffs are likely to succeed on the merits. "Thus, to prevail on an application for temporary relief, a Plaintiff must make a preliminary showing of ultimate success on the merits." *Crowe*, 90 N.J. at 133, citing *Ideal Laundry Co. vs. Gugliemone*, 107 N.J. Eq. 108 115-16 (E. & A. 1930). It is respectfully submitted that the Plaintiffs have already made such a showing. The language in the Uniform Construction Code, Lacey Township Building Code, and the prior Resolutions of approval are clear. The property owner of the facility cannot construct more than 28 spent fuel rod casks (which have already been constructed) without prior approval.

Based upon these facts alone it is clear that the Plaintiff is likely to succeed on the merits.

d. The equities at issue weight in favor of the Plaintiff.

It is abundantly clear that the Plaintiff and its citizens will indeed suffer a greater hardship should the injunction not issue than the Defendants would suffer should be injunction be issued pursuant hereto. The Defendants need only to apply for the appropriate applications and approvals, which they initially indicated they would do. A slight delay in making the applications to the various regulatory agencies, which the Defendants stated they would do and began making preliminary steps to do so, would not cause any undue hardship to the Defendants.

The fact that the Defendants will be required to comply with the law, should not cause any undue hardship to the Defendants. Certainly under these circumstances the equities weigh substantially in favor of the Plaintiff, and the citizens of Ocean and Lacey Township.

For the above-cited reasons we respectfully request that a Temporary Restraining Order be issued prohibiting the Defendants from continuing to undertake any work on the site without making an application to and receiving approvals from various regulatory agencies which have jurisdiction over this facility.

Respectfully Submitted,

JERRY J. DASTI

JJD/nc
Enc.
Cc: Richard Hunt, Esquire
Veronica Laureigh, Township Administrator/Clerk
Christopher Reid, Esquire, Director of Community Development

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And the Township Committee of the Township of Lacey

TOWNSHIP OF LACEY, a body politic, and THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF LACEY Plaintiff(s) vs. HOLTEC INTERNATIONAL and HOLTEC DECOMMISSIONING INTERNATIONAL Defendant(s)	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION OCEAN COUNTY DOCKET NO.: Civil Action **ORDER TO SHOW CAUSE WITH TEMPORARY RESTRAINTS**

THIS MATTER being opened to the Court by Dasti, Murphy, McGuckin, Ulaky, Koutsouris and Connors, Attorney for Plaintiff, Jerry J. Dasti, Esquire appearing, seeking relief by way of temporary restraints pursuant to *R.* 4:52, based upon the facts set forth in the Verified Complaint filed herewith; and it appearing that the Defendant has notice of this application and immediate and irreparable damage may result and for other good cause shown;

IT IS ON THIS _____ day of _____, 2020

ORDERED that the Defendants show cause before me at the Ocean County Court House, Toms River, New Jersey, on the _____ day of June, 2020, at 9:00 a.m. in the forenoon or as soon thereafter as counsel may be heard, to show this Court cause why an Order should not be issued preliminarily enjoining and restraining Defendants from:

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McGUCKIN, ULAKY,
KOUTSOURIS & CONNORS
COUNSELLORS AT LAW
620 WEST LACEY ROAD
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A. Discontinuing all work at the facility until all permits and approvals are granted;

B. Assessment of Counsel fees and costs of suit; and

C. Granting such other relief as the court deems equitable and just.

BE IT FURTHER ORDERED that pending the return date herein, the Defendant is temporarily enjoining and restrained from:

A. Continuing any and all work at the facility.

IT FURTHER ORDERED that:

1. The Defendant may move to dissolve or modify the temporary restraints herein contained on two (2) days' notice to the Plaintiff's attorney.

1. A copy of this Order to Show Cause, Verified Complaint, Legal Memorandum and any supporting Affidavits or Certifications submitted in support of this application be served upon the Defendants attorney, Richard Hunt within ____ days of the date hereof, in accordance with R. 4:4-3 and R. 4:4-4.

2. Plaintiff must file with the Court its proof of service of the pleadings on Defendants not later than three (3) days before the return date.

3. Defendants shall serve a written response to this Order to Show Cause and the request for entry of injunctive relief and proof of service by _____. The original documents must be filed with the Clerk of the Superior Court in the County listed above.

4. Plaintiff must file and serve written reply to Defendant, opposition by _____. The reply papers must be filed with the Clerk of the Superior Court in the County listed above.

5. If Defendant does not file and serve opposition to this Order to Show Cause,

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the application will be decided on the papers on the return date and relief may be granted by default, provided that Plaintiff files a proof of service and a proposed form of Order at least three (3) days prior to the return date.

6. Defendant take notice that Plaintiff has filed a lawsuit against you in the Superior Court of New Jersey. The Complaint attached to this Order to Show Cause states the basis of the lawsuit. If you dispute the Complaint, you or your attorney must file a written Answer to the Complaint and proof of service before the return date of the order to Show Cause.

7. These documents must be filed with the Clerk of the Superior Court in the County listed above. Include a filing fee payable to the "Treasurer, State of New Jersey". You must also send a copy of your Answer to Plaintiff's attorney whose name and address appear above. A telephone call will not protect your rights; you must file and serve your Answer, with the fee, or judgment may be entered against you by default. Opposition to the Order to Show Cause is not an Answer, you must file both. If you do not file and serve an Answer, judgment may be entered against you by default.

8. If you cannot afford an attorney, you may call Legal Services in the County in which you live. If you do not have an attorney and are not eligible for legal assistance you may obtain a referral to an attorney by calling one of the Law Referral Services.

9. The Court will entertain oral argument, but not testimony on the return date of the Order to Show Cause, unless the Court and the parties are advised to the contrary not later than _____ days before the return date.

HON. FRANCIS R. HODGSON, JR., P.J.Ch.

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TOWNSHIP OF LACEY, a body politic, and THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF LACEY Plaintiff(s) vs. HOLTEC INTERNATIONAL and HOLTEC DECOMMISSIONING INTERNATIONAL Defendant(s)	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION OCEAN COUNTY DOCKET NO.: Civil Action **ORDER**

THIS MATTER being brought before the Court by the law firm of Dasti, Murphy, McGuckin, Ulaky, Koutsouris & Connors, attorneys for Plaintiffs, Jerry J. Dasti, Esquire appearing, in the presence of Parker McCay, P.A., attorney for Defendants, Richard Hunt, Esquire appearing, and the Court having reviewed the pleadings, exhibits and memorandum of law submitted by the parties, and after providing an opportunity for oral argument, and for good cause shown;

IT IS on this ____ day of June 2020, **ORDERED and ADJUDGED** as follows:

1. The Defendants are hereby restrained from attempting to perform any additional work at the Ocean County nuclear power plant with regard to the storing of spent nuclear fuel rods until the appropriate and necessary permits and approvals from various regulatory agencies are obtained.

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2. An attorney's fee in the amount of _____ shall be assessed in favor of the Plaintiff and against the Defendants, to be paid within _____ days of the date of this Order.

_____
HON. FRANCIS HODGSON, JR., P.J.Ch.

DASTI, MURPHY
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Exhibit E

DASTI, MURPHY, McGUCKIN, ULAKY, KOUTSOURIS & CONNORS

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September 28, 2020

Electronically Submitted via Pacer
The Honorable Michael A. Shipp U.S.M.J.
United States District Court, District of New Jersey
Clarkson S. Fisher Building & U.S. Court House
Courtroom 5W
402 East State Street
Trenton, New Jersey 08608

Re: Holtec International et al. v. Lacey Township, et al.
Civil Action No.: 3:20-cv-12773
Opposition to Plaintiffs' Verified Complaint

Dear Judge Shipp,

Please be advised that this office represents the interests of the Township of Lacey ("the Township") with respect to the above captioned matter. Please accept this Letter Brief in opposition to Plaintiffs' application for a temporary restraining order.

In short, Plaintiffs' request extraordinary relief from this Honorable Court, which requires an extraordinary showing of the four prongs pertinenant to obtaining a temporary restrainig order. However, as will be detailed herein, the likelihood of Plaintiffs success on the merits falls short; the alleged irreparable harm is not remotely imminent, and in fact, the harm Plaintiffs allege they will suffer is solely a result of their own self-created hardships; granting this relief will result in greater harm to the Township of Lacey and its constituents; and finally the public interest does not favor the requested relief.

However, prior to getting into this analysis, it is important to clarify the arguments submitted by Plaintiffs against the Township versus the arguments against the Planning Board. This is necessary because although both are recognized to exist under the charter which is Lacey Township, they are not entities that are one in the same. The Planning Board is an administrative arm of the Township, with its own jurisdiction, and is comprised of its own Board. Whereas the Township, is its own entity, formed pursuant to N.J.S.A. 40A:63-1, and charged with governing and enforcing the ordinances it promulgated and those penned by the New Jersey State Legislature.

Plaintiffs improperly attempts to lump their actions together, and argue to this Honorable Court that their actions are identical. That simply is not the case. Therefore, by way of background Defendant Lacey Township offers the following:

Prior to the Plaintiffs' ownership of Oyster Creek, the predecessors of title were Jersey Central Power and Light Company and thereafter Exelon Generation Company, LLC (hereinafter referred to as "JCP&L" and "Exelon" respectively). When the property was owned by, and the facility was generating electricity as a result of the nuclear power plant, JCP&L applied to the Lacey Township Board of Adjustment for an approval for an independent spent fuel storage installation at the facility. (See Resolution of the Lacey Township Board of Adjustment Appeal No. 93-40 attached hereto as **Exhibit A**). This approval was granted. Thereafter, the successor in interest to the property and the facility, Exelon, applied to the Lacey Township Planning Board for approval to expand "the independent spent fuel storage area by removing existing pavement and construction of two 26' wide x 159' long and 3' deep concrete bases to support 28 additional prefabricated horizontal storage modules to house spent fuel rods." (See Resolution of Approval 10-SP-05 Planning Board, Township of Lacey **Exhiblt B**). These approvals were similarly granted.

In January of 2018, Exelon entered into an Administrative Consent Order ("ACO") with the New Jersey Department of Environmental Protection. In general terms, the consent order provided for the closure

of the facility in accordance with appropriate regulations and the eventual disposal of the spent nuclear fuel rods. (Attached to Plaintiffs' verified complaint as **Exhibit D**). This ACO, in pertinent part instructs:

> "This ACO shall not relieve Exelon from any obligation to obtain and comply with all required federal, state and **local permits, or from any obligation to comply with all applicable statutes, codes, rules, regulations and orders**...[See page 16, paragraph 41 **Exhibit D** attached to Plaintiffs' Verified Complaint.]

Following the precedent set by its predecessors in title, and required by the ACO, Plaintiffs in April 13, 2020, forwarded a letter to the Defendant Township indicating that Plaintiffs submitted a permit application with the Township for an "expansion of the ISFSI pad." (see April 13, 2020 letter attached hereto as **Exhibit C**). However prior to obtaining the requested approvals, Plaintiffs became aware that they required site plan approval in order to obtain the necessary approvals. To that effect, before even sending this letter to Defendants, Plaintiffs' preemptively applied to the Lacey Township Planning Board in the Fall of 2019 for site plan approval. Then, for unknown reasons at the time, Defendants withdrew their application for site plan approval to construct an additional ISFSI pad and security building. The reason for which was later uncovered to be the result of Plaintiffs' determination, based off an opinion rendered by a company located within the Holtec umbrella, that the existing ISFSI possessed sufficient space to accommodate the additional Horizontal Storage Casks.

As a result of this intention, it came to the Township's attention that Plaintiffs were undertaking work to excavate a large portion of the ground where the previously proposed ISFSI pad would be located, in addition to which, Plaintiffs' began constructing the cask transfer pit ("CTP"), which before Your Honor, they intended to utilize in their dry storage run. All of this was done without proper permits, and without ever obtaining site plan approval, in not only direct violation to the Township's local ordinances, the Municipal Land Use Law, and the Uniform Construction Code but also the ACO that Plaintiffs are bound by.

