

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on May 19, 2021

COMMISSIONERS PRESENT:

John B. Howard, Interim Chair
Diane X. Burman
James S. Alesi
Tracey A. Edwards

CASE 19-E-0730 - Joint Petition of Entergy Nuclear Indian Point 2, LLC; Entergy Nuclear Indian Point 3, LLC; and Nuclear Asset Management Company, LLC for a Declaratory Ruling Disclaiming Jurisdiction Over or Abstaining from Review of the Proposed Transfers or, in the Alternative, an Order Approving the Proposed Transfers Pursuant to Section 70 of the New York Public Service Law.

ORDER ASSERTING JURISDICTION AND
APPROVING AND ADOPTING JOINT PROPOSAL

(Issued and Effective May 19, 2021)

BY THE COMMISSION:

I. INTRODUCTION

In a joint petition filed with the Commission under New York State Public Service Law (PSL) §70, Petitioner Entergy Nuclear Indian Point 2, LLC (ENIP2); Petitioner Entergy Nuclear Indian Point 3, LLC (ENIP3) (collectively, with ultimate parent company Entergy Corporation, Entergy); and Petitioner Nuclear Asset Management Company, LLC (NAMCo)¹ propose to transfer ownership of the Indian Point nuclear electric plant in Buchanan, New York, together with related assets and

¹ Nuclear Asset Management Company, LLC is a wholly-owned subsidiary of Holtec International.

liabilities, from Entergy to NAMCo (the Transfer). By this order, the Commission determines that the Transfer requires Commission approval under PSL §70. Furthermore, for the reasons that follow, the Commission adopts the parties' April 14, 2021 joint proposal (the Joint Proposal) and approves the Transfer, subject to the Joint Proposal's terms and conditions.

II. BACKGROUND

A. The Indian Point Site

Located on the Hudson River's east bank in the Village of Buchanan, the Indian Point site (the Site) includes, among other things, three nuclear power reactors, known as Indian Point Nuclear Generating Unit 1 (IP Unit 1), Indian Point Nuclear Generating Unit 2 (IP Unit 2), and Indian Point Nuclear Generating Unit 3 (IP Unit 3). The Site also has three spent fuel pools, which temporarily store spent nuclear fuel assemblies, along with a dry cask storage facility (known as an Independent Spent Fuel Storage Installation or ISFSI), which is used for the long-term storage of spent nuclear fuel. Additional on-site structures house support equipment such as cooling water intake systems, discharge and outflow systems, meteorology and emissions monitoring equipment, security systems, transformers, and diesel generators, and also contain and isolate previously-replaced steam generators. Two natural gas transmission pipelines also cross the Site.

The Consolidated Edison Company of New York, Inc. (Con Edison) selected the Indian Point site for these nuclear power reactors decades ago. It lies just 24 miles north of New York City, 35 miles from Times Square, approximately 38 miles from Wall Street, 6 miles west of the New Croton Reservoir in Westchester County, which is part of the New York City reservoir system and which supplies drinking water to New York City residents, and within 20 miles of other reservoirs.

While developing Indian Point, Con Edison received the following construction permits and operating licenses on the following dates:

	CONSTRUCTION PERMIT ISSUED	OPERATING LICENSE ISSUED
IP UNIT 1	May 4, 1956	March 26, 1962
IP UNIT 2	October 14, 1966	September 28, 1973
IP UNIT 3	August 13, 1969	December 12, 1975
Source: Federal Register and NRC Information Digest. ²		

Notably, when Con Edison selected the Indian Point site in March 1955 and applied for the necessary construction permit, the United States Atomic Energy Commission (AEC)³ lacked site selection regulations that addressed surrounding population size or seismicity issues or analyzed severe accidents involving reactors or spent fuel pools on an individual or site-wide basis.⁴

² See 21 Fed. Reg. 3084-04 (May 9, 1956); 31 Fed. Reg. 13616-02 (Oct. 21, 1966); 34 Fed. Reg. 13437-04 (Aug. 20, 1969); U.S. Nuclear Regul. Comm'n, NUREG-1350, Volume 20, 2008-2009 Information Digest, at 103, 113 (Aug. 2008) (NRC Agencywide Documents Access and Management System (ADAMS) Accession No. ML082630080).

³ The United States Atomic Energy Commission was a predecessor of the current United States Nuclear Regulatory Commission.

⁴ With approximately 17 million people living within 50 miles of Indian Point, no other operating reactor site in the country comes close to Indian Point in terms of surrounding population. U.S. Nuclear Regul. Comm'n, NUREG-1437 (1996) at §2.2.2, Table 2.1 (based on 1990 census); NUREG-1437, Rev. 1 (2013) at §3.1, Figure 3.1-1, Table 3.1-1 (based on 2000 census) (NRC Adams Accession No. ML13106A241). The 1955 selection of the site came before the Third Circuit's Limerick Ecology Action, Inc. v. NRC, 869 F.2d 719 (1989) decision and NRC's subsequent promulgation of the 10 C.F.R. §51.53 (1996) regulation that require analysis of ways to mitigate the impacts of severe accidents at nuclear facilities.

B. Indian Point's Ownership and Operational History

Although Con Edison built each of the three reactors, it would over time transfer each reactor to other entities. IP Unit 1 operated from August 1962 until October 1974, at which time Con Edison shut it down permanently because the emergency core cooling system did not meet regulatory requirements.⁵ Con Edison would continue to own IP Unit 1, however, until 2001. Con Edison operated the IP Unit 2 reactor and fuel pool from 1973 to 2001.

By December 1975, in the face of financial challenges, Con Edison transferred IP Unit 3 to the Power Authority of the State of New York, now known as the New York Power Authority (NYPA).⁶ NYPA retained ownership of IP Unit 3 until 2000, when it transferred the unit to Entergy in a transaction that was not subject to Commission review. The following year, ENIP2 acquired IP Unit 1 and IP Unit 2 from Con Edison in a transaction that was subject to Commission review and which the Commission approved under PSL §70, subject to certain conditions.⁷

⁵ Indian Point - Unit 1, <https://www.nrc.gov/info-finder/decommissioning/power-reactor/indian-point-unit-1.html> (last visited May 12, 2021). The IP Unit 1 spent fuel pool, however, continued operating for the following three decades. It was not emptied until 2008, at which time its inventory was transferred to the ISFSI for long-term storage.

⁶ See 1974 Sess. Laws of N.Y. Ch. 369 (§2); 1974 Sess. Laws of N.Y. Ch. 370 (§2); New York Bill Jacket, 1974 S.B. 10677-A, Ch. 369; NRC Operating License DPR-64, Amendment No. 1, Dec. 24, 1975), Docket No. 50-286 (NRC ADAMS Accession No. ML003778621); Highlights of NYPA History Since 1931, <https://www.nypa.gov/about/timeline> (last visited May 12, 2021).

⁷ Case 01-E-0040, Consolidated Edison Company of New York, Inc. and Entergy Nuclear Indian Point 2, LLC - Transfer Proceeding, Order Authorizing Asset Transfer (issued August 31, 2001).

In addition to the three Indian Point nuclear reactors and their spent fuel storage facilities, ENIP2 and ENIP3 also took custody of the associated decommissioning trust funds.⁸ As is discussed in more detail below, these trusts were created to ensure that the plant's owners would have the resources needed to safely decommission the facilities and restore the Site to greenfield status.

In 2007, ENIP2 and ENIP3 requested that the United States Nuclear Regulatory Commission (NRC) renew IP Unit 2's and IP Unit 3's operating licenses for terms of 20 years each. New York State, supported by expert witnesses, intervened in the NRC proceeding, and the parties⁹ litigated various contentions for more than 9 years before a panel of Atomic Safety and Licensing Board judges.¹⁰ Entergy and New York regulatory agencies also litigated related issues in other administrative and judicial

⁸ ENIP 2 took custody of the IP Unit 1 and IP Unit 2 trust funds at the same time it acquired IP Unit 1 and IP Unit 2. Id. ENIP 3 took custody of the IP Unit 3 trust fund in 2017. See Order Approving Transfer of Control of Master Decommissioning Trust, Amendments to Master Decommissioning Trust Agreement, and License Amendments to Modify and Delete Decommissioning Trust License Conditions (issued Jan. 27, 2017), NRC Docket Nos. 50-286 and 50-333 (NRC ADAMS Accession No. ML16337A272).

⁹ The admitted parties in the NRC license renewal proceeding included the State of New York, Entergy, NRC Staff, Riverkeeper, Inc., and Hudson River Sloop Clearwater.

