

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-003, 50-247, and 50-286; NRC-2020-0251]

Holtec Decommissioning International, LLC

Indian Point Nuclear Generating Station, Unit Nos. 1, 2, and 3

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption in response to a February 12, 2020, request from Holtec Decommissioning International, LLC (HDI). The exemption permits HDI to make withdrawals from the Indian Point Nuclear Generating Station, Unit Nos. 1, 2, and 3 (referred to individually as IP1, IP2, and IP3, respectively, and collectively as the Indian Point Energy Center or IPEC) Decommissioning Trust Funds (DTFs) for spent fuel management and site restoration activities for IP1, IP2, and IP3 without prior notification to the NRC. This exemption is effective upon issuance, but only applies to HDI upon the consummation of the transfers of the licenses for IP1, IP2, and IP3 to Holtec International (Holtec) subsidiaries Holtec Indian Point 2, LLC and Holtec Indian Point 3, LLC and the transfer of the operating authority under the licenses to HDI.

DATES: The exemption was issued on November 23, 2020.

ADDRESSES: Please refer to Docket ID **NRC-2020-0251** when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document by any of the following methods:

- **Federal Rulemaking Web Site:** Go to <https://www.regulations.gov> and search for Docket ID **NRC-2020-0251**. Address questions about Docket IDs in

Regulations.gov to Jennifer Borges; telephone: 301-287-9127; e-mail:

Jennifer.Borges@nrc.gov. For technical questions, contact the individual listed in the

FOR FURTHER INFORMATION CONTACT section of this document.

- **NRC's Agencywide Documents Access and Management System**

(ADAMS): You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to PDR.resource@nrc.gov. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

- **Attention:** The PDR, where you may examine and purchase copies of public documents, is currently closed. You may submit your request to the PDR via e-mail at PDR.Resource@nrc.gov or call 1-800-397-4209 between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Richard V. Guzman, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-1030, e-mail: Richard.Guzman@nrc.gov.

SUPPLEMENTARY INFORMATION: The text of the exemption is attached.

Dated: November 23, 2020.

For the Nuclear Regulatory Commission.

/RA/

Richard V. Guzman, Senior Project Manager,
Plant Licensing Branch I,
Division of Operator Reactor Licensing,
Office of Nuclear Reactor Regulation.

Attachment – Exemption.

NUCLEAR REGULATORY COMMISSION

Docket Nos. 50-003, 50-247, and 50-286

Holtec Decommissioning International, LLC

Indian Point Nuclear Generating Station, Unit Nos. 1, 2, and 3

Exemption

I. Background.

The Indian Point Energy Center (IPEC) consists of three, four-loop pressurized-water reactors, Indian Point Nuclear Generating Station, Unit Nos. 1, 2, and 3 (IP1, IP2, and IP3, respectively), and an independent spent fuel storage installation (ISFSI), located in Buchanan, New York, in Westchester County, on the east bank of the Hudson River. Operation of IP1 permanently ceased on October 31, 1974 and all fuel was permanently removed from the IP1 reactor vessel by January 1976; operation of IP2 permanently ceased on April 30, 2020 and all fuel was permanently removed from the IP2 reactor vessel on May 12, 2020; and operation of IP3 is scheduled to permanently cease by April 30, 2021.

The U.S. Nuclear Regulatory Commission (NRC, the Commission) licenses for the IPEC are Provisional Operating License No. DPR-5 for IP1, Renewed Facility Operating License Nos. DPR-26 and DPR-64 for IP2 and IP3, respectively, and the general license for the ISFSI. The current licensed owners under these licenses are Entergy Nuclear Indian Point 2, LLC and Entergy Nuclear Indian Point 3, LLC and the current licensed operator under these licenses is Entergy Nuclear Operations, Inc. (ENOI). The IPEC licenses are subject to the rules, regulations, and orders of the NRC.

By application dated November 21, 2019 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML19326B953), the current licensed owners and operator and Holtec International (Holtec) and Holtec Decommissioning International, LLC (HDI) requested that the NRC consent to the transfer of the ownership of the IPEC licenses to Holtec subsidiaries Holtec Indian Point 2, LLC and Holtec Indian Point 3, LLC and the operating authority under these licenses to Holtec subsidiary HDI.