Thereafter, the Township's Attorney authored a letter dated May 15, 2020, which in short demanded Plaintiffs obtain the proper approvals before continuing work pursuant to Township Ordinances and the

Uniform Construction Code ("UCC"). (See Jerry J. Dasti, Esq.'s May 15, 2020 letter attached hereto as **Exhibit D**). Plaintiffs, despite having been issued a Stop Work Order by the Township, completed the construction of the Cast Transfer Pit without having ever obtained a permit for same, or site plan approval.

Subsequent to this revelation, the Township filed a Verified Complaint and Order to Show Cause in New Jersey Superior Court, Chancery Division, seeking *inter alia* an Order preventing the now Plaintiffs from constructing any additional structures or utilizing the CTP until proper permits and site plan approval were acquired. (See attached hereto as **Exhibit E** Lacey Township Verified Complaint and Order to Show Cause[1]). Briefs were filed on behalf of both parties, and at the eleventh hour a Consent Order was reached.

This Consent Order, in paragraph six, located on page five which is significant to the matter before Your Honor, reads:

> **6. In the event the Site Plan application is approved by the Planning Board, Defendants shall apply for construction permits to use the Cask Transfer Pit ("CTP") for its spent fuel transfer campaign.** No new construction may take place until a construction permit is issued, and Defendants have applied for permits and received the proper inspection. The Township will expedite issuance of permits and performing inspections. **It is understood that the CTP will NOT be used to execute the spent fuel program, until Defendants receive site plan approval and construction permits.** The Township agrees that the performance of the NRC regulated dry runs **may** begin as scheduled in September 2020 even if permits and the Certificate of Approval are not issued at that time, however the spent fuel campaign shall not begin until permits are issued. The Township agrees to work with Defendants to not impact this schedule, and to ensure that any approval will not be unreasonably withheld or delayed. To that end, the Township may inspect the CTP as soon as this Consent Order is executed. As used herein, the phrase "dry runs" refers to the testing and training exercises required by the NRC pursuant to 10 C.F.R. 72.212 and the Certificate of Compliance issued by NRC for the HI-STORM FW spent fuel storage cask, and includes the following steps:
>
> a. Moving the spent fuel canister and transfer cask into the spent fuel pool.
> b. Preparation of the spent fuel canister for fuel loading.

[1] Exhibits cited in the Verified Complaint are omitted in an effort to avoid burdening this Court with duplicative documents.

c. Selection and verification of fuel assemblies.

d. Loading test fuel assemblies (replica assemblies) in the spent fuel canister.

e. Remote installation of the spent fuel canister lid and removal of the canister/transfer cask from the spent fuel pool.

f. Spent fuel canister lid welding, Non-Destruction Examination ("NDE") inspections, pressure testing, draining, moisture removal, and helium backfilling.

g. Transfer of the spent fuel canister from the transfer cask to the overpack utilizing the CTP.

h. Placement of the spent fuel canister in the overpack on to the ISFSI pad.

(The July 15, 2020 Consent Order is attached hereto as **Exhibit F**) *emphasis added.*

Grammatically, based off the thesis/topic sentence of this paragraph, the use of the CTP for the Plaintiff's spent fuel campaign was expressly conditioned on obtaining not only Planning Board Approval but simultaneously the appropriate permits. Plaintiffs' failed to do that. Significantly to the validity of this fact, the parties reiterated that seemingly straight forward understanding in the fourth sentence of the paragraph. Immediately thereafter, in the fifth sentence, the parties do not utilized any compulsory language, that mandates, that the CTP shall be permitted to be utilized with respect to the NRC required dry runs. Rather, the Township agreed that it "may" permit the use of the CTP for the NRC required dry runs. Clearly this paragraph is devoid of any indication that the Township is required to allow Plaintiffs' to utilize the CTP in its dry runs without having first obtained the approval of the Planning Board and in turn the required permits.

The only conduct that this paragraph requires of the Township, is to work with the Defendants to not impact its dry run schedule. Which the Township believes it is doing, by not doing anything. Now that sounds oxymoronic. However, the Township is not submitting the Plaintiffs cannot perform all the aspects of their scheduled dry run. The Township's position is simply: (1) Plaintiffs are not permitted to perform the aspects of their scheduled dry run which would require the use of additional structures which were erected, constructed or otherwise, without having first obtained the appropriate permits from the Township, or required site plan approval

from the Planning Board; (2) Plaintiffs are not permitted to utilize the existing ISFSI pad without obtaining site plan approval consistent with the proposed amended use, a requirement that is more extensively discussed in the Planning Board's Brief; and (3) the Plaintiffs are not permitted to utilize the CTP with respect to the scheduled dry runs as a result of their own improper and illegal conduct of constructing the structure without obtaining the appropriate building permit or site plan approval for same.

Moreover, this same Consent Order simultaneously offered the Plaintiffs an avenue of relief in the event a disagreement over its contents had arisen. In the final paragraph, in the penultimate sentence, the parties agreed:

> "This matter shall be dismissed without prejudice, but can be immediately reopened upon letter request by either party or both parties, in the event either party feels that the terms or intent of this Consent Order have been violated, and the Order to Show Cause hearing shall take place on an expedited basis on a date to be determined by the Court. [See **Exhibit F** paragraph 13 page 6].

Following the entering of this Consent Order, the Township's involvement with this matter ended and the site plan application was brought on an expedited basis to the Planning Boards attention. The pertinent facts of which, the Township hereby rely upon and incorporate by reference as if more fully set forth herein, as stated by codefendant Lacey Township Planning Board.

Now before Your Honor, Plaintiffs seek the extraordinary remedy to impose temporary restraints on the Township to permit it to utilize its CTP without having ever obtained proper site plan approval, or the required permits. As will be detailed herein, Plaintiffs are incapable of substantiating the extraordinary relief they are requesting.

LEGAL ARGUMENT

A preliminary injunction is an extraordinary remedy that is granted only in limited circumstances. Ferring Pharm., v. Watson Pharm., Inc., 765 F.3d 205, 210 (3d Cir. 2014). To obtain a preliminary injunction, the moving party must establish: (1) a likelihood of success on the merits; (2) that [it] will suffer irreparable harm if the injunction is denied; (3) that granting preliminary relief will not result in even greater harm to the nonmoving

party; and (4) that the public interest favors such relief." Kos Pharm., Inc. v. Andrx Corp., 369 F.3d 700, 708 (3d Cir. 2004). Also, in Delaware River Port Auth. v. Transamerican Trailer Transp., Inc., 501 F.2d 917, 919-20 (3d Cir. 1974) the Court advised: in order to obtain a preliminary injunction, the moving party must generally show (1) reasonable probability of eventual success in the litigation, and (2) that it will be irreparably injured *pendente lite* if relief is not granted to prevent a change in the status quo. Id. Moreover while the burden rests on upon the moving party to make these two requisite showings, "the district court should take into account, when they are relevant, (3) the possibility of harm to other interested persons from the grant or denial of the injunction, and (4) the public interest." Id. at 920

However, "a party seeking a preliminary injunction that will alter the status quo bears a particularly heavy burden in demonstrating its necessity." Acierno v. New Castly County, 40 F.3d 645, 653 (3d Cir. 1994). This burden requires the moving party to demonstrate a sufficient likelihood of prevailing on the merits. Reilly v. City of Harrisburg, 858 F.3d 173, 180 (3d Cir. 2017). Notably, should a party fail to show a likelihood of success on the merits or a failure to demonstrate irreparable injury, this failure must necessarily result in the denial of a preliminary injunction. Morton v. Beyer, 822 F.2d 364, 371 (3d Cir. 1987).

For the reasons to follow, Plaintiffs fails to meet its burden and establish a potential success on the merits.

(1) PLAINTIFF FAILED TO MEET ITS BURDEN AND ESTABLISH A REASONABLE LIKELIHOOD OF SUCCESS ON THE MERITS AGAINST THE TOWNSHIP.

The Plaintiffs belief that Federal field preemption is applicable against the Township is an utter fallacy. The United States Supreme Court in Pac. Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm'n, 461 U.S. 190, 190, (1983) bifurcated and clearly outlined the authority vested in the federal government with respect to the regulation of active nuclear power plants, and in turn the authority that remained vested in the inherent police powers of each of the individual states to regulate land use. Specifically, the United States Supreme Court held:

> "Congress has preserved the dual regulation of nuclear-powered electricity generation: the federal government maintains complete control of the safety and "nuclear" aspects of energy generation;

> the states exercise their traditional authority over the need for additional generating capacity, the type of generating facilities to be licensed, land use, ratemaking, and the like. Id. at 210 (emphasis underscored).

At issue is whether the Atomic Energy Act and C.F.R. 72.6 et seq,, preempt the Uniform Construction Code and municipal authority from requiring in this case, a building permit, Planning Board Approval, site plan approval, etc, prior to undertaking construction/demolition related activities. Plaintiffs asserts that the entire field of Nuclear Energy Regulation is governed by the Atomic Energy Act and C.F.R. 72.6 et seq., and therefore, a public entity is preempted from requiring any additional procedures. However, it is clear that this argument falls short.

The United States Constitution provides that the Constitution and the laws of the United States, "shall be the supreme law of the land." U.S. Const., art. VI, cl. 2. The tests for determining whether state laws are preempted by federal law are well-established:

> Pre-emption may be either expressed or implied, and "is compelled whether Congress' command is explicitly stated in the statute's language or implicitly contained in its structure and purpose." Absent explicit pre-emptive language, we have recognized at least two types of implied pre-emption: field pre-emption, where the scheme of federal regulation is " 'so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it,' " and conflict preemption, where "compliance with both federal and state regulations is a physical impossibility," or where state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress[.]"

Gade v. Nat'l Solid Wastes Management Assoc., 505 U.S. 88, 98 (1992). Whether a state law stands as an obstacle to the accomplishment of a federal objective, requires a court to consider "the relationship between state and federal laws as they are interpreted and applied, not merely as they are written." Jones v. Rath Packing Co., 430 U.S. 519, 526, (1977).

The New Jersey Supreme Court in R.F. v. Abbott Labs, 162 N.J. 596 (2000) weighed in on the application of federal preemption in New Jersey and disclosed: there are three categories of preemption that are ordinarily defined as express preemption, implied preemption, and conflict preemption. Id. citing Laurence H. Tribe, *American Constitutional Law, Vol.I,* § 6–28 (3d ed.2000). The Court further stated:

> these three categories of preemption are anything but analytically air-tight. For example, even when Congress declares its preemptive intent in express language, deciding exactly what it meant to preempt often resembles an exercise in implied preemption analysis. So too, implied preemption analysis is inescapably tied to the presumption that Congress did not intend to allow state obstructions of federal policy, the existence of which is a central inquiry in conflict preemption analysis.

Id. at 618-19 (internal quotations omitted). The test to determine whether federal law preempts state law is fact-sensitive and "is not to be lightly presumed." Id. citing Turner v. First Union Nat'l Bank, 162 N.J. 75 (1999). Further, the United States Supreme Court held in Hillsborough Cty. Fla. V. Automated Med. Laboratories, Inc., 471 U.S. 707, 713 (1985) that "state laws can be pre-empted by federal regulations as well as federal statutes." Id.

The New Jersey Supreme Court, relying on Erwin Chemerinsky, Constitutional Law: Principles and Policies, § 5.2 (1997) distinguished the three forms of preemption as follows:

> There are three types of implied preemption: (1) field preemption, "where the scheme of federal law and regulation is 'so pervasive as to make reasonable the inference that Congress left no room for the states to supplement it;' " (2) conflict preemption, where there is a conflict between federal and state law, rendering " 'compliance with both federal and state regulations ... a physical impossibility;' " and (3) preemption where "state law impedes the achievement of a federal objective;" in this case, even if federal and state law are "not mutually exclusive ... preemption will be found if state law 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'

R.F. supra, at 620.