¹⁰ See, e.g., Entergy Nuclear Operations, Inc. (Indian Point, Units 2 & 3), CLI-16-7, 83 N.R.C. 293 (May 4, 2016) (granting New York petition for review of New York State Consolidated Contention NYS-12C concerning severe accident mitigation analysis, reversing LBP-12-13, and directing further analysis); Entergy Nuclear Operations, Inc. (Indian Point, Units 2 & 3), LBP-08-13, 68 N.R.C. 43 (July 31, 2008) (admitting initial contentions for adjudication); see also State of New York Petition for Review of Atomic Safety and Licensing Board Decision LBP-13-13 with Respect to Consolidated Contention NYS-12C (Feb. 14, 2014) (NRC ADAMS Accession No. ML14045A414).

arenas.¹¹ New York and Riverkeeper advocated more thorough testing of reactor vessel internals;¹² testing conducted in 2016 on IP Unit 2 revealed a high number of degraded bolts inside the reactor.¹³ On January 8, 2017, the State of New York and Entergy, along with Riverkeeper, reached an agreement to conclude the litigation matters, and Entergy agreed to permanently shut down the remaining two reactors.¹⁴

Consistent with that agreement, the IP Unit 2 reactor ceased operating on April 30, 2020, and the IP Unit 3 reactor ceased operating on April 30, 2021. Entergy confirmed the permanent removal of fuel from the IP Unit 3 reactor on May 11, 2021.¹⁵ Both the IP Unit 2 and IP Unit 3 spent fuel pools will continue operating for the time being, as will the dry cask ISFSI.

Accordingly, if the Transfer is approved, NAMCo and its corporate affiliates (collectively, including ultimate

¹¹ See, e.g., Entergy Nuclear Operations, Inc. v. New York State Dept. of State, 28 N.Y.3d 279 (November 21, 2016); Entergy Nuclear Indian Point Units 2 and 3: Consolidated NYSDEC Administrative Proceedings regarding SPDES Permit Renewal and Modification (SPDES # NY-0004472) and Water Quality Certification (DEC Nos. 3-5522-0001/00030 (IP2) and 3-5522-00195/00031 (IP3)); Entergy Indian Point 2, LLC et al., Interim Decision of the Assistant Commissioner, NYSDEC, 2008 WL 4693295 (August 13, 2008); see also State of New York v. NRC, 681 F.3d 471 (D.C. Cir. 2012).

¹² NRC ASLB Admitted Contentions NYS-25, NYS-26B/RK-TC-1, and NYS-38/RK-TC-5, Docket Nos. 50-247-LR and 50-286-LR, ASLBP No. 07-858-03-LR-BD01.

¹³ Entergy Nuclear Operations, Inc. (Indian Point, Units 2 and 3), LBP-17-3, 2017 WL 4803820, at *3 (March 13, 2017).

¹⁴ Id. at *4.

¹⁵ Case 19-E-0730, Correspondence confirming Permanent Retirement of Indian Point Unit 3 and conveying ENIP NL-21-033 (filed May 12, 2021) (Document and Matter Management System (DMM) Item No. 53).

parent company Holtec International, Holtec) would not operate nuclear power reactors; they would, however, operate and protect Indian Point's spent fuel pools and support systems, as well as the ISFSI. Holtec would also decommission the reactors, support systems, and the Site; move all nuclear fuel from spent fuel pools to dry cask storage; maintain and protect the ISFSI until the spent nuclear fuel can be transferred off-site; and restore the Site to greenfield status.

III. THE JOINT PETITION

On November 22, 2019, ENIP2, ENIP3, and NAMCo filed a joint petition (Petition) with the Commission seeking either: (1) a declaration that the Commission lacks jurisdiction over the proposed Transfer because the Transfer would not occur until after Indian Point had shut down; (2) a declaration that the Transfer does not require review under PSL §70 because it involves only internal restructuring that would occur upstream of the entity that owns and operates Indian Point; or (3) an order finding that the Transfer is in the public interest and is therefore approved under PSL §70.¹⁶

The Petition details the proposed two-part transaction. In the first part, ENIP2 and ENIP3 would transfer Indian Point and other related assets and liabilities to two limited liability companies whose membership interests will

¹⁶ The Petition was accompanied by a redacted copy of the Membership Interest Purchase and Sale Agreement as Exhibit 1, the resumes of key Holtec employees as Exhibit 2, a Schedule and Financial Information for Decommissioning as Exhibit 3, an Environmental Assessment Form as Exhibit 4, and a proposed Notice Pursuant to the State Administrative Procedure Act as Exhibit 5. An unredacted copy of the Membership Interest Purchase and Sale Agreement was submitted to the Commission's Records Access Officer with a request for exemption from disclosure under the Freedom of Information Law, Public Officers Law §§84-90.

ultimately be owned by Merchant Properties, LLC - another limited liability holding company. Merchant Properties is an indirect wholly-owned subsidiary of ENIP2's and ENIP3's parent corporation, Entergy Corporation.

In the transaction's second phase, the membership interests in Merchant Properties would be transferred to NAMCo, a wholly-owned subsidiary of Holtec International. The transaction would thus result in NAMCo indirectly owning Indian Point and the related assets and liabilities formerly owned by ENIP2 and ENIP3. NAMCo would subsequently merge with Merchant Properties, resulting in NAMCo directly owning Holtec Indian Point 2, LLC (HIP2) and Holtec Indian Point 3, LLC (HIP3), which will directly own the Indian Point assets and liabilities formerly owned by ENIP2 and ENIP3, respectively.

Holtec International will thus indirectly own Indian Point and its related assets through this chain of wholly-owned subsidiaries. Holtec International also indirectly owns Holtec Decommissioning International, LLC (HDI), which jointly owns, as the majority owner, Comprehensive Decommissioning International, LLC (CDI). The minority owner of CDI is SNC-Lavalin Group, through its subsidiary Kentz USA Inc. If the transaction is consummated, HDI would manage decommissioning operations, with CDI acting as general contractor.

Under this arrangement, Holtec projects that it could obtain NRC approval to release the Site, with the exception of the ISFSI, for unrestricted use (known as partial site release in NRC parlance¹⁷) by 2036, and possibly as early as 2033. If the transaction is not consummated, Entergy has announced that it intends to follow an NRC-approved deferred decommissioning

¹⁷ See 10 C.F.R. §50.83 (release of part of a power reactor facility or site for unrestricted use).

schedule known as "SAFSTOR"¹⁸ that would allow Entergy up to 60 years (i.e., until 2081) to decommission the Site.¹⁹

Should the Commission assert jurisdiction and review the Transfer under PSL §70, the Petitioners assert that the Commission has previously used a three-prong test to determine whether such transactions are in the public interest. According to Petitioners, the Transfer passes that test. Specifically, Petitioners assert that the Transfer presents no market power issues, that Holtec has the financial wherewithal necessary to responsibly decommission the Site because the Transfer will place Indian Point's decommissioning trust funds under Holtec's control, and that Holtec, together with its partner SNC-Lavalin, have the technical expertise necessary to safely decommission and restore the site. Furthermore, the Petitioners tout their plan to decommission the Site using the "DECON" schedule, under which Holtec projects that it can obtain partial site release from the NRC by the end of 2036, and possibly as early as 2033.

Finally, Petitioners also request that, should the Commission perform a PSL §70 review, it also determine that the Transfer would not have a significant adverse impact on the environment, adopt a negative declaration pursuant to the State Environmental Quality Review Act (SEQRA), and undertake no further environmental review.

¹⁸ The term "DECON" refers to the prompt demolition and decontamination of a facility and the removal of waste. Conversely, "SAFSTOR" refers to a long-term deferral of dismantling and decontamination work for a permanently shut down nuclear power plant and involves an extended period of inactivity before such work commences. A third option, known as "ENTOMB," involves permanently encasing a contaminated facility in a concrete sarcophagus. To date, no U.S. nuclear power facility has employed this option.

¹⁹ Notably, the NRC may further extend the 60-year decommissioning schedule under certain circumstances.
10 C.F.R. §50.82(a)(3).

IV. REGULATORY FRAMEWORK

Given the complexities that inhere in disassembling nuclear reactors, safely transporting and storing spent nuclear fuel, and thoroughly restoring the sites on which they are located, multiple state and federal agencies possess regulatory authority over nuclear decommissioning.

A. United States Nuclear Regulatory Commission

Under the Atomic Energy Act (AEA), regulation of atomic energy is divided between the federal and state governments. Generally, the NRC regulates the radiological safety of nuclear facilities, and states retain jurisdiction over issues beyond the scope of NRC's authority, such as, but not limited to, questions about rates, costs, or economics.²⁰

With respect to decommissioning specifically, the NRC's regulations establish minimum financial assurance requirements that all nuclear plant owners must satisfy.²¹ These regulations recognize, however, that funding for reactors' decommissioning trusts may also be subject to regulation by other federal or state government agencies.²² The NRC's decommissioning regulations further provide that the NRC must approve a plant owner's decommissioning and license termination plans before decommissioning begins, and, during decommissioning, owners must submit annual decommissioning status reports to the NRC.

²⁰ See 42 U.S.C. §2021(k) (AEA savings provision); Pac. Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm'n, 461 U.S. 190, 205 (1983).

²¹ 10 C.F.R. §50.75(b)-(c), (e); 53 Fed. Reg. 24018-01 (June 27, 1988) (General Requirements for Decommissioning Nuclear Facilities).

²² 10 C.F.R. §50.75(a); 53 Fed. Reg. 24018-01, 24037-38.