In support of the license transfer application, by letter dated December 19, 2019 (ADAMS Accession No. ML19354A698), HDI provided to the NRC a post-shutdown decommissioning activities report (PSDAR) and site-specific decommissioning cost estimate (SSCE) for IPEC. These documents reflected HDI's proposed use of the DECON decommissioning method to complete decommissioning over a period (inclusive of 2021) of 43 years if the license transfer application is approved and the proposed license transfer transaction is consummated. The decommissioning of IPEC would begin following the permanent cessation of operations of IP3 in 2021 and the majority of license termination activities would be completed by 2033 (i.e., releasing for unrestricted use the entirety of the site with the exception of the ISFSI). HDI would then remove the fuel and Greater than Class C waste from the site, decommission the ISFSI, terminate the NRC licenses, and release the remainder of the site for unrestricted use by 2063.

II. Request/Action.

In support of the license transfer application, in addition to providing a PSDAR and an SSCE, by letter dated February 12, 2020 (ADAMS Accession No. ML20043C539), HDI also submitted to the NRC a request for exemption from specific requirements of 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(1)(iv). The exemption from 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(1)(iv) would permit HDI to make withdrawals from the IP1, IP2, and IP3 Decommissioning Trust Funds (DTFs) for spent fuel management and site restoration activities for IP1, IP2, and IP3,

respectively, in accordance with HDI's SSCE. The exemption from 10 CFR 50.75(h)(1)(iv) would also permit HDI to make these withdrawals without prior notification to the NRC, similar to withdrawals for decommissioning activities made in accordance with 10 CFR 50.82(a)(8). The exemption would only apply to HDI if and when the proposed license transfer transaction is consummated.

As part of its exemption request, HDI provided Tables 1, 2, and 3 for IP1, IP2, and IP3, respectively, showing the annual cash flows for each unit's DTF while conducting decommissioning activities under the decommissioning method discussed in HDI's PSDAR. Each table contains the projected withdrawals from the unit's DTF needed to cover the estimated costs at that unit for radiological decommissioning, spent fuel management, and site restoration activities in accordance with HDI's SSCE. By letter dated March 26, 2020 (ADAMS Accession No. ML20086Q904), pursuant to 10 CFR 50.75(f)(2), ENOI reported the balances of the IP1, IP2, and IP3 DTFs as of December 31, 2019. The NRC staff considered all of this information in its review of the exemption request.

The requirements of 10 CFR 50.82(a)(8)(i)(A) restrict the use of DTF withdrawals to expenses related to legitimate decommissioning activities consistent with the definition of decommissioning that appears in 10 CFR 50.2, "Definitions." The definition of "decommission" in 10 CFR 50.2 is:

to remove a facility or site safely from service and reduce residual radioactivity to a level that permits—

- (1) Release of the property for unrestricted use and termination of the license;
- or
- (2) Release of the property under restricted conditions and termination of the license.

This definition does not include activities associated with spent fuel management and site restoration activities. The requirements of 10 CFR 50.75(h)(1)(iv) also restrict the use of DTF disbursements (other than for ordinary administrative costs and other incidental expenses of the fund in connection with the operation of the fund) to decommissioning expenses until final radiological decommissioning is completed. Therefore, an exemption from 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(1)(iv) is needed to allow HDI to use funds from the IPEC DTFs for spent fuel management and site restoration activities at IPEC. The requirements of 10 CFR 50.75(h)(1)(iv) further provide that, except for withdrawals being made under 10 CFR 50.82(a)(8) or for payments of ordinary administrative costs and other incidental expenses of the fund in connection with the operation of the fund, no disbursement may be made from the DTF without written notice to the NRC at least 30 working days in advance. Therefore, an exemption from 10 CFR 50.75(h)(1)(iv) is also needed to allow HDI to use funds from the IPEC DTFs for spent fuel management and site restoration activities at IPEC without prior NRC notification.

III. Discussion.

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50 (1) when the exemptions are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security; and (2) when any of the special circumstances listed in 10 CFR 50.12(a)(2) are present. These special circumstances include, among other things:

- (ii) Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule; and

- (iii) Compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated.

A. Authorized by Law

The requested exemption from 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(1)(iv) would allow HDI to use a portion of the funds from the IPEC DTFs for spent fuel management and site restoration activities at IPEC without prior notice to the NRC in the same manner that withdrawals are made under 10 CFR 50.82(a)(8) for decommissioning activities. As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR Part 50 when the exemptions are authorized by law. The NRC staff has determined, as explained below, that granting HDI's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

B. No Undue Risk to Public Health and Safety

The underlying purpose of 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(1)(iv) is to provide reasonable assurance that adequate funds will be available for the radiological decommissioning of power reactors. Based on HDI's SSCE and the cash flow analyses, use of a portion of the IPEC DTFs for spent fuel management and site restoration activities at IPEC will not adversely impact HDI's ability to complete radiological decommissioning within 60 years and terminate the IPEC licenses. Furthermore, an exemption from 10 CFR 50.75(h)(1)(iv) to allow HDI to make withdrawals from the DTFs for spent fuel management and site restoration activities without prior written notification to the NRC will not affect the sufficiency of funds in the DTFs to accomplish radiological decommissioning, because such withdrawals are still

constrained by the provisions of 10 CFR 50.82(a)(8)(i)(B) – (C) and are reviewable under the annual reporting requirements of 10 CFR 50.82(a)(8)(v) – (vii).