Notably, the United States Supreme Court has observed, "prior cases on preemption are not precise guidelines [since]...each case turns on the peculiarities and special features of the federal regulatory scheme in question." City of Burbank v. Lockhead Air Terminal Inc., 411 U.S. 624, 638 (1973). In fact, the United States Supreme Court has expressly recognized, that it is the burden of the party advocating preemption to establish that federal and state law in fact conflict. Silkwood v. Kerr-McGee Corp., 464 U.S. 238, 255 (1984) (holding, the federal preemption of state regulation of the safety aspects of nuclear energy, does not extend to state-authorized award of punitive damages for conduct related to radiation hazards actionable through state law.) Further, state law is preempted only to the extent that it actually conflicts with federal law, and such conflict arises on when

"compliance with both federal and state regulations is a physical impossibility," Florida Lime & Avocado Growers, Inc. v. Paul, 373 U.S. 132, 142-143 (1963), or where state law "stands as obstacle to the accomplishments and execution of the full purposes and objectives of congress." Hines v. Davidowitz, 312 U.S. 52, 67 (1941).

The application of federal preemption principals were applied in the field of nuclear regulation by the United States Supreme Court in Pac. Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm'n, 461 U.S. 190, 190, (1983) ("Pacific Gas"). In Pacific Gas, the United State Supreme Court was presented the opportunity to examine the extent the Atomic Energy Act of 1954 preempted a State Statute that sought to regulate nuclear waste. Id. Leading to its holding, the United States Supreme Court stated the following:

> as we view the issue, Congress, in passing the 1954 Act and in subsequently amending it, intended that the federal government should regulate the radiological safety aspects involved in the construction and operation of a nuclear plant, but that the States retain their traditional responsibility in the field of regulating electrical utilities for determining questions of need, reliability, cost and other related state concerns. Id. at 205 (emphasis underscored).

In fact, the United States Supreme Court reaffirmed the principle that: "Congress legislated here in a field which the States have traditionally occupied ... so we start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress." Id. at 206 quoting Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 229 (1947); see also Bates v. Dow Agrosciences LLC, 544 U.S. 431, 449 (2005)(recognizing, to the extent Congress's statutory direction is susceptible to more than one reading, [courts] have the duty to accept the reading that disfavors preemption."). The Court in Pacific Gas held: "Congress has preserved the dual regulation of nuclear-powered electricity generation: the federal government maintains complete control of the safety and "nuclear" aspects of energy generation; the states exercise their traditional authority over the need for additional generating capacity, the type of generating facilities to be licensed, land use, ratemaking, and the like." Id. at 210 (emphasis underscored).

Notably, within the Atomic Energy Act there is an express provision where it expands state authority with respect to regulating a nuclear power plant. Specifically, 42 U.S.C.A. § 2021 titled *Cooperation with States*,

subsection (k) provides: "State regulation of activities for certain purposes[:] [n]othing in this section shall be construed to affect the authority of any State or local agency to regulate activities for purposes other than protection against radiation hazards." 42 U.S.C.A. §2021 (k). The United States Supreme Court interpreted this subsection to represent Congress's clear intent that the Atomic Energy Act was not intended to cut back on preexisting state authority that is outside the NRC's jurisdiction. Pacific Gas supra at 210.

In fact, the NRC is permitted to delegate regulatory responsibility to any state agency, however, the Atomic Energy Act limits what may be delegated to four discrete categories. Specifically, 42 U.S.C.A. §2021 (c) provides in relevant part:

> No agreement entered into pursuant to subsection (b) shall provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to regulation of--
>
> (1) the construction and operation of any production or utilization facility or any uranium enrichment facility;
> (2) the export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;
> (3) the disposal into the ocean or sea of byproduct, source, or special nuclear waste materials as defined in regulations or orders of the Commission;
> (4) the disposal of such other byproduct, source, or special nuclear material as the Commission determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed of without a license from the Commission. [42 U.S.C.A. §2021(c)].

Additionally, 42 U.S.C.A. § 2021(I), created an advisory role for the states respecting activities within the NRC's jurisdiction and directs the commission to cooperate with states even in the formulation of standards for regulation again radiation hazards. See 42 U.S.C.A. § 2021(I), see also Pacific Gas, supra, n. 21.

Some guidance on this issue can also be deduced from Tenth Circuit cases: Cook v. Rockwell Int'l Corp., 618 F.3d 1127 (10th Cir. 2010) (Cook one) and Cook v. Rockwell Int'l Corp., 790 F.3d 1088 (10th Cir. 2015) (Cook Two). Where there, the Tenth Circuit was presented an opportunity to weigh in on the principles announced in Pacific Gas to determine whether the principle that the federal government retains total control over "nuclear" aspects of regulation also preempted state tort claims. At issue in Cook one and Cook two was whether the Price-Anderson Act preempted recovery under state statutes for injuries involving nuclear waste.

In both matters, the Court extensively reviewed the language in the Price-Anderson Act and to quote their analysis denying express preemption in Cook two, provided the following: "Where does any of this language—expressly preempt and preclude all state law tort recoveries for plaintiff who plead but do not prove nuclear incidents? We just don't see it." Cook two supra at 1096. Absent any express language in the federal statute or a federal regulation expressly preempting the field, the question turned on whether the state law conflicts with the federal law, because clearly field preemption was inapplicable, as that applies only when "the federal government [had] so fully occupied [the] entire field that no room remains for the operation of state law at all." Id. at 1093-94.Therefore, the Court turned to "conflict preemption" and found no indication that compliance with the state statute would make compliance with the Price-Anderson Act impossible. Id.

Drawing a parallel to the matter at bar, there is no provision of the Atomic Energy Act that expressly preempts states or local governing bodies from requiring compliance with their land use law and building code. In fact, as stated supra, the Atomic Energy Act expressly indicates that states may continue to regulate the functions that were traditionally theirs. A principle that has been reinforced and encouraged time and time again by the United States Supreme Court in the aforementioned case law. Further, as it is indisputable that Federal field preemption is inapplicable in this matter as a result of the United States Supreme Court's holding in Pacific Gas, therefore the question turns on whether conflict preemption applies.

In order for conflict preemption to apply, the Court must undertake a fact sensitive analysis and the Plaintiffs bears the burden of proving its existence. The Plaintiffs must establish that the application of the state statute makes it physically impossible to comply with the federal statute. Then, following the United States Supreme Court's holding in Bates supra, if "Congress's statutory direction is susceptible to more than one reading, [courts] have the duty to accept the reading that disfavors preemption." Bates supra at 449.

Plaintiffs contend that "under certain circumstances, the NRC can cede rights to states, as noted above, but again, Defendants are local government entities. Thus 42 U.S.C. 2021 does not apply to them. States and local governments also have traditional authority over the need for additional generating capacity, the type of

generating facilities to be licensed, *land use*, rate making and the like." (See Page 20 of Plaintiffs' moving brief second full paragraph.) Clearly, Plaintiff's own argument contradicts its ability to succeed on the merits.

Lacey Township has in its Building Code incorporated by reference the Uniform Construction Code. Therefore the UCC is part of the Lacey Township Building Code. As a result, the Township would respectfully direct this Honorable Court's attention to N.J.A.C. 5:23-1.4(a) which provides in part:

> Construction Permits—When required
>
> "It shall be unlawful to construct, enlarge, repair, renovate, alter, reconstruct or demolish a structure, or change the use of a building or structure, or portion thereof..." [N.J.A.C. 5:23-1.4(a).

The administrative code defines a "structure" as:

> A combination of materials to form a construction for occupancy, use or ornamentation, whether installed on, above, or below the surface of a parcel of land; provided the word "structure" shall be construed when used herein as though followed by the words "parts of parts thereof and equipment therein" unless context clearly requires a different meaning. [N.J.A.C. 5:23-1.4 (emphasis underscored)].

Therefore, rather than needlessly engage in a statute by statute, point by point, analysis of the regulatory provisions governing the decommissioning of a nuclear power plant, one need only peal the facts down to the center to uncover the reality of the matter. The Township's conduct in requiring Plaintiffs obtain the proper permits and site plan approval—two requirements inherently related to land use—as they relate to the structures they erected pertinent to the planned dry runs, is not preempted by Federal Law. Significantly, the Administrative Consent Order attached to Plaintiffs' Verified Complaint, as **Exhibit D** states:

> "This ACO shall not relieve Exelon from any obligation to obtain and comply with all required federal, state and **local permits, or from any obligation to comply with all applicable statutes, codes, rules, regulations and orders**...[See page 16, paragraph 41 **Exhibit D** attached to Plaintiffs' Verified Complaint (emphasis added)].

Despite this rather straight forward instruction, memorialized in the ACO inherited by the Plaintiffs. The Plaintiffs continue to turn a blind eye, and contend the Township's actions in requiring compliance with the MLUL, its building code and the UCC usurps Federal Authority.

As illustrated above, the issues between the parties began when the Township learned that the Plaintiffs were constructing structures on their property without any proper permits or having first obtained site plan approval. In rebuttal, Plaintiffs contended the NRC license conferred upon them the authority to construct anything relating to the decommission of the plant without obtaining (1) site plan approval or (2) the requisite building permits. However, nowhere do the facts suggest that the Township was attempting to usurp the federal authority and regulate the radiological and safety aspects of the plant. In fact, the history of the parties dealings reflect that the Township only required the Plaintiffs apply for and obtain the same building permits, and if need be, site plan approval as the Plaintiffs' predecessors in interest had done. There was nothing outrageous that the Township imposed. More importantly, the Township never imposed a single requirement that pertained to regulating the NRC required dry runs, which was not imposed by the NRC, or the ACO. Specifically, the requirement that the Plaintiffs obtain all applicable local and state approvals was a condition of approval.

Applying these principles, a reading of the entire Uniform Construction Code ("UCC") and the Municipal Land Use Law ("MLUL") will establish the Plaintiffs in this matter have an insurmountable obligation to establish a likelihood of success on the merits. Nowhere in either the UCC or the MLUL do they regulate the control of the safety and nuclear aspects of nuclear energy and one would be hard pressed to find otherwise. In fact, the Atomic Energy Act expressly provides that states are permitted to regulate activities provided they are for purposes other than radiation management or protection against radiation hazards. See 42 U.S.C.A. §2021 (k). Moreover, the United States Supreme Court in Pacific Gas and the aforementioned cases, indisputably held that states retain jurisdiction over regulating land use and activities that are traditionally related to the state police power and regulatory activities even when they are related to nuclear power plant regulation.

Before this Honorable Court are issues that are inherently related to land use, the state's police power and regulatory function. This is not a matter where Lacey Township is attempting to regulate the radiological safety and nuclear aspect of decommissioning Oyster Creek. This is a matter where Lacey Township required Plaintiffs obtain building permits, zoning permits, site plan approval, etc., prior to undertaking work that the Township

requires for all other construction related operations. Requiring this step does not conflict with the Atomic Energy Act. Moreover, requiring Plaintiffs to simultaneously adhere to the UCC and MLUL does not make it "physically impossible" for Plaintiffs to follow the Atomic Energy Act and the NRC regulations in fully decommissioning Oyster Creek, the onus is on Plaintiffs prove otherwise.

Moreover, as Codefendant Lacey Township Planning Board submits, the justification for the denial of Plaintiff's Planning Board Application was not due to the Planning Board's attempt to regulate the radiological aspect of the decommissioning of Oyster Creek, but was due to the simple fact that Plaintiffs, while testifying disclosed facts which were not originally applied for. Specifically, their proposed site plan was not accurate, and there was nothing temporary about the proposed use that Plaintiffs were applying for. Therefore, rather than beat a dead horse before Your Honor, Defendant Lacey Township hereby incorporate and rely upon the argument submitted by Lacey Township Planning Board with respect to the validity of its determination.

As such, Plaintiffs are simply incapable of substantiating that federal preemption is applicable to the matter at bar, and therefore, their application for injunctive relief must fail.

(2) ANY ALLEGED IRREPARABLE HARM IS FINANCIAL IN NATURE AND IS A DIRECT RESULT OF PLAINTIFF'S OWN SELF-CREATED HARDSHIPS, AND AN IMPROPER ATTEMPT TO CUT CORNERS TO AVOID FOLLOWING THE PROCEDURES MANDATED BY ITS OWN NRC OPERATING LICENSE.

