



To: U.S. Nuclear Regulatory Commission, Rulemakings and Adjudications Staff:

Re: **Hearing Docket ID NRC-2020-0021 – Opposing Indian Point License Transfer to Holtec**

Hudson River Sloop Clearwater strongly opposes the sale and transfer of Indian Point Licenses from Entergy Nuclear Operations, Inc. to Holtec International and Holtec Decommissioning International (HDI), LLC. After performing extensive research, we have concluded that Holtec and its subsidiaries are not qualified to hold the licenses for decommissioning the Indian Point Energy Center.

Given the company's record, Clearwater shares the view of members of New York's Congressional delegation, the New York State Attorney General, many local and state elected officials, Riverkeeper and area residents – namely that we have no confidence in Holtec's ability to decommission Indian Point safely and with financial surety. We therefore oppose it becoming the Indian Point licensee. As listed below, Holtec has had multiple problems, any one of which should disqualify it from holding Indian Point's licenses and decommissioning the plant. Taken together, these deficiencies add up to a clear imperative to reject Holtec as the licensee. We urge the Nuclear Regulatory Commission to deny the Joint License Transfer Application for the following reasons:

- 1) **Holtec lacks the experience needed to decommission Indian Point safely.** Its entire nuclear "fleet" was acquired less than a year ago. It has never decommissioned a nuclear plant before; its first decommissioning job is Oyster Creek, which it acquired in July 2019. Holtec is in effect learning on the job. The bulk of its experience is in spent fuel handling, where its performance has been poor. Further, reports from community members and Clean Water Action confirm that Holtec put costs ahead of safety by hiring low-skilled, unqualified workers who are not familiar with the plant at Oyster Creek, by stopping funding to local first responders who are responsible for implementing an emergency response plan, and by repeatedly exhibiting a pattern of disregard for the legitimate concerns of local officials and community members.

Holtec has also demonstrated dangerous incompetence in its spent fuel handling at San Onofre Nuclear Generating Station, (SONGS) in southern California, where Holtec is contracted by owner Southern California Edison to transfer spent fuel into dry storage. Holtec makes the plant's Hi Storm UMAX dry-storage canisters, which are welded shut and designed for interim storage, but not approved for shipment off site. These canisters are getting scratched and gouged in the loading process, which can accelerate corrosion in the moist salt air and could lead to early failure.

In August 2018, a whistleblower revealed a near miss at SONGS as a 50-ton Holtec Hi Storm UMAX system canister was being loaded into an 18-foot concrete silo. These canisters are thicker than the ones on which the workers had practiced loading. One of the 50-ton canisters got stuck on a shield ring near the top of the vault. Workers didn't realize the slings supporting the canister's massive weight went slack, and it hung there unsupported for close to an hour, in danger of dropping.

"What scared me is that we would not have been told about the incident unless a whistleblower had come out in public hearing to tell the world that he couldn't stand by [silent]," said Rear Admiral Leendert "Len" Hering, Sr., (USN-Ret.), who as the Southwest regional commander was responsible for the nuclear safety of naval operations, and is fiercely critical of Holtec's and the NRC's actions at SONGS. "If it were not for him, we would not have been made aware that this situation had occurred. Since that time I focused my attention on learning more [about safety issues at SONGS] and what I've uncovered is, to be honest, astounding. I have come to realize that the most hazardous material on the face of the earth was in fact being handled like any other commercial waste product. I have found that basic safety requirements have been waived or contorted in favor of expediency and cost."¹

¹ As reported in Background Supplement to Comments by Hudson River Sloop Clearwater on Indian Point Proposed License Transfer to Holtec, which is attached: Adm. Hering's remarks at a Congressional briefing on May 13, 2019, broadcast on C-SPAN <https://www.c-span.org/video/?460643-1/nuclear-power-oversight>

- 2) **Holtec lacks fiscal surety.** Holtec and its subsidiaries are not fiscally qualified to hold Indian Point's licenses and can't be relied upon to take financial responsibility for decommissioning the plant. They are privately held corporations and their finances are therefore opaque. Holtec's business model is based on maximally leveraging the Decommissioning Trust Fund (DTF), which was created by ratepayer dollars, for their own profit – at the expense of public health and safety. They have not demonstrated sufficient capitalization to complete decommissioning, especially if decommissioning costs exceed their unreliably low estimate.

