



**NYSERDA**

**ANDREW M. CUOMO**  
Governor

**RICHARD L. KAUFFMAN**  
Chair

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Acting President and CEO

November 10, 2020

Rich Guzman, Senior Project Manager  
Division of Operator Reactor Licensing  
Office of Nuclear Reactor Regulation  
U.S. Nuclear Regulatory Commission  
One White Flint North, 0-9C7  
11555 Rockville Pike  
Rockville, MD 20852-2738

Subject: Indian Point Decommissioning Trust Fund Exemption Request

Dear Mr. Guzman:

The State of New York has received the February 12, 2020, request from Holtec Decommissioning International, LLC (HDI) related to Indian Point Nuclear Generating Units 1, 2, and 3 (Indian Point). The request seeks exemption from provisions of 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(1)(iv). If granted by NRC, the exemption would allow HDI to use the Indian Point nuclear decommissioning trust funds for spent fuel management and site restoration activities. The exemption would also allow such withdrawals without prior notification to the NRC.

New York State opposes this exemption. The State incorporates by reference its letters dated March 24, 2020 (ML20091J663) and October 7, 2020 (ML20281A635), and adds the following:

For the reasons more fully described in its February 12, 2020 petition to intervene (ML200443E128), the State does not believe Holtec has adequately estimated the costs associated with radiological decommissioning, site restoration, and spent fuel management at the Indian Point. The State has requested a hearing, and the NRC should not grant Holtec's exemption request (or the license transfer application) until the issues raised in the State's petition are adjudicated or that petition is denied.

Spent fuel management is different from decommissioning and site restoration. Holtec proposes to spend some \$630 million dollars in decommissioning trust money on spent fuel management, which is a licensee operating expense and a federal government obligation. Holtec will recover a substantial portion of these non-decommissioning costs from the U.S. Department of Energy (DOE), either through settlement or in litigation. The NRC should not permit Holtec to use ratepayer funds to underwrite spent fuel management costs that will ultimately be borne by DOE. If the NRC does permit Holtec to use decommissioning trust money for this non-decommissioning expense, it should require Holtec to

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return DOE reimbursements to the Indian Point trusts or to another trust instrument until radiological decommissioning is complete.

Holtec also seeks an exemption to use decommissioning trust monies for non-radiological decommissioning. The NRC has no jurisdiction over this aspect of the Indian Point decommissioning process. New York State Public Service Commission (PSC) orders expressly authorize the collection of funds for site restoration.<sup>1</sup> Neither Holtec nor Entergy has responded to State requests regarding the disposition of these funds; to the extent the funds have been commingled with radiological decommissioning funds, this runs afoul of the PSC's orders. Because site restoration is a state-law issue, the NRC may not exercise jurisdiction over ratepayer funds collected to pay for site restoration under state authority.

If you have any questions or concerns, please contact me.

Sincerely,

A handwritten signature in cursive script that reads "Alyse Peterson".

Alyse Peterson, P.E.  
Senior Advisor

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<sup>1</sup> See, e.g., 1992 WL 12790173, \*43 (N.Y. Pub. Serv. Comm'n, Apr. 14, 1992).