Plaintiffs' application with respect to the irreparable harm prong is a far cry from the legal standard which would justify granting Plaintiffs' requested relief.

A plaintiff seeking a preliminary injunction must prove that irreparable injury is "likely" in the absence of relief. Winter v. nat. Res. Def. Council, Inc., 555 U.S. 7, 22 (2008). In addition, the party seeking injunctive relief must simultaneously show "that such harm is immediate—i.e. the threat must be a presently existing one and not a remote or speculative possibility." N. Jersey Vineyard Church v. Twp. of S. Hackensack, CV 15-8369 (WJM), 2016 WL 1365997, at *3 (D.N.J. Apr. 6, 2016), citing Howorth v. Blinder, Robinson & Co., Inc., 903 F.2d 186 (3d Cir. 1990); Acierno v. New Castle County, 40 F. 3d 645-655 (3d Cir. 1994). In general, to show

irreparable harm a plaintiff must "demonstrate potential harm which cannot be redressed by a legal or an equitable remedy following a trial." Instant Air Freight Co. v. C.F. Air Freight, Inc.,882 F.2d 797, 801 (3d. Cir. 1989). Moreover Courts have consistently recognized that economic loss does not constitute irreparable harm. Specifically, the United States Supreme Court addressed this very issue and instructed:

> "The key word in this consideration is irreparable. Mere injuries, however substantial, in terms of money, time, and energy necessarily expended in the absence of a stay, are not enough. The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary court of litigation, weighs heavily against a claim of irreparable harm."

Sampson v. Murray, 415 U.S. 61, 90 (1974). Thus, the word "irreparable" connotes: "that which cannot be repaired, retrieved, put down again, atoned for..." A.O. Smith Corp v. F.T.C., 530 F.2d 515, 525 (3d Cir. 1976). As a result, in order to warrant a preliminary injunction, the injury created by a failure to issue the requested injunction must truly be of a "peculiar nature." Acierno v. New Castle County, 40 F.3d. 645, 653 (3d Cir. 1994).

Plaintiffs fail to present any evidentiary basis to support their argument that the "irreparable harm" they will be subject to is of such a peculiar nature to warrant the requested relief. Rather, the real reason is financial based, and the fear of suffering an economic loss. The United States Supreme Court in Murray, supra., definitively held that an economic loss is insufficient to constitute "irreparable harm". Specifically, Defendants would respectfully direct this Honorable Court's attention to subsection B, that begins on page 33 of Plaintiff' moving brief. Therein, this Honorable Court will discover in the second paragraph, that the alleged harm Plaintiffs will suffer due to the Township enforcing local land use laws, is that they will be unable to move forward with their scheduled dry runs. In support of this contention, Mr. Dostal, a disqualified member of the Lacey Township Planning Board, discloses:

> "the dry run process, coordinated with the NRC and necessary for NRC approval of Hotlec's spent fuel transfer process, is scheduled to commence on September 28, 2020. There are four components to the dry run exercise:
>
> - Section 1 – Spent Fuel Canister Closure and seal welding, to be performed at Holtec's Camden facility—September 28 thru September 30, 2020. [See page 3 paragraph 11 of Mr. Dostal's Certification].

To clarify: this time line will not be frustrated by the Township of Lacey as it plays no roll in using the CTP and notably, that work will be undertaken in Camden, not Lacey Township.

However, Mr. Dostal thereafter certifies:

- Section 2—Spent Fuel Canister transport from the Reactor Building to the Cask Transfer Pit (CTP) and transfer to the Hi-Storm System—October 26 thru October 29, 2020. (See page 3 paragraph 11 of Mr. Dostal's Certification].

This deadline is the only one that is at issue as a result of the Township's lawful enforcement of its local land use laws. Therefore, the question becomes what is the alleged irreparable harm the Plaintiffs will suffer if they cannot meet this deadline? The Plaintiffs themselves submit: "in addition, because of Defendants' improper conduct, NDI **may** be exposed to assessments under the ACO that are tied to timely performance." (See page 34 of Plaintiffs' moving brief first full paragraph last sentence). Plaintiffs' own argument concedes that there is only a possibility that they might be subject to an economic loss. This again, is not sufficient to constitute irreparable harm. However, the only reason why Plaintiffs may be subject to this assessment is because they themselves have violated the ACO and have failed to obtain the required local and state approvals. Clearly, based on Plaintiffs' own argument there is nothing urgent or peculiar with respect to the alleged irreparable harm to warrant the requested relief.

As stated above, the Plaintiffs' without any local approvals, in direct violation of their NRC license and the ACO erected the CTP. Moreover, there is no mandate that these dry runs occur this year, or in long run that the decommissioning be completed within the next five years, other than by the decommissioning plan prepared by Plaintiffs to be used for Plaintiffs own financial benefit. In fact, when Plaintiffs took over the Decommissioning of the plant, it was already determined that the site had to be fully decommissioned by 2078.

Therefore, to sum up the facts before this Honorable Court: first, there is no real sense of urgency in decommissioning this plant, as the NRC has previously stated it need only be decommissioned by 2078. The only motivating factor in support of Plaintiffs' application is the fear of suffering a potential economic loss. However, this financial harm that Plaintiffs are potentially facing is not the fault of the Defendants. Moreover, as stated

supra, economic harm is not irreparable harm for purposes of obtaining injunctive relief. For that reason alone, Plaintiffs' application for injunctive relief must fail because they cannot present any evidence of an actionable irreparable harm under the aforementioned standard.

Second, to establish irreparable harm, the Plaintiffs must demonstrate a harm which cannot be redressed by a legal or an equitable remedy following a trial. Here, Plaintiffs are entitled to two forms of equitable relief. First, the Plaintiffs can execute on the authority vested in it pursuant to paragraph 13 of the Consent Order entered into with the Township, and write a letter to Judge Hodgson to immediately reopen the previous matter. In the alternative, Plaintiffs are entitled to appeal the Planning Board of Adjustment's determination to Superior Court, which they have already elected to do. Both actions could result in the very relief that Plaintiffs seeks before this Honorable Court. Therefore, as there are clearly forms of equitable relief available to the Plaintiffs, their application for injunctive relief must be denied.

(3) BALANCING OF HARMS WEIGH IN FAVOR OF DENYING PLAINTFFS' REQUESTED RELIEF.

Balancing the parties relative harms requires the inquiry into the "potential injury to the plaintiff's without this injunction versus the potential injury to the defendant with it in place." Novartis Consumer Health, Inc. v. Johnson & Johnson-Merck Consumer Pharm Co., 290 F.3d 578, 586 (3d Cir. 2002). Shockingly, Plaintiffs assert that that the Township has unclean hands, where the truth is quite the opposite. Throughout the Township's and the Plaintiffs entire relationship, the Township has only required one simple thing. The Plaintiffs must follow the precedent of their predecessors in interest, obtain the proper building permits, and if required, either Planning Board, or Zoning Board approval depending on the requested relief. This simple request was not only authorized by state law, but is also authorized by federal law and specifically the United States Supreme Court.

Despite this minor procedural hurdle that Plaintiffs could easily step over, Plaintiffs, on their own, opted to refute the legality of this requirement, and went ahead and constructed certain structures without

receiving any local approvals. Had Plaintiffs went forward with their initial site plan application which they originally submitted in 2019, almost a year ago to date, it is conceivable that this matter would not be before Your Honor, as any issues could have been worked out long before Plaintiffs' dry runs were set to commence. As a result, any harm that Plaintiffs may suffer is not a result of the Defendants but is a result of their own lethargic attitude in obtaining the appropriate approvals, and quite frankly their lack of candidness with the Planning Board.

Therefore, in order to truly grasp what the comparable harms are, it is worthy to grind this matter down to its core and determine what Lacey Township is prohibiting without obtaining permits and site plan approval. Lacey Township is not regulating the functionality of the CTP or the existing ISFSI. That jurisdiction is vested in the NRC. Rather, Lacey Township is regulating: (1) the legality of the CTP's location without proper permits; (2) the legality of the CTP's location without proper Planning Board approval; and (3) the legality of the expanded non-conforming use of adding additional casks to the existing ISFSI without proper approvals. As a result of Lacey Township's enforcement of these prohibitions it is simply regulating the use of a structure that is not legally authorized to exist.

Respectfully, should this Court grant the Plaintiffs' application for injunctive relief, it would be undercutting municipal authority to have any authority to enforce its land use ordinances. Individuals would use this matter as precedent to ignore Township requirements; construct structures wherever and whenever they please; and then in the event the Township prohibited the structure's use, seek injunctive relief enjoining the Township's conduct solely because the individual might suffer a potential economic loss. Clearly, to permit this precedent to go forward would not only be ridiculous but would cause catastrophic consequences for all municipalities within this Court's jurisdiction for years to come.

Therefore, before Your Honor is not an application to preserve the *status quo*, rather this is an application to permit the Plaintiffs to continue their blatant disregard to the law, and have two steps up on the

Township to prevent it from ever being permitted to require compliance with the Municipal Land Use Law and the UCC.

(4) THE PUBLIC INTEREST WEIGHS IN FAVOR OF DENYING PLAINTIFFS' REQUESTED RELIEF.

It is irrefutable that the primary purpose of a preliminary injunction is to preserve the *status* quo. Anderson v. Davila, 125 F.3d 148, 156 (3d Cir. 1997). Before this Honorable Court, the Plaintiffs are asking this Honorable Court to alter the status quo, and award it the extraordinary relief by way of a temporary restraining order thereby enjoining the Defendant Township from exercising its inherent police powers and require compliance with the New Jersey Municipal Land Use Law, and the Uniform Construction Code. This injunctive relief effectively asks this Honorable Court to vacate the Planning Board's determination. This precedent that Plaintiffs are seeking will result in an unrelenting cascade of lawsuits against Planning Boards whenever they deny a site-plan application, based solely on the argument that the applicant will lose money if they are not permitted to proceed according to their own self-imposed time table.

Significantly, Plaintiff's entire argument with respect to this point applies only to the Planning Board. The Plaintiffs do not address even peripherally what alleged public interest is advanced in favor of this Court ordering injunctive relief against the Township. In fact, their only argument relates to the Planning Board's alleged improper determination and alleged usurpation of the Federal Government's authority. Therefore, Plaintiffs fail to advance a single public interest that weighs in favor of granting the requested injunctive relief. However, even if Plaintiffs' did manage to concoct a reason, the simple fact of the matter is that any interest Plaintiffs submit is rooted in advancing their own financial gain. It has nothing to do with the welfare of the general public.

Therefore, Defendant Lacey Township respectfully submits that any public interest involved in this matter before this Honorable Court weighs heavily against ordering injunctive relief.

CONCLUSION

For the aforementioned reasons, Defendant Lacey Township respectfully requests that this Honorable Court deny Plaintiffs' application

Respectfully Submitted,

DASTI, MURPHY, McGUCKIN, ULAKY, KOUTSOURIS & CONNORS
Attorneys for Defendant Lacey Township

By: _____
PATRICK F. VARGA, ESQUIRE

Dated: September 28, 2020

Exhibit F

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Attorneys for Plaintiffs, Township of Lacey, a body politic,
And the Township Committee of the Township of Lacey

TOWNSHIP OF LACEY, a body politic, and THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF LACEY Plaintiff(s) vs. HOLTEC INTERNATIONAL and HOLTEC DECOMMISSIONING INTERNATIONAL Defendant(s)	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION OCEAN COUNTY DOCKET NO.: OCN-C-76-20 Civil Action **ORDER IMPOSING TEMPORARY RESTRAINTS**

THIS MATTER being opened to the Court by Dasti, Murphy, McGuckin, Ulaky, Koutsouris and Connors, Attorney for Plaintiff, Jerry J. Dasti, Esquire appearing, seeking relief by way of temporary restraints pursuant to *R.* 4:52, based upon the facts set forth in the Verified Complaint filed herewith; and it appearing that the Defendant has notice of this application and immediate and irreparable damage may result and for other good cause shown;

IT IS ON THIS 2nd day of June, 2020

ORDERED that the Defendants show cause before me at the Ocean County Court House, Toms River, New Jersey, on the 2nd day of July, 2020, at 2:00 p.m. in the forenoon or as soon thereafter as counsel may be heard, to show this Court cause why an Order should not be issued preliminarily enjoining and restraining Defendants from:

A. Continuing all work at the facility until all permits and approvals are granted;

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B. Assessment of Counsel fees and costs of suit; and

C. Granting such other relief as the court deems equitable and just.

BE IT FURTHER ORDERED that pending the return date herein, the Defendant is temporarily enjoining and restrained from:

A. Continuing any and all work at the facility unless or until permits are provided to Plaintiff's attorney documenting that the work being undertaken is permitted by the appropriate regulatory authority.