B. New York State Public Service Commission

Under the AEA, state public utility commissions like the PSC specifically retain their traditional authority over rates, including rate authority over nuclear decommissioning costs.²³ Indeed, the PSC has previously exercised that authority with respect to Indian Point.

Under Con Edison's earlier ownership, the trust funds for IP Unit 1 and IP Unit 2 were capitalized over a span of years with ratepayer funds via Commission-approved expense allowances.²⁴ These expense allowances included funds to cover the decommissioning of both radioactive and non-radioactive plant components. The PSC later authorized the transfer of Con Edison's Indian Point assets, including the decommissioning trust funds, to Entergy, provided that Entergy assumed Con Edison's decommissioning as well as site restoration obligations and agreed to return the Site to an unrestricted and greenfield condition.²⁵ The Commission also at that time expressly reserved

²³ The NRC's regulations provide that "[f]unding for the decommissioning of power reactors may also be subject to the regulation of Federal or State Government agencies (e.g., Federal Energy Regulatory Commission (FERC) and State Public Utility Commissions) that have jurisdiction over rate regulation." 10 C.F.R. §50.75(a).

²⁴ Case 96-E-0897, Consolidated Edison Company of New York, Inc. - Rates, Order Adopting Terms of Settlement Subject to Conditions and Understandings (issued September 23, 1997), p. 19; Case 94-E-0334, Consolidated Edison Company of New York, Inc. - Rates, Opinion No. 95-3 (issued April 6, 1995), p. 16; Case 91-E-0462, Consolidated Edison Company of New York, Inc. - Rates, Opinion No. 92-8 (issued April 14, 1992), p. 41.

²⁵ Case 01-E-0040, supra, Order Authorizing Asset Transfer (allowing the transfer of IP Unit 1 and IP Unit 2 from Con Edison to ENIP2 and approving, among other things, the ENIP2-Con Edison Asset Purchase and Sale Agreement (APSA)); see also Case 01-E-0040, supra, Order Adopting and Approving Issuance of Final Supplemental Environmental Impact Statement (issued

its Public Service Law jurisdiction over both reports on, and the spending of, the non-radiological decommissioning funds.²⁶

Additionally, under the New York Public Service Law, the Commission possesses general supervisory powers over all electric plants in the State of New York, which include "retired nuclear power reactors and their associated systems, structures, fuel and waste storage facilities, real estate, fixtures and personal property."²⁷ Moreover, the Commission must approve the Transfer proposed here under PSL §70(1), which provides that "[n]o . . . electric corporation shall transfer . . . its franchise, works or system or any part of such franchise, works or system to any other person or corporation . . . without the written consent of the [C]ommission."

C. New York State Department of Environmental Conservation

Under the AEA, the states expressly retain the authority to "regulate activities for purposes other than protection against radiation hazards."²⁸ New York law charges the New York State Department of Environmental Conservation (DEC) with protecting the State's natural resources and abating pollution.²⁹ As is relevant here, DEC has determined that the existence of or potential for such non-radiological hazards at Indian Point render it subject to DEC's authority under, among other applicable laws, the Resource Conservation and Recovery

August 17, 2001) (FEIS discussion of prior Con Edison rate cases and APSA, p. 28-29, 48-49).

²⁶ Case 01-E-0113, Entergy Nuclear Indian Point 2, LLC et al. - Declaratory Ruling Proceeding, Order Providing for Lightened Regulation of Nuclear Generating Facilities (issued August 31, 2001), p. 11.

²⁷ PSL §§2(12), (13); 5; 66(1).

²⁸ 42 U.S.C. §2021(k).

²⁹ See generally N.Y. Env't Conserv. Law §1-0101.

Act via the Industrial Hazardous Waste Management Program; the Inactive Hazardous Waste Disposal Site remedial program through the State Superfund Program; the New York State Navigation Law, which governs liability and cleanup of petroleum releases in New York State; and 6 NYCRR Part 613, which regulates the bulk storage of petroleum.³⁰

Notably, although the AEA grants the NRC jurisdiction over the radiological aspects of nuclear facilities, the states retain the authority to regulate radiation below levels of regulatory concern to the NRC.³¹ Under NRC regulations, "[a] site will be considered acceptable for unrestricted use if the residual radioactivity . . . results in a [total effective dose equivalent [TEDE]] . . . that does not exceed 25 [millirem] . . . per year".³² Therefore, radioactivity that falls below this level of regulatory concern remains subject to state jurisdiction, and DEC has in fact published guidance stating that such radioactivity should be remediated until a 10 millirem (mrem) per year TEDE is achieved in order to protect public health and the environment.³³

³⁰ Joint Proposal, Attachment A, p. 1-2.

³¹ 42 U.S.C. §2023.

³² 10 C.F.R. §20.1402 (an NRC-licensed site is acceptable for unrestricted use if residual radioactivity does not exceed 25 millirem per year).

³³ N.Y. State Dep't of Env't Conserv., DER-38, Cleanup Guidelines for Soils Contaminated with Radioactive Materials (2013) (formerly referred to as Technical Administrative Guidance Memorandum). Other states have adopted similar standards. See, e.g., 105 Mass. Code Regs. 120.245 (10 millirem per year); N.J. Admin. Code §7:28-12.8 (15 millirem per year); Conn. Dep't of Env't Prot., Div. of Radiation, Bureau of Air Mgmt. et al., Remediation Standards for Radionuclide Contamination in Connecticut (19 millirem per year).

D. United States Department of Energy

The United States Department of Energy (DOE) owes contractual obligations to Indian Point's owner, whether that owner is Entergy or Holtec, that are relevant to this Order. Under the Nuclear Waste Policy Act of 1982, Congress authorized DOE to enter into contracts for the storage of spent nuclear fuel with entities that generated or owned such fuel.³⁴ Under the terms of the resulting "Standard Contract for Disposal of Spent Nuclear Fuel and/or High Level Radioactive Waste", DOE was required to begin accepting spent nuclear fuel no later than January 31, 1998.³⁵ But, because the federal government has yet to develop a national repository capable of permanently storing spent nuclear fuel, DOE has yet to actually accept any such fuel. As a result of DOE's breach of its contractual and statutory obligations, spent nuclear fuel generated by the IP Unit 1, IP Unit 2, and IP Unit 3 reactors over the past 60 years has accumulated at the Indian Point site. Federal courts have therefore concluded that DOE is liable to both the current and former Indian Point owners – Entergy and Con Edison – for damages.³⁶

V. PROCEDURAL HISTORY

A. The PSC Transfer Proceeding

The Commission issued a Notice Seeking Comments on the Petition on January 17, 2020, and published a Notice of Proposed

³⁴ 42 U.S.C. §10156.

³⁵ 10 C.F.R. §961.11.

³⁶ See, e.g. Consol. Edison Co. of New York v. Entergy Nuclear Indian Point 2, LLC, 676 F.3d 1331, 1334 (Fed. Cir. 2012) (affirming liability for DOE's partial breach of standard contract and awarding certain damages to both Con Edison and ENIP2).

Rulemaking in the State Register on January 29, 2020, in accordance with the State Administrative Procedure Act. Between April 8, 2020, and the close of the comment period on May 28, 2020, the Commission received comments from, among others, the Hendrick Hudson School District, the Town of Cortlandt, the Village of Buchanan (collectively, the Local Governments), DEC, the New York State Office of the Attorney General (OAG), the New York State Energy Research and Development Authority (NYSERDA), Riverkeeper, Inc., and the Westchester County Board of Legislators.³⁷ Petitioners filed reply comments on May 28, 2020. The Commission also heard roughly seven hours of oral testimony at two virtual public statement hearings held on February 23, 2021.³⁸

On that same day, Department of Public Service (DPS) Staff from the Office of Accounting, Audits, and Finance reviewed Holtec International financial statements brought to DPS Staff by Holtec International representatives. This review was conducted in addition to DPS Staff's ongoing informal written discovery with Petitioners. During the course of this proceeding, DPS Staff served, and Petitioners responded to, 35 separate information requests.

Following exploratory discussions, DPS Staff filed a Notice of Impending Settlement Negotiations on March 19, 2021, informing the parties that the issues presented in this proceeding may be amenable to settlement and that negotiations would commence five days later on March 24, 2021. This notice was served contemporaneously on all parties, thereby providing

³⁷ The Commission established a single, common date for receipt of comments related to any aspect of the Petition because the Commission actions sought were closely linked to the Petitioners' request for declaratory relief.

³⁸ Transcripts of the public statement hearings are available on the Department's website (DMM Item No. 40).

them with reasonable and sufficient notice of the settlement negotiations.³⁹ All parties participated in the ensuing negotiations, which culminated with the filing of the Joint Proposal on April 15, 2021. The Commission accepted public comments on the Joint Proposal until April 29, 2021, and received submissions from, among others, OAG, the Local Governments, the Westchester County Board of Legislators, and various citizens.

B. The NRC Proceeding

Concurrent with their filing of the Petition, Petitioners also applied to the NRC to transfer Indian Point's federal licenses from Entergy to Holtec. In late December 2019, Petitioners supplemented that application with a Post-Shutdown Decommissioning Activities Report (PSDAR) and a site-specific Decommissioning Cost Estimate (DCE).⁴⁰

Shortly thereafter, on February 12, 2020, OAG filed a petition with the NRC to intervene in the federal license transfer proceeding on behalf of the State of New York and requested a hearing. The Local Governments and Riverkeeper similarly moved to intervene.