Holtec's complex subsidiary structure of separate, undercapitalized LLCs shield the parent company from liability and accountability. If actual costs exceed the amount set aside for decommissioning, Holtec's limited liability corporations can simply declare bankruptcy, and neither the parent company nor Entergy would have any further responsibility. At the same time, its side businesses, including building small modular reactors (SMRs) and a "consolidated interim storage" (CIS) site for nuclear waste in New Mexico, pose unacceptable conflicts of interest which its compartmentalized subsidiary structure does not remedy. These side businesses create perverse incentives for Holtec — for example to ship radioactive waste from Indian Point to its own CIS facilities, or eventually to use Indian Point's waste or even its site to benefit Holtec's SMR business — even if such choices run counter to the public interest and public safety.

In its premature Post-Shutdown Activities Report (PSDAR), improperly filed with the NRC as if it were already the licensee, Holtec significantly underestimated the cost to decommission Indian Point. In fact, there is no site characterization assessing current conditions on which to base an estimate. Clearwater's comments on the PSDAR, which include input from many of our colleagues, are attached.

The PSDAR also ignored the Algonquin Gas Transmission Pipelines passing under and near Indian Point's critical components, even though their presence greatly complicates decommissioning and raises risks of ruptures and fires. Holtec acknowledges in the PSDAR that there is radioactive contamination of groundwater at the site, which is also leaking into the Hudson River. However, it stated it plans to do nothing to remediate it, and will only monitor it. Nor does it plan to remediate contaminated soil any deeper than three feet. The PSDAR also stated that Holtec is considering shipping large radioactive components by barge down the Hudson, which raises a host of additional unacceptable risks.

- 3) **Holtec and SNC-Lavalin, the two companies behind the proposed Indian Point decommissioning, are embroiled in numerous scandals and controversies** that contradict their claims of high standards in ethics, compliance, financially sustainable business practices and trusted stewardship of nuclear materials. Their actual record is full of corruption, bribery, fraud, pleading guilty to and paying fines for malfeasance, getting barred from doing business with the World Bank and the Tennessee Valley Authority (TVA), and misleading and lying to officials and the public. A thoroughly documented history of Holtec's dishonest business practices and dangerous operational track record is attached, entitled "*Background Supplement to Comments by Hudson River Sloop Clearwater on Indian Point Proposed License Transfer to Holtec.*"

Holtec is neither an honest broker nor a trustworthy partner in securing the safety and future of the region around Indian Point. 20 million people live and work within a 50-mile radius of the plant. Decommissioning the Indian Point facility is a complex undertaking and an awesome responsibility on which the safety and future viability of our region depend. Those of us who live and work in the area will not passively accept an unqualified, unscrupulous company such as Holtec being put in charge of Indian Point.

As New York Attorney General Letitia James [said](#) when she filed a petition to challenge license transfer to Holtec, "**Putting the decommissioning of Indian Point in the hands of a company with no experience and uncertain financial resources is very risky.**" Many other elected officials in New York support the AG's filing and share her objections to Holtec.

It is vital that Indian Point's licensee be competent and trustworthy, free of the kind of serial malfeasance Holtec has committed, with a solid track record demonstrating it is well equipped to decommission Indian Point safely and responsibly. The Commission therefore has a statutory obligation to clear the way for such a qualified candidate and to reject Holtec as the licensee entrusted to decommission Indian Point.

As Clearwater's Environmental Director for almost 20 years, I have been tracking meetings and proceedings related to Indian Point's operations, including: its relicensing application in which Clearwater was an active

intervenor and we won/lost² our Environmental Justice contention; the 2017 Settlement agreement; and now the proposed License Transfer Agreement (LTA) to Holtec with the accompanying PSDAR.