IT FURTHER ORDERED that:

1. The Defendant may move to dissolve or modify the temporary restraints herein contained on two (2) days' notice to the Plaintiff's attorney.

2. A copy of this Order to Show Cause, Verified Complaint, Legal Memorandum and any supporting Affidavits or Certifications submitted in support of this application be served upon the Defendants attorney, Richard Hunt within 2 days of the date hereof, in accordance with R. 4:4-3 and R. 4:4-4.

3. Plaintiff must file with the Court its proof of service of the pleadings on Defendants not later than three (3) days before the return date.

4. Defendants shall serve a written response to this Order to Show Cause and the request for entry of injunctive relief and proof of service by June 24, 2020. The original documents must be filed with the Clerk of the Superior Court in the County listed above.

5. Plaintiff must file and serve written reply to Defendant, opposition by June 29, 2020. The reply papers must be filed with the Clerk of the Superior Court in the County listed above.

6. If Defendant does not file and serve opposition to this Order to Show Cause, the

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application will be decided on the papers on the return date and relief may be granted by default, provided that Plaintiff files a proof of service and a proposed form of Order at least three (3) days prior to the return date.

7. Defendant take notice that Plaintiff has filed a lawsuit against you in the Superior Court of New Jersey. The Complaint attached to this Order to Show Cause states the basis of the lawsuit. If you dispute the Complaint, you or your attorney must file a written Answer to the Complaint and proof of service before the return date of the order to Show Cause.

8. These documents must be filed with the Clerk of the Superior Court in the County listed above. Include a filing fee payable to the "Treasurer, State of New Jersey". You must also send a copy of your Answer to Plaintiff's attorney whose name and address appear above. A telephone call will not protect your rights; you must file and serve your Answer, with the fee, or judgment may be entered against you by default. Opposition to the Order to Show Cause is not an Answer, you must file both. If you do not file and serve an Answer, judgment may be entered against you by default.

9. If you cannot afford an attorney, you may call Legal Services in the County in which you live. If you do not have an attorney and are not eligible for legal assistance you may obtain a referral to an attorney by calling one of the Law Referral Services.

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10. The Court will entertain oral argument, but not testimony on the return date of the Order to Show Cause, unless the Court and the parties are advised to the contrary not later than 2 days before the return date.

11. Plaintiffs are permitted to visit the site upon reasonable notice to and with cooperation from the Defendants in order to verify whether the work being undertaken is in

accordance with the permits that Defendants have represented they have previously received.

12. No other work shall be undertaken by the Defendants at the site, without further Order of this Court, other than work which has been permitted by the Nuclear Regulatory Commission, which proof will be demonstrated to Plaintiff's attorney. Until the proof is submitted, no additional work whatsoever shall be permitted on site.

/s/ Francis R. Hodgson, Jr.
HON. FRANCIS R. HODGSON, JR., P.J.Ch.

[redacted]

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FORKED RIVER, N.J. 08731

Exhibit G

File No. 15454-13/RWH
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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
TRENTON VICINAGE

HOLTEC INTERNATIONAL, HOLTEC DECOMMISSIONING INTERNATIONAL and OYSTER CREEK ENVIRONMENTAL PROTECT, LLC Plaintiffs, v. TOWNSHIP OF LACEY, a body politic of the State of New Jersey, and THE TOWNSHIP OF LACEY PLANNING BOARD, Defendants.	HONORABLE CIVIL ACTION NO.: CIVIL ACTION **VERIFIED COMPLAINT**

NATURE OF ACTION

1. Oyster Creek Nuclear Power Station ("Oyster Creek") is located in the Township of Lacey, Ocean County, New Jersey. Oyster Creek was a boiling water nuclear reactor that came on line in December of 1969. Prior to its shutdown in September of 2018, Oyster Creek was the oldest operating commercial nuclear power plant in the United States. Oyster Creek is now undergoing decommissioning, the process by which the plant is retired from service.

2. Exelon Generating Company, LLC ("Exelon") owned Oyster Creek at the time of its shutdown in September of 2018, and held all licensing issued by the Nuclear Regulatory Commission ("the NRC"), including but not limited to, Renewed Facility Operating License No. DPR-16 and the general license for Independent Spent Fuel Storage Installation ("ISFSI"), all of which are in the name of Exelon or were transferred by the NRC to Exelon as of September of 2018. Attached as **Exhibit A** is a true and correct copy of the Facility Operating License No. DPR-16; attached as **Exhibit B** is a true and correct copy of the Renewed Facility Operating License No. DPR-16; and attached as **Exhibit C** is a true and correct copy of the NRC Order, dated June 20, 2019 approving the transfer of Renewed Facility Operating License No. DPR-16 and the ISFSI general license.

3. The ISFSI is a facility designed and constructed for long-term interim storage of spent nuclear fuel after its removal from the nuclear reactor.

4. The ISFSI for Oyster Creek is located on the grounds of the plant, and currently houses spent nuclear fuel from prior operating cycles. As part of Oyster Creek's NRC - regulated decommissioning process, all spent nuclear fuel must be removed from the nuclear reactor and remaining spent fuel in wet storage added to the ISFSI. The spent nuclear fuel remains there until a permanent long-term storage option becomes available. Exelon also entered into an Administrative Consent Order with the New Jersey Department of Environmental Protection in January 2018, which reiterated the procedures it must follow with regard to the ISFSI and decommissioning. Attached hereto as **Exhibit D** is a true and complete copy of the January 2018 Administrative Consent Order.

5. As part of the planned shutdown of Oyster Creek, on or about May 21, 2018, Exelon submitted a Post-Shutdown Decommissioning Activities Report ("PSDAR") to the NRC, which

described the decommissioning activities and proffered a schedule for its completion. As set forth in the PSDAR, Exelon selected the SAFSTOR decommissioning method, and estimated the decommissioning process would take approximately 60 years, or be complete by approximately 2078. Attached hereto as **Exhibit E** is a true and correct copy of the May 21, 2018 PSDAR.

6. In August of 2018, Exelon and Oyster Creek Environmental Protection, LLC ("OCEP") and Holtec Decommissioning International, LLC ("HDI"), both wholly-owned subsidiaries of Holtec International ("Holtec"), (and, collectively, "Plaintiffs") requested that the NRC consent to a proposed direct transfer of the Renewed Facility Operating License No. DPR-16 and ISFSI General License from Exelon to OCEP as the licensed owner and to HDI as the licensed operator for decommissioning (the "Exelon Transfer").

7. The intent was for OCEP to acquire Oyster Creek, including the ISFSI, from Exelon as an asset purchase, and for HDI to serve as the decommissioning operator of Oyster Creek. Upon approval by the NRC, HDI would be the licensed entity responsible for maintaining and decommissioning the facility. This included but was not limited to handling, storing, controlling and protecting the spent nuclear fuel, decommissioning and decontaminating the facility, and maintaining the ISFSI, each in accordance with NRC licensing, regulations and oversight.

8. On September 25, 2018, Exelon certified to the NRC that it had permanently ceased operations at Oyster Creek, and that it had removed all spent nuclear fuel from the nuclear reactor and placed it in the nuclear fuel pool for eventual transition to the ISFSI, which is a timely and complex process.

9. On or about September 28, 2018, HDI, in anticipation of becoming the new decommissioning operator under the NRC licenses, submitted a revised PSDAR to the NRC in accordance with NRC regulations. Unlike Exelon, HDI selected Prompt Decommissioning

(DECON) as the decommissioning method, which significantly expedites the decommissioning process, including the transfer of spent nuclear fuel to the ISFSI. HDI estimated that the decommissioning process would be completed by 2025, as opposed to Exelon's estimate of 2078. Attached hereto as **Exhibit F** is a true and complete copy of the September 29, 2018 revised PSDAR.

10. On June 20, 2019, the NRC approved the Exelon Transfer.

11. On July 3, 2019, Exelon, OCEP and HDI completed the Exelon Transfer.

12. On July 9, 2020, HDI submitted a minor site plan application to the Township of Lacey Planning Board, Application 20-SP-07. Attached hereto as **Exhibit G** is a true and complete copy of Application 20-SP-07. HDI sought approval to install additional storage modules to store the remaining spent nuclear fuel on a previously constructed concrete pad and a canister transfer pit. This work was needed as part of the ISFSI. The application also sought approval to move a security fence around the perimeter of the storage modules, construct a driveway to accommodate the independent spent nuclear fuel storage area and to place 20 additional prefabricated temporary vertical storage modules on the existing storage pad. The Plaintiff sought to have a total of 68 spent fuel storage modules located on this site.

13. Unlike the existing storage modules at Oyster Creek, which are horizontal, HDI proposed to install vertical storage modules.

14. The Township of Lacey Planning Board had previously approved 48 storage modules under applications made in 1994 and 2010. Of those, 34 prefabricated horizontal storage modules are currently in use at Oyster Creek housing spent nuclear fuel. HDI sought to add 34 new vertical storage modules- 14 under previous approvals, but with vertical orientation, and 20 new vertical storage modules.

15. HDI's minor site plan application met all of the Township of Lacey's land use and development regulations, and did not require any variances or waivers from the Township of Lacey's land development codes.

16. HDI's minor site plan application did not require any approvals or variances from any other State or County entities.

17. On August 10, 2020, HDI also gave a presentation regarding its site plan application and answered extensive questions addressing any potential concerns over radiological safety. HDI also provided responses to extensive questions posed by the Township of Lacey Planning Board Engineer. Attached hereto as **Exhibit H** is a true and complete copy of the August 10, 2020 presentation given by HDI and HDI's responses to questions posed by the Township of Lacey Planning Board Engineer.

18. Nonetheless, on August 24, 2020, the Township of Lacey Planning Board denied HDI's minor site plan application. As reflected in the hearing transcript, and Board Resolution #20-SP-07, the denial was based entirely on concerns over radiological safety. Attached hereto as **Exhibit I** is a true and complete copy of the Township of Lacey Planning Board meeting held on August 24, 2020.

19. The question presented by this case is whether the Defendants' actions in denying HDI's minor site plan application premised solely on radiological safety concerns were proper. The clear answer is no.

20. Defendants' actions are preempted by federal law, specifically the Atomic Energy Act ("AEA"), 42 U.S.C. § 2011 et seq., the Nuclear Waste Policy Act ("NWPA"), 42 U.S.C. § 10101 et seq., the Supremacy Clause of the United States Constitution, U.S. Const. Art. VI, and because they seek to and have interfered with Plaintiffs' federal rights.

21. States and local governments may not interfere with the federal government's exclusive authority over the radiological safety of nuclear power plants, which includes decommissioning. Any state or local government regulation or action impacting a nuclear power plant, including decommissioning, that is grounded in radiological safety concerns falls squarely within the prohibited and preempted field that comes under the exclusive purview of the federal government, in this case the NRC.

22. By this action, Plaintiffs seeks a declaratory judgment that Defendants were not authorized to deny HDI's otherwise conforming minor site plan application premised solely on radiological safety concerns.