Holtec petitioned the NRC to exempt the Indian Point decommissioning trust funds from NRC regulations, promulgated in 1988, that limited the funds' use to radiological decommissioning expenses only.⁴¹ The Petitioners also submitted a letter notifying the Commission and the parties to this

³⁹ The New York State Division of Homeland Security and Emergency Services and HDI subsequently became parties and signed the Joint Proposal.

⁴⁰ They also submitted the PSDAR/DCE to the Commission (DMM Item No. 4).

⁴¹ 53 Fed. Reg. 24018-01; 10 C.F.R. §§50.75(c), n.1, 50.82(a)(8)(i)(A).

proceeding of the exemption request. In March 2020, OAG filed comments with the NRC opposing this exemption request,⁴² and OAG, NYSERDA, and DPS Staff later made additional submissions to the NRC opposing it as well.⁴³

On November 23, 2020, NRC staff approved Petitioners' license transfer application and the Holtec request for an exemption from the NRC's decommissioning trust fund regulations. The NRC later ratified both determinations and denied all requests to intervene by a 3-2 vote on January 15, 2021.

OAG promptly filed a petition for judicial review with the United States Court of Appeals for the District of Columbia Circuit challenging the NRC's denial of New York's petition to intervene and the NRC's approval of the license transfer and trust fund exemption. Riverkeeper and the Local Governments did the same. As of the date of this Order, those petitions remain pending.

VI. THE JOINT PROPOSAL

The Joint Proposal agreed to by all the parties establishes multiple financial assurance mechanisms intended to ensure that sufficient funds are available to complete the project, contains oversight and reporting provisions aimed at providing New York's state government and the public at large with the information needed to properly oversee the work, and includes other provisions designed to protect the public's interest in Indian Point's thorough and prompt decommissioning

⁴² OAG letter dated March 24, 2020 (NRC ADAMS Accession No. ML20091J663).

⁴³ See, e.g., OAG letter dated October 7, 2020 (NRC ADAMS Accession No. ML 20281A635); NYSERDA letter dated November 10, 2020 (NRC ADAMS Accession No. ML20316A008); DPS Staff letter dated November 23, 2020 (NRC ADAMS Accession No. ML20328A251) (incorporated by reference).

and site restoration, as well as the responsible management and security of its spent nuclear fuel.

Specifically, the Joint Proposal establishes a series of minimum balances that Holtec must maintain in the decommissioning trust funds over time.⁴⁴ First, Holtec has agreed to maintain a minimum balance of no less than \$400 million in the trust funds until at least 2031. After 2031, Holtec has further agreed to maintain a minimum balance of no less than \$360 million until it has obtained partial site release from the NRC. Finally, because the ISFSI and its dry storage casks and spent fuel will remain on site following partial site release, Holtec has also agreed to maintain a minimum balance – of an amount to be determined later based on projected remaining costs after partial site release – until all spent fuel is removed from the Site, the ISFSI is decommissioned, and the Site is fully restored.

If the funds' collective balance is ever projected to fall below the required minimum balance, Holtec must replenish them using the spent fuel management reimbursements that Holtec is projected to obtain from DOE.⁴⁵ Holtec must return at least 50% of any such recoveries to a dedicated subaccount within the trust funds and leave them there as additional financial assurance until it obtains partial site release. In the event of a shortfall, Holtec must first use DOE recoveries *other* than those deposited in the dedicated subaccount to replenish the fund. Only if additional funding is still needed to achieve the required minimum balance may Holtec rely on the recoveries segregated in the subaccount.

⁴⁴ Joint Proposal, p. 14-17.

⁴⁵ Joint Proposal, p. 16. The Joint Proposal requires Holtec to seek these reimbursements within five years of acquiring Indian Point and then at least every five years thereafter.

Additional financial assurance is provided for under an Administrative Consent Order (ACO) executed by both DEC and Holtec. Under the ACO, Holtec has committed to conducting comprehensive site investigation, characterization, remediation, and restoration activities for non-radiological hazardous waste and contaminants at Indian Point. Moreover, the ACO further requires Holtec to remediate residual radioactivity below the NRC's 25 millirem per year standard and instead achieve the New York State guidance level of 10 millirem per year.⁴⁶

To ensure that funds are available to complete this work, Holtec will secure third-party financial assurance in the amount of \$110,593,000 that names DEC as the beneficiary.⁴⁷ Additionally, Holtec will obtain a \$30 million pollution liability insurance policy that would offset costs arising from previously unknown releases of hazardous substances.⁴⁸

The Joint Proposal also establishes a series of reporting requirements with which Holtec must comply.⁴⁹ First, Holtec has agreed to meet monthly with State and local government representatives to provide project updates. At these meetings, Holtec will report on, among other topics, the status of major project activities, the project budget, and any significant changes to either the project's schedule or to its projected costs.

New York State will also receive twice-yearly updates on the status of the decommissioning trust funds. First, under NRC rules, Holtec must report to the NRC annually on or before March 31 on, among other things, the amount spent on decommissioning, the remaining balance of any decommissioning

⁴⁶ Joint Proposal, Exhibit A, p. 15.

⁴⁷ Id. at p. 6-7.

⁴⁸ Id. at p. 8.

⁴⁹ Joint Proposal, p. 18-22.

funds, and the estimated cost to complete decommissioning. New York State will receive this report as well. Second, Holtec must further provide New York State with an annual mid-year report on or before August 30 that describes, among other things, any changes in the trust funds' balances since the most recent NRC filing, the nature of trust fund investments, and year-to-date trust fund withdrawals. Both reports will be accompanied by meetings between New York State representatives and Holtec executives to review their contents.

Finally, in addition to these financial assurance and reporting provisions, the Joint Proposal addresses a variety of other concerns. It requires, for example, that Holtec notify both DPS Staff and the owners of the natural gas pipelines located on-site before undertaking certain decommissioning activities. Holtec is also required to promptly notify DPS Staff of any nuclear emergency, fatal accident, serious security threat, or media event should one occur during the course of decommissioning. And it incorporates a memorandum of understanding between Holtec and the Local Governments in which Holtec commits to honor Entergy's previous Payment In Lieu of Taxes (PILOT) agreements and which establishes a process for negotiating future PILOT agreements.

Holtec has further agreed to provide certain funding for oversight and emergency planning purposes and warranted that it has no plan to install new nuclear reactors at the Site. Finally, the Joint Proposal includes an agreement among the parties that they will promptly withdraw all litigation related to the NRC license amendment and transfer proceeding, and it concludes by requesting that the Commission approve the Transfer pursuant to PSL §70.

VII. LEGAL AUTHORITY

The Commission possesses general supervisory powers over all electric plants in the State of New York, which include “retired nuclear power reactors and their associated systems, structures, fuel and waste storage facilities, real estate, fixtures and personal property.”⁵⁰

Additionally, under PSL §70(1), “[n]o . . . electric corporation shall transfer . . . its franchise, works or system or any part of such franchise, works or system to any other person or corporation . . . without the written consent of the [C]ommission.” An “electric corporation” includes “every corporation, company, association, joint-stock association, partnership and person . . . owning, operating or managing any electric plant.”⁵¹

The Commission applies a public interest standard when reviewing such a transfer.⁵² Various factors are relevant to this determination, including the financial strength of the transferee, the transferee’s ability to safely own, maintain, operate, or decommission the assets, and “any other matters that may implicate the public interest.”⁵³

Finally, in reviewing the terms of a proposed settlement like the Joint Proposal, the Commission has previously stated that it will consider, as is relevant here,

⁵⁰ See PSL §§2(12), (13); 5; 66(1).

⁵¹ PSL §2(13).

⁵² Case 20-E-0371, Exelon Generation Co. et al. – Transfer Proceeding, Order Approving Transfer and Making Other Findings (issued April 15, 2021), p. 4; Case 17-E-0452, Exelon Generation Co., LLC et al. – Transfer Proceeding, Order Approving Transfer (issued November 17, 2017), p. 5.

⁵³ Case 20-E-0371, supra, Order Approving Transfer and Making Other Findings, p. 4.

whether the settlement (1) strikes a reasonable balance between protection of ratepayers and fairness to investors; (2) is consistent with New York State's environmental, social, and economic policies; and (3) achieves results that are within the range of reasonable results that would likely have arisen from a Commission decision in a litigated proceeding.⁵⁴ Additionally, the Commission will give weight to the fact that a proposed settlement reflects an agreement between ordinarily adverse parties.⁵⁵

VIII. DISCUSSION

A. Coastal Zone Management Act

The Coastal Zone Management Act (CZMA) encourages states to protect their coastal resources by developing Coastal Management Programs (or CMPs).⁵⁶ In New York, the New York State Department of State (NYSDOS) promulgated regulations to implement the CZMA⁵⁷ and developed a Coastal Management Program. State actions may be subject to review for consistency with the CMP, but that review – known as “state consistency review” – is conducted not by NYSDOS but by the state agency proposing to take the action, in accordance with regulations promulgated by NYSDOS.⁵⁸ In this matter, DPS Staff have reviewed and completed a screening analysis, known as a coastal assessment form (or CAF). Staff concluded that the proposed state action at issue here – the PSL §70 review of the proposed transfer of ownership interests in the Indian Point site, facilities, fuel, and trusts

⁵⁴ Case 92-M-0138, Proceeding Re Procedures for Settlement and Stipulation Agreements, Opinion, Order, and Resolution Adopting Settlement Procedures and Guidelines (issued March 24, 1992).