Based on the above, there are no new accident precursors created by using the DTFs in the proposed manner. Thus, the probability of postulated accidents is not increased. Also, based on the above, the consequences of postulated accidents are not increased. No changes are being made in the types or amounts of effluents that may be released offsite. There is no significant increase in occupational or public radiation exposure. Therefore, the requested exemption will not present an undue risk to public health and safety.

C. Consistent with the Common Defense and Security

The requested exemption would allow HDI to use funds from the IPEC DTFs for spent fuel management and site restoration activities at IPEC. Spent fuel management under 10 CFR 50.54(bb) is an integral part of the planned HDI decommissioning and license termination process and will not adversely affect HDI's ability to physically secure the site or protect special nuclear material. This change to enable the use of a portion of the funds from the DTFs for spent fuel management and site restoration activities has no relation to security issues. Therefore, the common defense and security is not impacted by the requested exemption.

D. Special Circumstances

Special circumstances, in accordance with 10 CFR 50.12(a)(2)(ii), are present whenever application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the regulation.

The underlying purpose of 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(1)(iv), which restrict withdrawals from DTFs to expenses for radiological decommissioning activities, is to provide reasonable assurance that adequate funds will be available for radiological decommissioning of power reactors and license termination. Strict

application of these requirements would prohibit the withdrawal of funds from the IPEC DTFs for activities other than radiological decommissioning activities at IPEC, such as for spent fuel management and site restoration activities, until final radiological decommissioning at IPEC has been completed.

The DTFs for IP1, IP2, and IP3 contained \$555.74 million, \$701.30 million, and \$929.97 million, respectively, as of December 31, 2019. HDI's analyses project the total radiological decommissioning costs at IP1, IP2, and IP3 to be approximately \$485,015,000, \$469,456,000, and \$583,168,000, respectively (in 2019 dollars), including the costs for decommissioning the ISFSI. As required by 10 CFR 50.54(bb), HDI estimated the costs associated with spent fuel management at IP1, IP2, and IP3 to be \$72,381,000, \$188,278,000, and \$371,370,000, respectively (in 2019 dollars).

The NRC staff performed independent cash flow analyses of the IPEC DTFs over the proposed 43-year DECON period (assuming an annual real rate of return of 2 percent, as allowed by 10 CFR 50.75(e)(1)(ii)) and determined the projected earnings of the DTFs. The NRC staff confirmed that the current funds in the DTFs and projected earnings provide reasonable assurance of adequate funding to complete all NRC-required radiological decommissioning activities at IPEC and also to pay for spent fuel management and site restoration activities. Therefore, the NRC staff finds that HDI has provided reasonable assurance that adequate funds will be available for the radiological decommissioning of IPEC, even with the disbursement of funds from the DTFs for spent fuel management and site restoration activities. Consequently, the NRC staff concludes that application of the requirements of 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(1)(iv), that funds from the DTFs only be used for radiological decommissioning activities and not for spent fuel management and site restoration activities, is not necessary to achieve the underlying purpose of the rule. Thus, special circumstances are present supporting approval of the exemption request.

In its submittal, HDI also requested exemption from the requirement of 10 CFR 50.75(h)(1)(iv) concerning prior written notification to the NRC of withdrawals from the DTFs to fund activities other than radiological decommissioning. The underlying purpose of notifying the NRC prior to withdrawal of funds from the DTFs is to provide opportunity for NRC intervention, when deemed necessary, if the withdrawals are for expenses other than those authorized by 10 CFR 50.75(h)(1)(iv) and 10 CFR 50.82(a)(8) that could result in there being insufficient funds in the DTFs to accomplish radiological decommissioning.