23. By this action, Plaintiffs also seek a preliminary and permanent injunction prohibiting Defendants from incorporating any aspect of radiological safety into their decision as to whether HDI's minor site plan application meets the Township of Lacey's land use and development regulations upon reapplication or direct remand.

24. By this action, Plaintiffs also seek an emergent preliminary and permanent injunction permitting Plaintiffs to conduct dry runs (i.e. practice demonstrations) as required as part of their spent fuel campaign, which is part of the ISFSI, required by the NRC pursuant to 10 C.F.R. 72.212 and currently scheduled, with NRC involvement to take place in September of 2020.

25. By this action, Plaintiffs also seek an emergent preliminary and permanent injunction permitting Plaintiffs to conduct the spent fuel campaign, consistent with its revised PASDAR submitted on September 28, 2018.

THE PARTIES

26. Plaintiff, Holtec, is a corporation formed in the State of Delaware. Holtec's primary place of business is 1 Holtec Blvd., Camden, New Jersey.

27. Plaintiff, HDI, is a limited liability company formed in the State of Delaware. HDI's primary place of business is 1 Holtec Blvd., Camden, New Jersey. HDI is a wholly owned subsidiary of Holtec.

28. Plaintiff, OCEP, is a limited liability company formed in the State of Delaware. OCEP's primary place of business is 1 Holtec Blvd., Camden, New Jersey. OCEP is a wholly owned subsidiary of Holtec.

29. Defendant, Township of Lacey, is a body politic of the State of New Jersey ("Lacey Township") located in Ocean County, New Jersey.

30. Defendant, Township of Lacey Planning Board, is the governing body appointed by the Township Committee and tasked with preparing and ensuring compliance with Lacey Township's Master Plan in accordance with the New Jersey Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. ("Planning Board").

JURISDICTION AND VENUE

31. The Court has subject matter jurisdiction over the claims asserted in this action pursuant to 28 U.S.C. § 1331 (federal question), because this action involves interpretation of the Atomic Energy Act ("AEA", 42 U.S.C. § 2011 et seq., the Nuclear Waste Policy Act ("NWPA"), 42 U.S.C. § 10101 et seq., the Supremacy Clause of the United States Constitution, U.S. Const. Art. VI, and because the action seeks to prevent local officials from interfering with the federal rights of Plaintiffs.

32. Venue is properly vested in this Court pursuant to 28 U.S.C. § 1391 because all Defendants reside in the State of New Jersey and/or are located in the State of New Jersey, Ocean County. Venue is also properly vested in this Court because Oyster Creek is located in the State of New Jersey, Ocean County, and all conduct by Defendants at issue in this action took place in

the State of New Jersey, Ocean County. Venue is also properly vested in this Court because Plaintiffs' primary places of business are located in New Jersey.

33. There is a present and actual controversy between the parties.

34. The relief requested is authorized pursuant to 28 U.S.C. §§ 2201 and 2202 (declaratory judgment) and 28 U.S.C. § 1651(a) (injunctive relief).

SUBSTANTIVE ALLEGATIONS

I. REGULATORY OVERSIGHT OF PRIVATE NUCLEAR REACTORS IN THE UNITED STATES

35. The AEA stemmed from Congress' belief that the national interest would be served if the Government encouraged the private sector to develop atomic energy for peaceful purposes under a program of federal regulation and licensing. The Act implemented this policy decision by opening the door to private construction, ownership, and operation of commercial nuclear-power reactors under the strict supervision of the [NRC]. English v. Gen. Elec. Co., 496 U.S. 72, 81 (1990). The AEA "provid[es] for licensing of private construction, ownership, and operation of commercial nuclear power reactors for energy production under strict supervision by the [NRC]." Duke Power Co. v. Carolina Envtl. Study Group, Inc., 438 U.S. 59, 63 (1978).

36. The NRC in turn has created a comprehensive and rigorous licensing procedure for nuclear facilities including ISFSI. See, 10 CFR §50.33, §50.40 and §72.

37. States, on the other hand, have "traditional authority over the need for additional generating capacity, the type of generating facilities to be licensed, land use, ratemaking, and the like". Pacific Gas & Elec. Co. v. State Energy Res. Conserv. & Dev. Comm'n, 461 U.S. 190, 212 (1993).

38. Likewise, states have no traditional authority over the licensing and operation of nuclear power plants. Under the AEA, the NRC has "exclusive authority over plant construction

and operation," such that any attempt by a state or local government "to regulate the construction or operation of a nuclear power plant… would clearly be impermissible ... even if enacted out of non-safety concerns." Id. at 212.

39. States and their political subdivisions (counties and municipalities), have no authority to regulate the radiological safety of nuclear power plants. "[T]he federal government has occupied the entire field of nuclear safety concerns, except the limited powers expressly ceded to the states." Id. at 212. Thus, state laws or actions are invalid if they have "some direct and substantial effect on the decisions made by those who build or operate nuclear facilities concerning radiological safety levels." English, 496 U.S. at 85.

40. The prohibitions against States regulating radiological safety noted above apply equally to local municipalities. See, Hillsborough County v. Automated Medical Laboratories, 471 U.S. 707 (1985).

41. The AEA allows a state to enter into an agreement with the NRC whereby the state agrees to shoulder some of the burden of regulating nuclear facilities. See, 42 U.S.C. § 2021. Nonetheless, Congress has made clear that issues relating to "construction and operation" of nuclear facilities remain within the exclusive control of the NRC. Id. § 2021(c). Moreover, there is no such ceding applicable here as the Defendants are local not state actors.

42. In 1982, Congress enacted the Nuclear Waste Policy Act ("NWPA"), 42 U.S.C. §§ 10101-10270, which "establishe[d] a schedule for developing a permanent federal repository" of spent nuclear fuel and "[a]s an alternative to a permanent facility, ... also establishe[d] a federally-monitored temporary storage program." Skull Valley Band of Goshute Indians v. Nielson, 376 F.3d 1223, 1242 (10th Cir. 2004), cert. denied sub nom. Nielson v. Private Fuel Storage, LLC, 546 U.S. 1060 (2005). Pursuant to the AEA and the NWPA, "the Atomic Energy Commission and the

NRC have promulgated detailed regulations regarding the operation of nuclear facilities, including the storage of SNF [i.e., spent nuclear fuel]." Id.; see also id. at 1250 ("Under the federal licensing scheme ..., it is not the states but rather the NRC that is vested with the authority to decide under what conditions to license an SNF storage facility.").

43. In light of this extensive field preemption of state regulation of nuclear facilities in the areas of licensing, construction and operation, storage of spent nuclear fuel and radiological health and safety, most states containing nuclear facilities have not sought to regulate in such areas. In those instances where states have attempted to intrude into areas subject to NRC's exclusive authority, in particular radiological safety, federal and state courts have repeatedly enforced federal preemption to invalidate the state regulations/actions.

II. ISFSI

44. The transfer and storage of spent nuclear fuel to long-term interim storage is a crucial component of decommissioning, and critical in this case to ensure that the decommissioning schedule at Oyster Creek complies with the revised PSDAR submitted by HDI, and that radiological safety requirements are met.

45. The transfer and storage of spent fuel involves lifting and placing approximately 75 fuel assemblies (each assembly holding approximately 80 metal rods encasing the uranium pellets) into a Multi-Purpose Canister ("MPC") and Holtec's proprietary, patented transfer cask (HI-TRAC) while in the spent fuel pool. The MPC, which encloses the spent fuel, and HI-TRAC cask are then lifted from the pool, drained, dried, decontaminated, sealed and prepared for the next step in the transfer process. Once ready, the HI-TRAC and MPC are loaded onto a special vehicle that transports the MPC to a Cask Transfer Pit ("CTP"). This is all done in accord with NRC regulation.

46. At the CTP, each MPC will be lowered into the patented HI-STORM FW dry cask storage module (generally described above as a vertical storage module). The HI-STORM FW modules are prefabricated and provide the necessary shielding from radiation as well as structural protection. Once the lid is placed over the module, the HI-STORM FW containing the MPC will be lifted from the CTP and transported to its storage location on a concrete pad at the site- the site is the ISFSI.

47. The CTP, the edge of which was filled with flowable fill as a safety measure to protect employees, will be removed and the area restored upon completion of fuel transfer.

48. Dry cask storage systems such as that being employed at Oyster Creek by Plaintiffs must be designed and operated in accordance with NRC standards at 10 C.F.R. Part 72, and extensive NRC technical guidance. The NRC's standards and technical guidance exceeds 400 pages. Attached as **Exhibit J** is a true and correct copy of the cover and table of contents to NRC's Standard Review Plan for Spent Fuel Dry Storage Systems at a General Licensing Facility, NUREG-1536. A full copy can be accessed at https://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1536/r1/sr1536r1.pdf.

49. The NRC reviews and approves dry cask storage systems by issuing a Certificate of Compliance ("CoC"). Holtec's HI-STORM FW storage system been approved by NRC pursuant to CoC No. 1032, as amended. Attached as **Exhibit K** is a true and correct copy of the original CoC No. 1032 for the HI-STORM FW, issued by NRC on June 13, 2011.

50. As set forth in the CoC, the NRC approved the HI-STORM FW system based on its review of the Final Safety Analysis Report prepared by Holtec, an extensive 870-page report detailing the design and operation of the casks. Attached as **Exhibit L** is a true and correct copy

of the cover and table of contents for the Final Safety Analysis Report for the HI-STORM FW. A full copy can be accessed at https://www.nrc.gov/docs/ML1236/ML12363A284.pdf.

51. Oyster Creek has a general license for the ISFSI pursuant to NRC requirements, which is subject to the general licensing conditions under 10 C.F.R. 72.212.

52. NRC has issued several inspection manuals governing the evaluation of ISFSIs and a licensees' compliance with NRC regulations relating to the ISFSI. Such manuals include NRC Inspection Manual: Review of 10 CFR 721.212(b) Evaluations, Inspection Procedure 60856, a true and correct copy of which is attached as **Exhibit M**.

53. NRC has also issued "NRC Inspection Manual: On-Site Fabrication of Components and Construction of an ISFSI, Inspection Procedure 60853," a true and correct copy of which is attached as **Exhibit N**.

54. NRC's inspection of and oversight over decommissioning is also set forth in "NRC Inspection Manual: Decommissioning Power Reactor Inspection Program, Inspection Manual Chapter 2561," a true and correct copy of which is attached as **Exhibit O**.

55. Since nuclear fuel must be replaced over time, spent fuel has previously been transferred, prior to the decommissioning process, from the reactor building at Oyster Creek to storage on the ISFSI. The first spent fuel campaign to load spent fuel containers into dry cask storage occurred in 2002, utilizing the NUHOMS storage system. Several additional spent fuel transfer campaigns, consistent with NRC regulations, continued through 2018 at Oyster Creek.

56. The entire spent fuel loading, transfer, and storage process, along with the use and operation of the dry cask storage system, is inspected and reviewed by NRC.

57. In accordance with NRC requirements, including Section 9 of the CoC issued by NRC for the HI-STORM FW storage cask, NRC must inspect the site and observe a dry (i.e.

practice) run of the spent fuel loading and transfer onto the ISFSI, including the use of the CTP. HDI has arranged for a dry run process, which includes an NRC review and site inspection. That dry run is scheduled, with the NRC in attendance, to begin in late September of this year.

58. However, as will be addressed in more detail at Paragraphs 72, 73, and 80 of the Complaint, Defendants have indicated they will refuse to allow the dry run, because they denied HDI's minor site plan application. Attached hereto as **Exhibit P** is a true and complete copy of a letter dated September 1, 2020 from Jerry J. Dasti to Richard W. Hunt describing the Township's position refusing the scheduled September dry run.

59. Defendants' expressed intention to block the dry run and the subsequent spent fuel campaign is illegal under federal preemption because, as per Section III of this Complaint, their denial of HDI's minor site plan application was premised entirely on radiological safety.

60. Defendants are also delaying and interfering with Plaintiffs' obligation to decommission Oyster Creek by their failure to act in good faith regarding NDI's minor site plan application.