⁵⁵ Id.

⁵⁶ See 16 U.S.C. §§1451-1452.

⁵⁷ See generally 19 NYCRR Part 600.

⁵⁸ See N.Y. Exec. Law §919; 19 NYCRR §§600.2(1); 600.3, 600.4.

— would not impact the Coastal Management Program. Upon review of the Petition, the Joint Proposal, and the Coastal Assessment Form, the Commission concludes that the proposed action does not significantly affect, and will not have a significant adverse impact on, the coastal zone. The completed CAF will be retained in the Department's files.

B. State Environmental Quality Review Act

Pursuant to SEQRA, Article 8 of the Environmental Conservation Law, and its implementing regulations (6 NYCRR Part 617 and 16 NYCRR Part 7), potential agency actions are classified as "Type I," "Type II," or "Unlisted" actions. Type I actions are those that exceed certain thresholds. If an action is included on a Type I list, a rebuttable presumption exists that the action will likely cause a significant environmental impact. Actions constituting Type II actions are also identified in separate lists and require no further review under SEQRA. Unlisted actions are those that are not included in either the Type I or Type II lists.

The Commission's approval, pursuant to PSL §70, to transfer ownership interests in the Indian Point site, facilities, and trusts from Entergy subsidiaries to Holtec subsidiaries is an unlisted action within the meaning of 6 NYCRR §617.2(a)(1) because it does not meet the regulatory criteria for Type I or Type II actions set forth in 6 NYCRR §§617.2, 617.4, and 617.5, and 16 NYCRR §7.2.⁵⁹ Therefore, an environmental review is required to determine the significance of the proposed action.

⁵⁹ The Commission's finding that the proposed corporate transfer is subject to PSC regulatory authority constitutes a declaratory ruling involving an interpretation of existing statutes, rules, or regulations, and is not an "action" within meaning of SEQRA requiring review.

In making a determination of significance, a lead agency causes an Environmental Assessment Form (EAF) to be prepared, considers the proposed action and reviews the EAF and any other supporting information to identify the relevant areas of environmental concern, thoroughly analyzes the identified relevant areas of environmental concern to determine whether the action may have a significant adverse impact on the environment, and sets forth its determination of significance in a written form containing a reasoned elaboration and providing reference to any supporting documentation.⁶⁰ If the lead agency determines that the proposed action will not have an adverse effect on the environment or that any adverse effect identified would not be significant, SEQRA review ends upon the adoption of a "Notice of Negative Declaration."

PSL §70 vests the related decision-making authority exclusively with PSC. Other than the Commission's review and approval, PSL §70 does not envision or depend on additional state or local permits. Thus, a coordinated review under SEQRA is unnecessary. Accordingly, the Commission assumes the role of Lead Agency under SEQRA and conducts an environmental review.

Exhibit 4 of the Petition includes Part 1 of the EAF, which describes the proposed action as the transfer of ownership interests in the Indian Point site and facilities and discloses the likely environmental impacts of the proposed action. DPS Staff have completed Parts 2 and 3 of the EAF for the Commission's consideration. Upon review of the Petition and the EAF, and consideration of the criteria for determining significance listed in 6 NYCRR §617.7(c), the Commission concludes that the proposed action will not have a significant adverse impact on the environment. The transfer of ownership

⁶⁰ 6 NYCRR §617.7(b).

interests in the Indian Point site, facilities, and trusts will not, in and of itself, result in any environmental impacts.

The AEC and NRC previously issued permits and licenses for the construction and operation of the Indian Point facilities. Those actions, along with federal regulations, also anticipated, envisioned, and were premised on the decommissioning of the Indian Point site.⁶¹ Petitioners represent and confirm that, following the proposed Transfer, the Indian Point site and facilities will continue to be managed or operated in conformance with all applicable Commission orders, as well as environmental permits, laws, and standards.⁶²

Because no significant adverse environmental impacts are found for this action, no public notice requesting comments is required or will be issued. A Notice of Negative Declaration concerning this Unlisted Action will be issued in conjunction with this Order (Appendix B). The completed EAF will be retained in the Department's files.

⁶¹ NRC previously published its analysis of environmental impacts associated with decommissioning. See U.S. Nuclear Regul. Comm'n NUREG-1437, Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Supplement 38, Regarding Indian Point Nuclear Generating Unit Nos. 2 and 3, Volume 1, Chapter 7 (2010) (NRC ADAMS Accession No. ML103350405); see also U.S. Nuclear Regul. Comm'n, NUREG-0586, Supplement 1, Volume 1, Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities: Supplement 1, Regarding the Decommissioning of Nuclear Power Reactors (2002) (NRC ADAMS Accession No. ML023500395). Licensees shall complete decommissioning in a safe and timely manner. 53 Fed. Reg. 24018-01, 24038.

⁶² Petition, p. 57 ("Holtec will be required to comply with the NRC's decommissioning requirements and applicable State environmental Requirements.").

C. The proposed Transfer requires Commission approval under PSL §70.

Under PSL §70, no electric corporation may "transfer or lease its franchise, works or system or any part of such franchise, works or system" without first receiving written Commission consent. The proposed transfer of ownership interests in the Indian Point site, facilities, fuel, and trusts falls within the Commission's jurisdiction.

First, Indian Point constitutes an "electric plant" within the meaning of the Public Service Law and therefore the Site and its owners are subject to the Commission's regulatory authority. "Electric plants" include "retired nuclear power reactors and their associated systems, structures, fuel and waste storage facilities, real estate, fixtures and personal property."⁶³ As the present and future owners of the Indian Point electric plants, the Entergy and Holtec affiliates are electric corporations and subject to Commission regulation.⁶⁴

Second, to effectuate the implementation and enforcement of previous Commission orders, the Commission has a continuing regulatory oversight interest in the integrity of the funds in the decommissioning trusts. The Commission authorized Con Edison to collect money from its ratepayers to establish the decommissioning trusts for IP Unit 1 and IP Unit 2.⁶⁵ The Commission also required Con Edison to deposit additional funds

⁶³ PSL §2(12).

⁶⁴ PSL §2(13).

⁶⁵ See, e.g., Case 96-E-0897, Consolidated Edison Company of New York, Inc. - Rates, Order Adopting Terms of Settlement Subject to Conditions and Understandings (issued September 23, 1997), p. 19; Case 94-E-0334, Consolidated Edison Company of New York, Inc. - Rates, Opinion No. 95-3 (issued April 6, 1995), p. 16; Case 91-E-0462, Consolidated Edison Company of New York, Inc. - Rates, Opinion No. 92-8 (issued April 14, 1992), p. 41.

into the trusts when it approved the sale and transfer of those facilities from Con Edison to Entergy, and it imposed a cost condition on Entergy if it did not complete the immediate decommissioning of the Site following the cessation of power reactor operations.⁶⁶ This latter condition, which required Entergy to return 50% of any residual funds remaining in the decommissioning trusts to ratepayers if Entergy resorted to a delayed decommissioning schedule (i.e., SAFSTOR) or encased the facilities in a concrete sarcophagus (i.e., ENTOMB), has remained in force.⁶⁷

Moreover, in its order approving lightened regulation for Entergy's affiliates – including ENIP2 and ENIP3 – the Commission confirmed its continued regulatory interest over funding for decommissioning and site restoration.⁶⁸ The interest now extends, following the 2017 transfer of the IP Unit 3 decommissioning trust from NYPA to ENIP3, to all three Indian Point trust funds. The Commission retains authority to enforce these previous orders.⁶⁹

Relatedly, the Commission takes this opportunity to underscore the importance of ensuring proper funding for decommissioning, site restoration, and emergency response capabilities after a reactor ceases operation. Spent fuel pools, which facilitate the generation of electricity, continue operating even after the associated reactor has been retired. Owners of New York nuclear plants are required to ensure that

⁶⁶ Case 01-E-0040, supra, Order Authorizing Asset Transfer, (issued August 31, 2001) at p. 7 n.12, p. 9.

⁶⁷ Id. at p. 9.

⁶⁸ Cases 01-E-0113 and 00-E-1225, supra, Order Providing for Lightened Regulation of Nuclear Generating Facilities (issued August 31, 2001), p. 11.