I was initially optimistic that the Nuclear Regulatory Commission would provide appropriate oversight of the nuclear industry over which they have jurisdiction, despite many of my colleagues accusing me of being naïve and/or “pollyanna.” Over time, however, we have observed a pattern of dismissiveness, inability to answer technical questions at Indian Point Annual Assessment Meetings and excessive granting of waivers and exemptions to the operator. As recently as March 19, 2020 the NRC approved a Holtec Exemption Request to be allowed to use a portion of ratepayer-financed Nuclear Decommissioning Trust (NDT) funds, designated for decommissioning itself, “for management of spent fuel and site restoration activities, respectively”³ – which are not the purposes for which these funds were collected. We have seen many instances of the NRC’s failing to follow its own rules and protocols when inconvenient for the operators and its own predilection to protect the very industry it is charged with regulating.

Since shortly after 9-11, Clearwater has held numerous conference, forums and briefings for local, regional and national audiences on issues related to nuclear power and nuclear waste management, with a focus on Indian Point’s operations and, more recently, decommissioning. See: <https://www.clearwater.org/ea/indian-point-campaign/> They include two Congressional briefings to educate members of Congress, their staffs, the staffs of relevant federal agencies, and the media on decommissioning issues: [Decommissioning Nuclear Power Plants: What Congress, Federal Agencies and Communities Need to Know \(2018\)](#) and [Decommissioning: A New Era in the U.S. Nuclear Power Industry; a Critical Need for Congressional Oversight \(2019\)](#). Our [Fall 2019 Regional Nuclear Decommissioning Forum](#) (Oct 10, 2019) featured independent scientists and advocates from five reactor communities grappling with decommissioning, speaking before an audience of state, county, and local elected officials, appointed task force members, and concerned citizens. These forums initiated and nurtured a dialog on how policy and regulation can reduce risks, protect the environment, and ensure public health and safety.

In the short time since the notice of the public comment period for the Joint LTA was filed in the Federal Register and then extended a month, two things have occurred that drastically change the context of this LTA proceeding.

1) The NRC Inspector General Report: The NRC Office of Inspector General recently published an Event Inquiry regarding “Concerns Pertaining to Gas Transmission Lines at the Indian Point Nuclear Power Plant,” Case No. 16-024.⁴ The OIG Report found that the NRC:

- “failed to thoroughly reexamine the underlying premises of its analyses and did not accurately communicate its analytical work performed.”
- employed a NOAA computer program that was not designed for the purpose it was used for
- used a draft regulatory guide in lieu of the final, approved version (which had been issued approximately 2 years prior) and deviated from the approved version in a manner that was less conservative and had an impact on the analysis outcome.

² In 2013 Clearwater won that contention in as much as the Atomic Safety Licensing Board said that NRC Staff and Entergy failed to undertake the comprehensive environmental justice assessment that is required by NEPA. The Board found that the NRC Staff “failed to follow its own internal procedure” in carrying out the assessment. The Staff “analyzed the wrong variables” by failing to compare the effects of the relicensing on environmental justice populations with the effects on the general population. Therefore, the NRC Staff “failed to comply with its . . . obligations” to analyze environmental justice impacts under the National Environmental Policy Act. The NRC Staff claimed that they were not required to look at accident impacts, but the Board found “there is no legal foundation for the Staff’s failure” to analyze accidents. The ASLB then concluded that Clearwater filled the void in the public record regarding the EJ contention, but did not require either the NRC staff or Entergy to undertake an Environmental Justice Assessment on its own, or to propose or implement any mitigation.

“... In summary, Clearwater’s witnesses did a thorough job of revealing the EJ population’s concerns about relicensing Indian Point and the potential disproportionate and adverse impact this population may experience, in comparison to the non-EJ population, were there to be an accident at Indian Point. Thus, the record now contains evidence of informed public participation and adequate analysis to foster informed decision-making. Therefore, the NRC, despite the inadequate FSEIS, has met its NEPA burden with regards to the issues raised in CW-EC-3A.”