III. MINOR SITE PLAN APPLICATION

61. As part of the decommissioning and spent fuel transfer campaign, HDI had first evaluated the existing ISFSI, and decided that an expansion of the ISFSI pad would be required to accommodate the additional vertical storage casks. In addition, HDI planned to construct a new security building. Based on those plans, HDI submitted an application to Lacey Township for Preliminary and Final Major Site Plan approval, on or about December 12, 2019. A true and correct copy of the December 12, 2019 site plan approval request is attached as **Exhibit Q**.

62. HDI subsequently determined that it no longer needed the security building, and removed it from the proposed site plan. HDI submitted those revised plans to Lacey Township,

explaining that the building was no longer part of the application. Attached as **Exhibit R** is a true and correct copy of the March 11, 2020, cover letter on behalf of HDI to Lacey Township transmitting the revised plans.

63. HDI also reevaluated the arrangement of dry storage casks on the ISFSI and determined that an expansion of the existing ISFSI concrete pad would no longer be necessary in order to accommodate the casks. Instead, HDI determined it was able to use the space on the existing ISFSI concrete pad. Since the ISFSI pad expansion and security building were abandoned, HDI withdrew its Preliminary and Final Major Site Plan application.

64. On March 27, 2020, Lacey Township issued a Stop Work Order ("SWO") to Plaintiffs (directed to Holtec Industries as "Owner"). In that SWO, Lacey Township opined that Plaintiffs were required to obtain permits that they did not possess. Attached hereto as **Exhibit S** is a true and complete copy of the March 27, 2020 SWO.

65. On April 17, 2020, Plaintiffs filed an appeal to the Ocean County Construction Board of Appeals.

66. On May 27, 2020, Lacey Township and the Township Committee filed a lawsuit against in the Superior Court of New Jersey, Docket OCN-C-76-20 ("State Court Case"). Lacey Township and the Township Committee sought to temporarily and permanently enjoin Holtec and HDI from continuing any and all work at Oyster Creek unless or until permits were provided to counsel for Lacey Township and the Township Committee documenting that the work being undertaken is permitted by the appropriate regulatory authority.

67. On June 2, 2020, over the objection of Holtec and HDI, the Honorable Francis R. Hodgson, Jr., P.J. Ch., entered an Order granting temporarily restraints in favor of and as requested by Lacey Township and the Township Committee, and further ordered the parties to show cause

on July 2, 2020, why the restraints should not be permanent. The Order indicated that the only work that could continue on site was "work which has been permitted by the Nuclear Regulatory Commission, which proof shall be demonstrated to Plaintiffs' attorney." Attached hereto as **Exhibit T** is a true and complete copy of the June 2, 2020, Order to Show Cause.

68. On June 3, 2020 Plaintiffs' counsel sent a detailed letter, consistent with the Order to Show Cause, detailing the licensing background for the facility, and explaining the comprehensive NRC jurisdiction over the design, construction, and operation of the ISFSI, demonstrating that the work related to the spent fuel campaign was permitted by the NRC and should be allowed to continue. Attached hereto as **Exhibit U** is a true and complete copy of the June 3, 2020 letter sent by Plaintiff's counsel.

69. On July 17, 2020, after negotiations between counsel for the parties, the Honorable Francis R. Hodgson, Jr., P.J. Ch. entered a Consent Order resolving the State Court Case and dismissing it without prejudice. Amongst other terms, Holtec and HDI agreed to submit a site plan application as described therein. Attached as **Exhibit V** is a true and correct copy of the July 17, 2020, Consent Order.

70. Pursuant to the terms of the Consent Order the Township agreed "to work with Defendant [Holtec] to ensure that any approvals will not be unreasonably withheld or delayed." (**Exhibit V**, Paragraph 7).

71. Further, the Consent Order provided, at Paragraph 6, that "The Township agrees that the performance of the NRC regulated dry runs may begin as scheduled in September 2020 even if permits and the Certificate of Approval are not issued at that time, however the spent fuel campaign shall not begin until permits are issued. The Township agrees to work with Defendants to not impact this schedule, and to ensure that any approvals will not be unreasonably withheld or

delayed. To that end, the Township may inspect the CTP as soon as this Consent Order is executed." (**Exhibit V**, Paragraph 6, emphasis supplied).

72. Paragraph 6 went on to specifically set forth the specific components of the dry run procedure, as provided for pursuant to 10 C.F.R. 72.212.

73. Accordingly, on June 9, 2020 HDI submitted a minor site plan application to the Township of Lacey Planning Board, Application 20-SP-07. (See **Exhibit G**).

74. Prior to the final public hearing held on August 24, 2020, Defendants submitted a series of questions to and sought information and documents from Plaintiffs. Virtually every question posed and all information and documents sought by Defendants addressed radiological safety concerns.

75. At the final public hearing held on August 24, 2020, Plaintiffs presented written answers to Defendants' questions, and answered all other questions presented and information and documents sought with the highest level of detail possible.

76. HDI's minor site plan application met all of Lacey Township's land use and development regulations.

77. HDI's minor site plan application did not require any approvals, variances, or waivers from any other state or county entities.

78. Nonetheless, on August 24, 2020, Defendants denied HDI's minor site plan application due entirely to concerns over radiological safety.

79. Further, the Township Solicitor, contrary to the language and intention of the Consent Order and prior verbal representations to Holtec's counsel, has now taken the position that the Planning Board approval was a prerequisite for the NRC regulated dry run process. (See **Exhibit P**), which is currently scheduled, through the NRC, to begin in September, 2020.

80. Accordingly, Defendants, contrary to the New Jersey Municipal Land Use Law ("MLUL") and the AEA, and in contravention of the NRC regulated ISFSI spent fuel campaign, for which the preliminary dry run process is currently scheduled to begin, with NRC oversight, at the end of September, have indicated their intent to frustrate this urgent nuclear safety procedure.

CAUSES OF ACTION

COUNT ONE
AEA/NRC PREEMPTION
(Declaratory and Injunctive Relief)

81. Plaintiff incorporates paragraphs 1-81 above as if alleged herein at length.

82. The AEA vests in the NRC exclusive jurisdiction over the licensing and operation of nuclear power facilities, including decommissioning and, specifically, ISFSI. Local government laws, regulations and actions that have or seek to have a direct and substantial impact on nuclear plant operations, including decommissioning and, specifically ISFSI, are preempted under the Supremacy Clause, U.S. Const. Art. VI.

83. Likewise, the NRC has exclusive authority over radiological safety. Local government laws, regulations and actions that have or seek to have any impact on radiological safety are preempted under the Supremacy Clause, U.S. Const. Art. VI.

84. Defendants' decision to deny HDI's minor site plan application (Application 20-SP-07) premised solely on radiological safety concerns was improper and preempted as radiological safety concerns are within the exclusive province of the NRC.

85. Defendants' improper decision to deny HDI's minor site plan application (Application 20-SP-07) premised solely on radiological safety concerns and its intention to shut down Plaintiffs' efforts to conduct a dry run, will impermissibly shut down HDI's ability to proceed

with its spent fuel campaign, and otherwise materially interfere with Plaintiffs' decommissioning efforts at Oyster Creek, in particular the ISFSI.

86. It is essential that HDI be able to proceed with the dry run, scheduled to begin in late September, and with the spent fuel campaign which are of the utmost importance and urgency to ensure the safe and timely storage of spent nuclear fuel from the decommissioned reactor.

87. Plaintiffs seek a declaration that Defendants are preempted from stopping or interfering with the federally licensed decommissioning of Oyster Creek, specifically, the ISFSI, by applying radiological safety concerns when deciding municipal land use applications.

88. Plaintiffs seek a preliminary and permanent injunction against any action by Defendants to stop or interfere with Plaintiffs' commencement of the dry run at Oyster Creek in light of their improper denial of HDI's minor site plan application (Application 20-SP-07).

PRAYER FOR RELIEF

In light of the foregoing, Plaintiffs respectfully request that the Court:

I. Issue a declaratory judgment, pursuant to 28 U.S.C. § 2201 and § 2202, 42 U.S.C. § 1983, and Rule 57 of the Federal Rules of Civil Procedure, that: (1) federal law preempts the Defendants from applying radiological safety concerns as a factor when deciding any application by Plaintiffs submitted pursuant to Lacey Township's land use and development regulations as radiological safety comes under the exclusive purview of the NRC; (2) Defendants shall not reject any future application by Plaintiffs submitted pursuant to Lacey Township's land use and development regulations based on radiological safety concerns as radiological safety comes under the exclusive purview of the NRC; and (3) Defendants improperly denied HDI's minor site plan application, #20-SP-07, because they did so solely because of concern over radiological

safety and not based on Lacey Township's land use ordinances that govern minor site plan approval;

II. Issue temporary, preliminary and permanent injunctive relief pursuant to 28 U.S.C. § 1651(a), 42 U.S.C. § 1983, and Rule 65 of the Federal Rules of Civil Procedure, that; (1) temporarily, preliminarily, and permanently enjoining Defendants from any and all actions of any kind which would frustrate or obstruct Plaintiffs' ability to move forward with the NRC-regulated dry run process that is currently scheduled to begin in late September 2020; (2) the spent fuel storage campaign, or Plaintiffs' ability to operate and facilitate said campaign; (3) all activities related to transfer and storage of spent fuel as related to the Independent Spent Fuel Storage Installation ("ISFSI"); (4) requiring and mandating that Defendants not withhold any permits and/or approvals that are part of the dry run or spent fuel storage campaign administrative process; (5) generally enjoining Defendants from any actions which attempt to control, regulate, or impact radiological safety considerations, which is an area preempted by Federal regulations; (6) enjoining Defendants from applying radiological safety concerns as a factor when deciding any application by Plaintiffs submitted pursuant to Lacey Township's land use and development regulations as radiological safety comes under the exclusive purview of the NRC; (7) enjoining Defendants from rejecting any future application by Plaintiffs submitted pursuant to Lacey Township's land use and development regulations based on radiological safety concerns as radiological safety comes under the exclusive purview of the NRC; and (9) enjoining Defendants from prohibiting the dry run at Oyster Creek;

III. Award reasonable attorneys' fees and costs to Plaintiffs; and

IV. Award such other relief as the Court deems just and equable.

COUNT TWO
CONSTITUTIONAL DEPRIVATION

89. The Plaintiffs incorporate all of the foregoing paragraphs by reference as if those paragraphs were fully set forth at length herein.

90. Jurisdiction to entertain Plaintiffs' State Constitutional legal claims is conferred upon the Federal District Court pursuant to 42 U.S.C. 1983.

91. It is undisputed that the Plaintiff owns a 139.65 acre tract of land within the Lacey Township-Ocean Township Border which is more precisely defined as Block 1001, Lot 4.02, as set forth on the Tax Maps of Lacey Township and which contains the Oyster Creek Nuclear Facility currently being decommissioned.

92. As set forth in the Resolution of Denial 20-SP-07 (attached hereto as **Exhibit Y**)

> 1. The applicant is requesting approval of a minor site plan application in accordance with the Lacey Township Land Use and Development Regulations. The site is currently a nuclear power generating station, consisting of 139.65 acres on the Lacey Township/Ocean Township border. The existing temporary spent nuclear fuel storage area is located east of the existing power plant. The storage area contains 48 prefabricated horizontal storage modules within a security fence. Twenty of the existing storage modules were approved in 1994 by Lacey Township Zoning Board of Adjustment Resolution 93-40, and 28 additional storage modules were approved in 2010 by Lacey Township Planning Board Resolution 10-SP-05. The applicant now seeks minor site plan approval to expand the independent spent nuclear fuel storage area to construct 28 additional temporary vertical storage modules on a previously constructed concrete/canister transfer pad, plus 6 additional temporary vertical storage modules on another existing concrete pad, for a total of 34 additional temporary storage modules.

93. It is undisputed that the Plaintiffs have a proprietary interest, which is protected by the Federal and State Constitutions, in the subject property.

94. It is undisputed that the Plaintiff HDI requested approval in accordance with the MLUL.

95. It is undisputed that subject property is located in the M-100 Industrial Zone, in the Forked River section of the Township.