⁶⁹ See, e.g., PSL §§4(1); 25-26; 66.

adequate additional funding exists to satisfy various site restoration criteria and emergency response programs under the auspices of New York State agencies. Thorough and prompt decommissioning and site restoration help promote public health and safety and ensure the further use of a site for other purposes in the future.⁷⁰

Accordingly, the Commission determines and declares that it has jurisdiction over the proposed transaction.⁷¹

D. The proposed Transfer is in the public interest.

a. Holtec's Financial Wherewithal

Before it may approve the Transfer, the Commission must first find that the Holtec subsidiaries possess the financial strength to responsibly assume ownership of the Indian Point site.⁷² Many commenters, however, have expressed concern during this proceeding that the corporate structure and financial assurances proposed in the Petition fail to adequately protect the public interest.

Specifically, some have noted that the subsidiary entities that would acquire Indian Point are special purpose entities that lack any assets other than the decommissioning

⁷⁰ Case 20-E-0371, supra, Order Approving Transfer and Making Other Findings, at p. 13; see also Case 18-T-0347, Binghamton BOP LLC et al. - Declaratory Ruling Proceeding, Order Approving Transfers and Making Other Findings (issued Nov. 20, 2019), p. 13 n.22 (regulatory oversight may extend over "the use of property, fixtures, or systems that facilitated, or continues to facilitate, generation activity").

⁷¹ The Commission further notes that, in the Joint Proposal, the parties "agree that the [t]ransactions are subject to Commission authorization under [PSL §]70" (Joint Proposal, p. 10) and recommend that the Commission authorize the transfers pursuant to PSL §70 (Joint Proposal, p. 43).

⁷² Case 20-E-0371, supra, Order Approving Transfer and Making Other Findings, p. 4.

trusts and have no independent revenue streams that could bolster the trust funds should shortfalls occur. Under this scenario, commenters have correctly observed that parent company Holtec International's assets⁷³ would likely be shielded from decommissioning liabilities if the subsidiaries ever declared bankruptcy.⁷⁴

Accordingly, it is of the utmost importance that the trusts contain enough money to fund the necessary decommissioning and site restoration work. To that end, the Commission notes that, as of December 31, 2020, the decommissioning trust funds had a collective balance of more than \$2.4 billion. That sum exceeds Holtec's total projected decommissioning costs, even before accounting for the projected DOE reimbursements discussed in section IV(F), supra. And under the Joint Proposal, half of these reimbursements will be deposited back into the trust funds until partial site release – with the possibility of additional reimbursements being available.

Most importantly, the Joint Proposal includes multiple financial assurance provisions that protect the public's interest in ensuring that Holtec and its affiliates do not exhaust the trust funds before they complete the necessary decommissioning and site restoration work. The various minimum balance provisions will ensure that the funds remain well capitalized until certain significant project milestones are

⁷³ DPS Staff have reviewed several years' of Holtec International's audited financial statements, and the information contained therein indicates that the company is financially sound.

⁷⁴ See, e.g., Local Governments' comments, p. 35; OAG's comments, p. 68; Riverkeeper's comments, p. 10; Holly Malekian's comments (DMM Public Comment No. 1324); Mitchell Backarach's comments (DMM Public Comment No. 919).

achieved. These balances are, moreover, backed by a dedicated revenue stream in the form of future DOE recoveries.⁷⁵ Finally, as some commenters have noted,⁷⁶ there is at this time reason to believe that DOE will not begin accepting spent nuclear fuel by 2030. Accordingly, the Joint Proposal's inclusion of a post-partial site release minimum balance is a particularly important means of protecting the public interest, as it will ensure that sufficient funds remain available for spent fuel management, security, and the eventual decommissioning of the ISFSI until DOE fulfils its statutory and contractual obligations and accept the spent fuel.

Multiple commenters also expressed concern about the likelihood that Holtec would encounter non-radiological contamination on the Site that was not properly accounted for in the PSDAR/DCE.⁷⁷ The Commission recognizes the validity of these concerns and further finds that the ACO thoroughly addresses them by establishing a comprehensive site investigation process. This process will include meaningful public participation, and the DEC will have final say over the remedy that Holtec must implement.⁷⁸

The Commission also notes with approval that the ACO requires Holtec to secure additional, site restoration-specific third-party financial assurance of \$110,597,000.⁷⁹ This is particularly critical now that the NRC has approved Holtec's trust fund exemption request, as any funds used on site

⁷⁵ Joint Proposal, p. 16-17.

⁷⁶ See, e.g., OAG's comments, p. 48-50.

⁷⁷ See, e.g., DEC's comments, p. 4-10; OAG's comments, p. 32-45; Riverkeeper's comments, p. 13-14; Comments of Colin Smith, Westchester County Legislator, District 1 (DMM Public Comment No. 1461).

⁷⁸ Joint Proposal, Attachment A, p. 11-13.

⁷⁹ Joint Proposal, Attachment A, p. 6-7.

restoration expenses would now be effectively deducted from the sums available for other decommissioning work.

Therefore, in light of the trust funds' current balances, as secured by the Joint Proposal's various financial assurance provisions, the Commission finds that the Holtec entities possess the financial wherewithal necessary to responsibly assume ownership of the Site.

b. Holtec's Technical Qualifications

The Commission must further find that Holtec possesses the technical capabilities necessary to responsibly assume ownership of the Indian Point site and safely complete the required work before approving the Transfer.⁸⁰ Multiple commenters, however, have expressed concern that Holtec and its affiliates lack these qualifications.⁸¹ Specifically, parties and others noted that Holtec has never fully decommissioned a nuclear plant and that its so-called "fleet model" for simultaneously decommissioning multiple plants is unproven.⁸² In the words of one commenter, Holtec's strategy depends on it "learning on the job."⁸³

Nevertheless, based on DPS Staff review and the information obtained thus far, Holtec appears competent and

⁸⁰ Case 20-E-0371, supra, Order Approving Transfer and Making Other Findings, p. 4.

⁸¹ See, e.g., Hudson River Sloop Clearwater's comments (DMM Public Comment No. 1724); Robert May's comments (DMM Public Comment No. 1222); Alice Sturm Sutter's comments (DMM Public Comment No. 1517).

⁸² See, e.g., Local Governments' comments, p. 38-39; Riverkeeper's comments, p. 10-11; OAG's comments, at p. 55-57; Brian Orsi's comments (DMM Public Comment No. 1478); Linda Abbott's comments (DMM Public Comment No. 1165); Alice McMechen's comments (DMM Public Comment No. 371).

⁸³ Local Governments' comments, p. 58.

capable of managing spent nuclear fuel and decommissioning the Site. The Commission notes that, as of 2020, only 10 commercial nuclear reactors in the United States have been fully decommissioned.⁸⁴ The number of companies with extensive nuclear decommissioning experience on the scale required at Indian Point is therefore small. Holtec, however, has experience in the field of spent nuclear fuel management and has previously worked at Indian Point under a contract with Entergy. The established working relationship between Holtec and Entergy should make for a smooth transition.

The NRC has approved Holtec to decommission two other nuclear facilities: Oyster Creek Nuclear Generating Station in Lacey Township, New Jersey (Oyster Creek) and Pilgrim Nuclear Power Station in Plymouth, Massachusetts (Pilgrim). DPS Staff review of these projects has determined that while both projects remain in the early stages of decommissioning, they appear thus far to be proceeding on schedule and in line with Holtec's projected budgets.⁸⁵ With these decommissioning projects commencing years ahead of Indian Point, New York stands to benefit from the experience gained and lessons learned at Oyster Creek and Pilgrim.

Accordingly, the Commission finds that Holtec possesses the necessary technical capabilities and experience with spent fuel management to responsibly decommission the Indian Point site.

⁸⁴ U.S. Nuclear Regul. Comm'n, NUREG-1350, Volume 23, 2020-2021 Information Digest, Appendix C at 116-119 (Oct. 2020) (NRC ADAMS Accession No. ML20282A666).

⁸⁵ DPS Staff Statement in Support of Joint Proposal, Attachment A (NAMCo's Response to Information Request DPS-35).

c. Other Public Interest Factors

i. Decommissioning Timeline

The Commission must also consider any other factors that may affect whether the proposed Transfer is in the public interest. First, the Commission finds that a prompt decommissioning and site restoration process is unquestionably in the public interest. To that end, Holtec intends to complete this work decades faster than Entergy would under the NRC's deferred SAFSTOR decommissioning approach. Holtec has committed, absent a force majeure event, to transferring all spent fuel to the ISFSI no later than December 31, 2024. After that, Holtec projects that all work except ISFSI decommissioning will be completed by 2036, and possibly as early as 2033. This window is far shorter than the permissible window for Entergy's preferred SAFSTOR decommissioning approach, which could leave the site unrestored and sitting idle for up to 60 years, i.e., until 2081, if not later.

Entergy and Holtec have affirmatively represented to the Commission that Holtec can and will restore the Indian Point site more expeditiously than Entergy can,⁸⁶ and the Commission has taken these representations into account. The Commission therefore finds that Holtec's projected decommissioning timeline would further the public interest.

ii. Holtec's and SNC-Lavelin's Internal Controls and Compliance History

Another factor that has been raised by commenters concerns Holtec's previous regulatory compliance issues.⁸⁷

⁸⁶ See, e.g., HDI DECON Site Specific DCE, at 97-99, Figure 5-1.