<https://www.clearwater.org/wp-content/uploads/2011/12/aslb-partialinitialdecision-11-27-13.pdf>

³ Indian Point Units 1, 2, and 3 - Acceptance Review Determination (E-mail dated 3/19/20) re: Holtec Exemption Request from 10CFR50.82(a)(8)(i)(A) and 10CFR50.75(h)(1)(iv) [EPID L-2020-LLE-0010] ADAMS Accession No. ML20079M249

⁴ <https://www.oversight.gov/sites/default/files/oig-reports/Concerns%20Pertaining%20to%20Gas%20Transmission%20Lines%20at%20the%20Indian%20Point%20Nuclear%20Power%20Plant-2020.pdf>

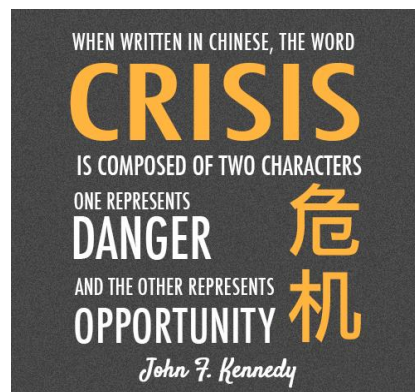
- did not properly undergo quality assurance requirements/procedures for conducting safety related calculations.

The OIG Report speaks of “backwards engineering to get a desired result” and confirms the concerns of Clearwater and many other stakeholders regarding the NRC’s lax oversight and bending the rules to ensure desired answers and outcomes.

2) **Coronavirus Pandemic:** The other major new development is the rapid and devastating spread of the SARS-Cov-2 coronavirus causing COVID-19, its impact on our entire society here and around the globe, and specifically with regard to adequate personnel at operating, closed and decommissioning nuclear plants. At a March 20 teleconference on its COVID-19 response, the NRC staff was asked a series of legitimate questions regarding what actions they would take to ensure public health and safety in this crisis. The NRC staff repeatedly deferred to other, often unspecified, agencies, and to the licensees. As the NRC restricts its activities because of the pandemic, granting operators more waivers from NRC inspections, and affirming the operators’ prerogative to come up with their own protocols to handle the spread of COVID-19 among workers, and decides whether to keep operating, it is demonstrating a lack of appropriate, proactive oversight, even amid this very serious, potentially catastrophic situation, even as demand for electricity falls precipitously, and even for Indian Point, which is in the epicenter of the U.S. outbreak. Nuclear facilities in the UK and elsewhere are shutting down when workers test positive for COVID-19. If there aren’t sufficient rules and regulations in place for the NRC, in cooperation with OSHA and others, to address this crisis appropriately and make sure U.S. nuclear plants weather the pandemic safely, then it is urgent to let Congress know what must be done, so it can step in, provide the needed oversight, and take whatever action is needed to protect public health and safety.

In Crisis is Opportunity: As President John F. Kennedy observed, when the word “crisis” is written in Chinese, it is composed of two characters: One represents danger, and the other represents opportunity.

Today’s trying circumstances can create a unique opportunity for the NRC to restore public trust by denying the license transfer of Indian Point Nuclear Power Plant from Entergy to Holtec. The public needs and deserves more stringently protective standards for all decommissioning companies to ensure technical proficiency, financial surety and trustworthiness. If these do not exist, they should be promptly promulgated and applied to all license transfer applications, and incorporated as conditions for approving license transfer. In the meantime, Holtec’s application should be denied or deferred from consideration until adequate protections are in place.



We sincerely hope the NRC will treat this as an opportunity to rise to the challenge of a complex and dangerous situation, and to fulfill its mission to: “regulate the Nation’s civilian use of radioactive materials to protect public health and safety, promote the common defense and security, and protect the environment” – and to achieve its vision to be “A trusted, independent, transparent, and effective nuclear regulator.”

Thank you for this opportunity to comment on the proposed License Transfer of Indian Point from Entergy to Holtec.

Sincerely,

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Attachments:

- Hudson River Sloop Clearwater comments on Holtec LTA and PSDAR
- Background Supplement to Comments by Hudson River Sloop Clearwater on Indian Point Proposed License Transfer to Holtec.
- Transcript of Admiral Leendert “Len” Hering, Sr., USN Len Hering, Washington, DC (May 13, 2019)
- Summary of NRC Inspector General Report Findings