96. It is undisputed that the Lacey Township Zoning Ordinance allows for the zoning regulation of the Plaintiffs' property.

97. It is undisputed that ongoing maintenance and proposed decommissioning of the facility necessarily includes the storage of spent fuel.

98. The Board's denial of the Plaintiffs' Application was ultra vires.

99. The Board's denial of the Minor Site Plan was clearly premeditated, as reflected by the questions posed by the Board to the Plaintiffs prior to the hearing, the Board's questioning during the hearing, and the certified Board Resolution. (**Exhibit Y**)

100. The Board's denial of the Plaintiffs' Application was motivated by political bias and coercion, and was done with reckless disregard for Plaintiffs' rights and property interests.

101. The Board's denial of the Plaintiffs' Application was not only unreasonable, arbitrary, and capricious but the means selected by the Defendant to deny the Plaintiffs' Application had no real and substantial relation to the MLUL. Schmidt v. Board of Adjustment of City of Newark, 9 N.J. 405 (1952).

102. Throughout the Plaintiffs' Application process, the Plaintiffs were entitled to Due Process, both procedural and substantive, which is designed to prevent fundamental unfairness.

103. The purpose of the constitutional limitations in the 14th Amendment of the Bill of Rights and in the Due Process and Equality clauses of the Federal and State Constitutions is to safeguard the fundamental rights of persons and property against arbitrary and oppressive state action.

104. The actions of that Planning Board were ultra vires and premediated and constitute a violation of Plaintiffs' constitutional rights.

105. An example of the ultra vires, premediated, unreasonable, coerced and biased conduct of the Board occurred during the August 10, 2020, and August 24, 2020 Hearing, during which various Board Members asked questions of and made comments to the Plaintiffs' Experts that involved issues that were clearly within the purview of the NRC.

106. As reflected in the questions posed prior to the hearing, the questions posed at the hearing and the Resolution of Denial, the Board Members overtly and egregiously exceeded their authority to review the Minor Site Plan with regard to the duties empowered to the Board pursuant to N.J.S.A. 40:55D-1 et seq. and the Township Code regarding Site Plan Review.

107. Acts by a Planning Board that are ultra vires, premediated and or motivated by political bias not only constitute a violation of a property owner's constitutional rights including a violation of 42 U.S.C. 1983. The above referenced comments, demands, questions and subsequent denial of the Application without any deliberation on the merits of the testimony or discussion with the Board's professionals is *prima facie* evidence of the Board's tainted bias and premediated process which violates the Plaintiffs' constitutional rights. Their actions deprived the Plaintiff of Due Process, and created a manifest injustice, which must be addressed.

108. Plaintiff HDI was entitled to Due Process, both procedural and substantive, which is designed to prevent fundamental unfairness. However, these constitutional entitlements were

indiscriminately violated when the Board Members presented various demands and requirements of the Plaintiffs, which clearly exposed the Board's pre-disposition and bias against the Plaintiffs.

109. The purpose of the constitutional limitations in the 14th Amendment and in the Due Process and Equality Clauses of the Federal and State Constitution is to safeguard the fundamental rights of persons and property against arbitrary and oppressive state action. Therefore, acts by a Board that are ultra vires, premediated and or motivated by political bias are prohibited and constitute a violation of a property owner's constitutional rights.

WHEREFORE, Plaintiffs demand the entry of judgment in its favor and against the Board for compensatory damages, attorney's fees, and cost of suit as well as damages authorized under 42 U.S.C. 1983, including a civil penalty, and any other equitable relief deemed just.

PARKER McCAY, P.A.
Attorneys for Plaintiffs
Holtec International, Holtec
Decommissioning International, LLC
and Oyster Creek Environmental Protect, LLC

s/Richard W. Hunt

Dated: September 16, 2020 By: _____
RICHARD W. HUNT

DEMAND TO PRESERVE EVIDENCE

Defendants are directed and demanded to preserve all physical and electronic information of, about, relating or pertaining to plaintiffs, defendants, to plaintiffs' cause of action and/or prayers for relief, to any defenses to same, or to any party, including, but not limited to, electronic data storage, closed circuit TV footages, digital images, computer images, cache memory, searchable data, emails, spread sheets, employment files, memos, text messages and any and all online social or work related websites, entries on social networking sites (including, but not limited to,

Facebook, Twitter, etc.), and any other information and/or data and/or things and/or documents which may be relevant to any claim or defense in this litigation. Failure to do so will result in separate claims for sanctions, spoliation of evidence and/or appropriate adverse inferences.

PARKER McCAY, P.A.
Attorneys for Plaintiffs
Holtec International, Holtec
Decommissioning International, LLC
and Oyster Creek Environmental Protect, LLC

s/Richard W. Hunt

Dated: September 16, 2020 By: _____
RICHARD W. HUNT

Pursuant to Rule 28 U.S.C. 1746, this matter is currently not the subject of any other action pending in any court. In the event that becomes no longer the case, I will promptly notify the Court.

PARKER McCAY, P.A.
Attorneys for Plaintiffs
Holtec International, Holtec
Decommissioning International, LLC
and Oyster Creek Environmental Protect, LLC

s/Richard W. Hunt

Dated: September 16, 2020 By: _____
RICHARD W. HUNT

VERIFICATION

I, JEFFREY P. DOSTAL, of full age, say:

1. I am the Vice President for Plaintiff, Holtec Decommissioning International, LLC ("Holtec"), and am authorized to make this Verification on behalf of the Holtec Plaintiffs in the above-captioned action in support of the allegations contained and relief sought by this Verified Complaint and the accompanying Order to Show Cause.

2. I have read the foregoing Verified Complaint, and hereby verify that all allegations contained therein are true and correct to the best of my knowledge, belief, and information available to me, except those made on information and belief.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: September 16, 2020

By:_____
JEFFREY P. DOSTAL

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Exhibit H

File No. 15454-13/RWH
PARKER McCAY P.A.
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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
TRENTON VICINAGE

HOLTEC INTERNATIONAL, HOLTEC DECOMMISSIONING INTERNATIONAL, LLC and OYSTER CREEK ENVIRONMENTAL PROTECT, LLC, Plaintiffs, v. TOWNSHIP OF LACEY, a body politic of the State of New Jersey, and THE TOWNSHIP OF LACEY PLANNING BOARD, Defendants.	HONORABLE MICHAEL A. SHIPP CIVIL ACTION NO.: 3:20-cv-12773-MAS-DEA CIVIL ACTION **ORDER TO SHOW CAUSE SEEKING PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER PURSUANT TO FRCP 65**

THIS MATTER being brought before the Court by Richard W. Hunt, Esquire of Parker McCay, P.A. attorneys for Plaintiffs, Holtec International, Holtec Decommissioning International, LLC and Oyster Creek Environmental Protect, LLC, (collectively "Plaintiffs" or "Holtec"), seeking relief by way of preliminary, temporary, and permanent restraints pursuant to FRCP 65, based upon the facts set forth in the Affidavit of Jeffrey Dostal, the Verified Complaint and Memorandum of Law filed herewith; and it appearing

that the Defendants, Township of Lacey and the Township of Lacey Planning Board ("Defendants") have notice of this application, and for good cause shown;

IT IS on this _____ day of _____, 2020 hereby **ORDERED** that Defendants appear and show cause on the ____ day of _____, 2020 at the United States District Court, District of New Jersey, Clarkson S. Fisher Building & U.S. Courthouse, 402 East State Street, Trenton, NJ 08608, at _____o'clock in the _____, or as soon thereafter as counsel can be heard, why an Order should not be issued as follows:

> Temporarily, preliminarily, and permanently enjoining Defendants from any and all actions of any kind which would frustrate or obstruct Plaintiffs' ability to move forward with (1) the NRC-regulated dry run process that is currently scheduled to begin in late September 2020; (2) the spent fuel storage campaign, or Plaintiffs' ability to operate and facilitate said campaign; (3) all activities related to transfer and storage of spent fuel as related to the Independent Spent Fuel Storage Installation ("ISFSI"); (4) requiring and mandating that Defendants not withhold any permits and/or approvals that are part of the dry run or spent fuel storage campaign administrative process; and (5) generally enjoining Defendants from any actions which attempt to control, regulate, or impact radiological safety considerations, which is an area preempted by Federal regulations.

IT IS FURTHER ORDERED that sufficient reason having been shown, therefore pending the hearing of Plaintiffs' application for a preliminary injunction, pursuant to Rule 65, FRCP, that Defendants are temporarily restrained and enjoined, as per Plaintiffs' requested relief; _____

_____; and

IT IS FURTHER ORDERED that the Defendants may move to dissolve or modify the temporary restraints herein contained on two (2) days' notice to the Plaintiffs' attorney; and

IT IS FURTHER ORDERED that a copy of this Order to Show Cause, Verified Complaint, Brief, and any affidavits submitted in support of this application be served upon Defendants personally within _____ days of the date hereof; and

IT IS FURTHER ORDERED that the Plaintiffs must file with the Court its Proof of Service of the pleadings on Defendants no later than three (3) days before the return date; and

IT IS FURTHER ORDERED that the Defendants shall file and serve a written response to this Order to Show Cause and request for entry of injunctive relief and Proof of Service by _____, 2020. The original documents must be filed with the Clerk of the United States District Court, District of New Jersey. You must send a copy of your opposition papers directly to Judge _____, whose address is _____, New Jersey. You must also send a copy of your opposition papers to the Plaintiff's attorney whose name and address appears above. A telephone call will not protect your rights; you must file your opposition and pay the required fee of $_____ and serve your opposition on your adversary, if you want the Court to hear your opposition to the injunctive relief the Plaintiffs are seeking; and

IT IS FURTHER ORDERED that the Plaintiffs must file and serve any written reply to the Defendants' Order to Show Cause opposition by _____,

2020. The reply papers must be filed with the Clerk of the United States District Court in the District of New Jersey and a copy of the reply papers must be sent directly to the Chambers of Judge _____; and

IT IS FURTHER ORDERED that if the Defendants do not file and serve opposition to this Order to Show Cause, the application will be decided on the papers on the return date and relief may be granted by default, provided that the Plaintiffs file a Proof of Service and a proposed form of Order at least _____ days prior to the return date; and

IT IS FURTHER ORDERED that if the Plaintiffs have not already done so, a proposed form of Order addressing the relief sought on the return date (along with a self-addressed return envelope with return address and postage) must be submitted to the Court no later than three (3) days before the return date; and

IT IS FURTHER ORDERED that Defendants shall take notice that the Plaintiffs have filed a lawsuit against you in the United States District Court, District of New Jersey. The Verified Complaint attached to this Order to Show Cause states the basis of the lawsuit. If you dispute this Complaint, you, or your attorney, must file a written Answer to the Complaint and Proof of Service within twenty (20) days from the date of service of this Order to Show Cause, not counting the day you received it.

These documents must be filed with the Clerk of the United States District Court, District of New Jersey. Include a $_____ filing fee payable to the "Treasurer State of New Jersey." You must also send a copy of your Answer to the Plaintiffs' attorney whose name and address appear above, or to the Plaintiffs, if no attorney is named above. A telephone call will not protect your rights; you must file and serve your Answer (with the fee) or judgment may be entered against you by default. Please note: Opposition to the

Order to Show Cause is not an Answer and you must file both. Please note further: if you do not file and serve an Answer within twenty (20) days of this Order, the Court may enter a default against you for the relief Plaintiffs demand.

If you cannot afford an attorney, you may call the Legal Services office in the county in which you live or the Legal Services of New Jersey Statewide Hotline at 1-888-LSNJ-LAW (1-888-576-5529). If you do not have an attorney and are not eligible for free legal assistance you may obtain a referral to an attorney by calling one of the Lawyer Referral Services.

IT IS FURTHER ORDERED that the Court will entertain argument, but not testimony, on the return date of the Order to Show Cause, unless the Court and parties are advised to the contrary no later than _____ days before the return date.

_____

U.S.D.J.

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