⁸⁷ See, e.g., Rosalyn Cherry's comments (DMM Public Comment No. 1511); Alyssa Paskie's comments (DMM Public Comment No. 1491); John Casti's comment (DMM Public Comment No. 742).

Specifically, the Tennessee Valley Authority (TVA), a federal agency whose portfolio includes power reactors and spent fuel storage installations, temporarily debarred Holtec in 2010 after its inspector general released a report describing how Holtec had bribed TVA employees to obtain certain TVA contracts. The report also described an incident of excessive billing on a government contract. Although TVA has thus far refused to make an unredacted version of this report public, the redacted version suggests involvement by the company's owner.⁸⁸ Holtec subsequently paid a financial penalty of \$2 million and hired a corporate governance officer.⁸⁹

Also troubling is the recent compliance history of SNC-Lavalin Group, which is a minority owner of Holtec's chosen general contractor, CDI. As some commenters have noted,⁹⁰ SNC-Lavalin Group has a checkered past with respect to regulatory compliance. In 2013, the World Bank debarred an SNC-Lavalin Group subsidiary and more than 100 of its affiliates for 10 years following a World Bank investigation into allegations of bribery and other misconduct in international transactions in Bangladesh and Cambodia. Additionally, another SNC-Lavalin entity, SNC-Lavalin Construction, Inc., pled guilty in December 2019 in a Canadian criminal court to one count of fraud committed against various Libyan authorities.⁹¹ At sentencing, the Court of Quebec ordered the company to pay an

⁸⁸ OAG's comments, p. 68-69; NYSERDA's comments, p. 15; Riverkeeper's comments, p. 89-90.

⁸⁹ See Tenn. Valley Auth., Off. of the Inspector Gen., Semi-Annual Report (April 1, 2015-September 30, 2015), p. 18.

⁹⁰ See, e.g., Riverkeeper's comments, p. 9; Margaret Comaskey's comments (DMM Public Comment No. 1616); Patricia Duran's comment (DMM Public Comment No. 576).

⁹¹ R. v. SNC-Lavalin Construction, Inc., No. 500-73-004261-158 (Court of Quebec, Criminal and Penal Div. December 18, 2019).

approximately \$230,000,000 (U.S.) fine, strengthen its compliance programs, and appoint an independent monitor to review and report on its progress.⁹²

In their reply comments, Petitioners contend that these allegations are meritless and immaterial to this proceeding. They note that the TVA has long since resumed doing business with Holtec and its affiliates and observe that none of these concerns precluded the NRC from approving their federal license transfer application.⁹³ The Commission further notes that the World Bank appears to have recently reinstated the SNC-Lavalin entities and vacated the final 2 years of the debarment, thereby reducing their debarment period to 8 years.⁹⁴

The Commission disagrees with Petitioners' contention that these circumstances are immaterial to its review of the proposed Transfer. The field of nuclear power implicates various regulatory programs. As the number of parties to the Joint Proposal demonstrates, multiple federal, state, and local governmental entities exercise different regulatory authority powers to promote the public interest and protect health and safety. Government entities need to be able to rely on the accuracy and candor of regulated entities. Those concerns are magnified when, as here, the facility in question lies just a few miles from one of the world's major population centers. The Commission therefore must – and will – insist that any entity seeking to own and operate a facility like Indian Point conduct its affairs with the utmost integrity and adhere strictly to its

⁹² Id.

⁹³ Petitioners' reply comments, p. 82.

⁹⁴ Robb M. Stewart, SNC-Lavalin Says World Bank Lifts Sanctions Imposed in 2013, Wall Street Journal (April 20, 2021, 2:10 PM), <https://www.wsj.com/articles/snc-lavalin-says-world-bank-lifts-sanctions-imposed-in-2013-11618942254>.

various regulatory obligations. The incidents to which the commenters have referred, at best, evince a previous lack of rigorous internal controls designed to ensure such compliance.

Accordingly, rigorous public oversight of Holtec's activities is a prerequisite to the Commission's approval of the Transfer. The Joint Proposal ensures such oversight. Specifically, Department Staff may attend and participate in monthly project meetings, at which HDI will offer regular insight into its activities and budget. Department Staff will also receive twice-yearly reports on the status of the decommissioning trust funds, which will be accompanied by opportunities for Staff to question top Holtec executives about their stewardship of the trusts. These reporting requirements will provide the Department, and the Commission, with regular insight into the status of Indian Point's decommissioning and restoration. Also, DPS Staff will continue to have physical access to the Site.⁹⁵ Moreover, the Commission has various additional regulatory and oversight tools, such as its PSL §66 powers, to obtain needed information.

Finally, the Commission acknowledges the recommendation of some commentors that it condition any approval of the Transfer on the appointment of an independent monitor or auditor.⁹⁶ The Commission finds such a measure unnecessary at this time, given the multiple layers of oversight already in place. In addition to the previously discussed Joint Proposal provisions, the Department will soon constitute a new Decommissioning Oversight Board that will independently monitor the project, with input from state officials, scientific and technical experts, local officials, labor union representatives,

⁹⁵ Joint Proposal, p. 13-14.

⁹⁶ See, e.g., NYSERDA's comments, p. 16; Kurt Rieke's comments (DMM Public Comment No. 642).

environmental groups, and other stakeholders. Notably, the Joint Proposal includes commitments from Holtec not to oppose the Board's creation and to cooperate with any reasonable requests for meetings and information.⁹⁷

iii. Pipeline Safety

Many commentors expressed concern about various dangers posed by the natural gas pipelines on the Site, which were previously approved by the federal government.⁹⁸ The Commission agrees that the presence of these pipelines on and near the Site implicates a concern that deserves close scrutiny. It is therefore entirely appropriate and prudent that the Joint Proposal devotes a section to pipeline safety. Specifically, it requires Holtec to notify, and in some cases consult with, the Department and the pipeline owners before undertaking certain higher-risk decommissioning activities. Holtec will also display inside its control room emergency contact numbers for the gas pipeline operations control room so that the pipeline owners may be contacted promptly in the event of any gas emergency. The Commission finds that these measures sufficiently protect the public interest.

iv. Continuation of Operations at Indian Point

The Commission has received comments arguing that Indian Point should not be retired. That issue is far beyond the scope of this proceeding. An agreement was reached more than four years ago requiring the plant's retirement. Consistent with that agreement, the Indian Point Unit 2 reactor

⁹⁷ Joint Proposal, p. 31-32.

⁹⁸ See, e.g., Courtney Williams' comments (DMM Public Comment No. 1372); Deborah Porder's comments (DMM Public Comment No. 1156); Rachel Marco-Havens' comments (DMM Public Comment No. 1123).

ceased operation in 2020, and the Indian Point Unit 3 reactor ceased operations on April 30, 2021. Both units confirmed the permanent removal of fuel from their reactor vessels and the permanent cessation of reactor operations.⁹⁹ The only question before the Commission today is whether to approve the transfer of ownership of the Indian Point Site, facilities, fuel, and trusts to Holtec and its affiliates.

IX. CONCLUSION

Declaratory Ruling:

Consistent with the discussion in the body of this order, the Commission determines and declares that it has jurisdiction over the proposed transaction and will exercise such jurisdiction in accordance with PSL §70.

Furthermore, for the reasons discussed above in the order, and based on the conditions set out below, the Commission approves the parties' Joint Proposal and the transfer of the Indian Point site, facilities, fuel, and trusts from the Entergy affiliates to the designated Holtec affiliates.

The Commission Orders:

1. The terms and conditions of the parties' Joint Proposal, dated April 14, 2021 (Appendix A hereto), are hereby adopted and incorporated as part of this order, and all parties shall abide by its terms, commitments, and conditions.

2. ENIP2, ENIP3, NAMCO, HIP2, HIP3, and HDI shall comply with the commitments and conditions contained in the Joint Proposal.

3. Until further notice, any future filings to be made with the Commission or Department pursuant to the Joint Proposal shall be made in this proceeding.

⁹⁹ See ENIP3 NL-21-033 (May 11, 2021) (DMM Item No. 53); ENIP2 NL-20-042 (May 13, 2020) (DMM Item No. 20).

4. In the Secretary's sole discretion, the deadlines set forth in this Order and the Joint Proposal may be extended. Any request for an extension must be in writing, must include a justification for the extension, and must be filed at least ten days prior to the affected deadline, absent extraordinary circumstances.

5. This proceeding is continued.

By the Commission,

(SIGNED)

MICHELLE L. PHILLIPS
Secretary

APPENDIX A

Parties' April 2021 Joint Proposal

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

CASE 19-E-0730 - Joint Petition of Entergy Nuclear Indian Point 2, LLC; Entergy Nuclear Indian Point 3, LLC; and Nuclear Asset Management Company, LLC for a Declaratory Ruling Disclaiming Jurisdiction Over or Abstaining from Review of the Proposed Transfers or, in the Alternative, an Order Approving the Proposed Transfers Pursuant to Section 70 of the New York Public Service Law.