By granting the exemption to 10 CFR 50.75(h)(1)(iv) and 10 CFR 50.82(a)(8)(i)(A), the NRC staff considers that withdrawals consistent with HDI's submittal dated February 12, 2020, are authorized. As stated previously, the NRC staff determined that there are sufficient funds in the DTFs to complete radiological decommissioning activities, as well as to conduct spent fuel management and site restoration activities, consistent with HDI's PSDAR, SSCE, and February 12, 2020, exemption request. Pursuant to the requirements in 10 CFR 50.82(a)(8)(v) and (vii), licensees are required to monitor and annually report to the NRC the status of the DTFs and the licensee's funding for spent fuel management. These reports provide the NRC staff with awareness of, and the ability to take action on, any actual or potential funding deficiencies. Additionally, 10 CFR 50.82(a)(8)(vi) requires that the annual financial assurance status report must include additional financial assurance to cover the estimated cost of completion if the sum of the balance of any remaining decommissioning funds, plus earnings on such funds calculated at not greater than a 2-percent real rate of return, together with the amount provided by other financial assurance methods being relied upon, does not cover the estimated cost to complete the decommissioning. The requested exemption would not allow the withdrawal of funds from the DTFs for any other purpose that is not currently authorized in the regulations

without prior notification to the NRC. Therefore, the granting of the exemption to 10 CFR 50.75(h)(1)(iv) to allow HDI to make withdrawals from the DTFs to cover authorized expenses for spent fuel management and site restoration activities without prior written notification to the NRC will still meet the underlying purpose of the regulation.

Special circumstances, in accordance with 10 CFR 50.12(a)(2)(iii), are present whenever compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated. HDI states that the DTFs contain funds in excess of the estimated costs of radiological decommissioning and that these excess funds are needed for spent fuel management and site restoration activities. The NRC does not preclude the use of funds from DTFs in excess of those needed for radiological decommissioning for other purposes, such as spent fuel management or site restoration activities.

The NRC has stated that funding for spent fuel management and site restoration activities may be commingled in DTFs, provided that the licensee is able to identify and account for the radiological decommissioning funds separately from the funds set aside for spent fuel management and site restoration activities (see NRC Regulatory Issue Summary 2001-07, Rev. 1, "10 CFR 50.75 Reporting and Recordkeeping for Decommissioning Planning," dated January 8, 2009 (ADAMS Accession No. ML083440158), and Regulatory Guide 1.184, Revision 1, "Decommissioning of Nuclear Power Reactors," dated October 2013 (ADAMS Accession No. ML13144A840)). Preventing access to those excess funds in DTFs because spent fuel management and site restoration activities are not associated with radiological decommissioning would create an unnecessary financial burden without any corresponding safety benefit. The adequacy of the IPEC DTFs to cover the cost of activities associated with spent fuel

management and site restoration, in addition to radiological decommissioning, is supported by HDI's SSCE. If HDI cannot use its DTFs for spent fuel management and site restoration activities, it would need to obtain additional funding that would not be recoverable from the DTFs, or it would have to modify its decommissioning approach and methods. The NRC staff concludes that either outcome would impose an unnecessary and undue burden significantly in excess of that contemplated when 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(1)(iv) were adopted.

The underlying purposes of 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(1)(iv) would be achieved by allowing HDI to use a portion of the IPEC DTFs for spent fuel management and site restoration activities without prior NRC notification, and compliance with the regulations would result in an undue hardship or other costs that are significantly in excess of those contemplated when the regulations were adopted. Thus, the special circumstances required by 10 CFR 50.12(a)(2)(ii) and 10 CFR 50.12(a)(2)(iii) exist and support the approval of the requested exemption.

E. Environmental Considerations

In accordance with 10 CFR 51.31(a), the Commission has determined that granting the exemption will not have a significant effect on the quality of the human environment (see Environmental Assessment and Finding of No Significant Impact published in the *Federal Register* on November 10, 2020 (85 FR 71664)).

IV. Conclusions.

In consideration of the above, the NRC staff finds that the proposed exemption confirms the adequacy of funding in the IPEC DTFs, considering growth, to complete radiological decommissioning of the site and to terminate the licenses and also to cover estimated spent fuel management and site restoration activities.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to public health and

safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants HDI an exemption from the requirements of 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(1)(iv) to allow the use of a portion of the funds from the IPEC DTFs for spent fuel management and site restoration activities in accordance with HDI's PSDAR and SSCE, dated December 19, 2019. Additionally, the Commission hereby grants HDI an exemption from the requirement of 10 CFR 50.75(h)(1)(iv) to allow such withdrawals without prior NRC notification.

This exemption is effective upon issuance.

Dated: November 23, 2020.

For the Nuclear Regulatory Commission.

/RA/

Craig G. Erlanger, Director,
Division of Operating Reactor Licensing,
Office of Nuclear Reactor Regulation.