JOINT PROPOSAL

By and Among:

**Entergy Nuclear Indian Point 2, LLC
Entergy Nuclear Indian Point 3, LLC
Nuclear Asset Management Company, LLC
Holtec Decommissioning International, LLC
Staff of the New York State Department of Public Service
New York State Office of the Attorney General
New York State Department of Environmental Conservation
New York State Energy Research and Development Authority
New York State Division of Homeland Security and Emergency Services
Westchester County
Hendrick Hudson School District
Town of Cortlandt
Village of Buchanan
Riverkeeper, Inc.
Public Utility Law Project of New York, Inc.**

Dated: April 14, 2021

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ATTACHMENT A - Department of Environmental Conservation Order on Consent and Administrative Settlement

ATTACHMENT B – Memorandum of Understanding

ATTACHMENT C – List of Information Request Responses

PRELIMINARY STATEMENT

This Joint Proposal (“Joint Proposal”) is made as of the 14th day of April, 2021 by and among Nuclear Asset Management Company, LLC (“NAMCo”); Holtec Decommissioning International, LLC (individually, “HDI” and together with NAMCo, “Holtec”); Entergy Nuclear Indian Point 2, LLC (“ENIP2”); Entergy Nuclear Indian Point 3, LLC (“ENIP3,” together with ENIP2, “Entergy,” and collectively with NAMCo, “Joint Petitioners”); New York State Department of Public Service Staff (“NYSDPS” or “DPS Staff”); the New York State Office of the Attorney General (“OAG”); the New York State Department of Environmental Conservation (“NYSDEC”); the New York State Energy Research and Development Authority (“NYSERDA”); the New York State Division of Homeland Security and Emergency Services (“NYSDHSES”); Westchester County; Hendrick Hudson School District (“HHSD”); Town of Cortlandt (“Cortlandt”); Village of Buchanan (“Buchanan,” and collectively with HHSD and Cortlandt, the “Local Entities”); Riverkeeper, Inc. (“Riverkeeper”); and the Public Utility Law Project of New York (“PULP”), all of which are parties to Case 19-E-0730 before the New York State Public Service Commission (“Commission” or “PSC”), a proceeding in which Joint Petitioners are seeking Commission authorization pursuant to New York Public Service Law (“NYPSL”) Section 70 for proposed corporate transfers. The signatories to this Joint Proposal are collectively referred to herein as “the Signatory Entities” or “Signatory Parties.” Additionally, this Joint Proposal incorporates by reference the NYSDEC Order on Consent and Administrative Settlement re: Indian Point Energy Center (hereinafter, “DEC Order”), attached hereto as Attachment A and the Memorandum of Understanding by and among Holtec, Westchester County and the Local Entities (“Local Government Entities MOU”), attached hereto as Attachment B.

Case 19-E-0730 addresses the indirect upstream transfer of the membership interests in the entities that own the permanently retired nuclear units and related assets near Buchanan, New York

known as Indian Point Unit 1 (“IP Unit 1”) and Indian Point Unit 2 (“IP Unit 2”), and that own Indian Point Unit 3 (“IP Unit 3”), scheduled to be permanently retired in April 2021, together with the Indian Point Independent Spent Fuel Storage Installation (“ISFSI”), and other facilities, structures and equipment (collectively, “Indian Point” or the “Site”). The parties’ negotiations have culminated in this Joint Proposal, which is being filed with the Commission in Case 19-E-0730 for its consideration to resolve all matters therein. Taking the Joint Proposal together with the Joint Petition and the record in Case 19-E-0730, all Signatory Entities hereby recommend that the subject transfers be authorized under NYPSS Section 70 because they are in the public interest. Specifically, in conjunction with the parameters and commitments defined by the Joint Petition and taking into account information and representations provided in the Post Shutdown Decommissioning Activities Report (“PSDAR”) and Site-Specific Decommissioning Cost Estimate (“DCE”) submitted by NAMCo affiliate HDI, the Joint Proposal provides additional parameters, conditions and commitments to build on the Joint Petition that are designed to, *inter alia*, preserve financial resources for comprehensive, timely, and safe Indian Point decommissioning and site restoration, and maintenance of the ISFSI that remains at the site after partial site release from the Nuclear Regulatory Commission (“NRC”) for unrestricted use pursuant to 10 C.F.R. § 50.83 (hereinafter, “Partial Site Release”), consistent with the framework and timelines projected in the HDI PSDAR and DCE and the DEC Order.

DEFINITIONS

(a) “Day” shall mean a calendar day. A “business day” shall mean a day other than a Saturday, Sunday, or a New York or Federal holiday. In computing any period of time under this Joint Proposal, where the last day would fall on a Saturday, Sunday or New York or Federal holiday, the period shall run until 5:00 p.m. EST of the next business day.

(b) “Decommissioning Trust Fund” or “Trust Fund” shall mean the IP Unit 1 Nuclear Decommissioning Trust, IP Unit 2 Nuclear Decommissioning Trust, IP Unit 3 Nuclear Decommissioning Trust and IP Unit 1 and IP Unit 2 Provisional Decommissioning Trust, defined collectively herein, maintained by the respective entities owning Indian Point subject to NRC regulation and oversight and having an aggregate amount of approximately \$2.4 billion as of December 31, 2021.

(c) “DOE” shall mean the U.S. Department of Energy.

(d) “Fiscal Year” shall mean a New York fiscal year, which begins on April 1 of each year and ends on March 31 of the following year.

(e) “Force Majeure Event” shall mean any event arising from causes beyond the reasonable control of Holtec, of any entity controlled by Holtec, and of Holtec’s contractors, that delays or prevents the performance of any obligation under this Joint Proposal despite Holtec’s efforts to fulfill the obligation, such as where the failure is a result of acts of God, work stoppages due to labor disputes or strikes, fires, explosions, epidemics, pandemics, riots, war, rebellion, sabotage or any other condition which was not caused by the negligence or willful misconduct of Holtec and which could not have been avoided by Holtec through the exercise of due care.

(f) “FOIL” means the Freedom of Information Law as set forth in Article 6 of the Public Officers Law, Sections 84 through 90.

(g) “GTCC” means Greater Than Class-C waste.

(h) “License Termination” shall mean the date that the NRC terminates the general or specific license (whichever is applicable) for Indian Point, including the ISFSI, all radiological waste stored on the Indian Point ISFSI has been removed and transported out of New York, and the Site, including the ISFSI, has been decommissioned, remediated and restored for unrestricted

use in accordance with all NRC requirements, New York State law and regulations, and the terms of this Joint Proposal, the DEC Order, and the PSC Order.

(i) “Local Government Representatives” shall mean Westchester County, HHSD, Cortlandt and Buchanan.

(j) “NRC Decommissioning Funding Plan” shall mean the decommissioning funding plan pursuant to 10 C.F.R. Section 72.30(c).

(j) “NRC Decommissioning Funding Status Reports” shall mean the annual decommissioning and spent fuel management funding assurance reports for Indian Point filed with the NRC on or before March 31 each year pursuant to 10 C.F.R. § 50.75(f)(1) and 10 C.F.R. § 50.82(a)(8)(b).

(k) “PSC Order” shall mean the order issued by the Commission authorizing the Transactions.

(l) “Transaction Closing Date” shall mean the date that the Transaction to transfer Indian Point to NAMCo closes.

DESCRIPTION OF TRANSACTIONS

As described in detail in the joint petition described *infra*, Joint Petitioners have proposed a two-part transaction (hereinafter, “Transactions” or “Transfers”). First, for internal business purposes designed to facilitate the second Transaction, discussed *infra*, Entergy plans to execute a series of internal reorganizational steps involving several indirect, wholly owned subsidiaries of Entergy Corporation.

Second, shortly thereafter, NAMCo will acquire 100% of the upstream membership interests in the companies owning Indian Point in a transfer pursuant to the terms of the Membership Interest Purchase and Sale Agreement (“MIPA”). Upon authorization of the Commission and following consummation of this second Transaction, Holtec Indian Point 2, LLC

(“Holtec IP2”) will become the upstream entity that owns IP Unit 1 and IP Unit 2, and Holtec Indian Point 3, LLC (“Holtec IP3”) will be the upstream entity that owns IP Unit 3 and these entities will have all rights and assume all obligations concerning Indian Point.

PROCEDURAL SUMMARY

PSC Case 19-E-0730

On November 22, 2019, Joint Petitioners submitted a petition to the Commission concerning a series of transfers that would ultimately result in the indirect upstream transfer of the membership interests in the entities that own Indian Point from subsidiaries of Entergy to NAMCo (the “Joint Petition”). Specifically, the Joint Petition seeks a declaratory ruling from the Commission disclaiming jurisdiction or abstaining from review under NYPSC Section 70, or alternatively, an order under NYPSC Section 70 authorizing the Transfers to effectuate a prompt decommissioning plan (“DECON Plan”). Pursuant to its DECON Plan, HDI currently plans to complete the vast majority of the decommissioning at Indian Point (except for the ISFSI) and secure Partial Site Release by the end of 2036, and potentially as early as 2033. Joint Petitioners identified a closing date for the Transactions of May 2021 and requested Commission action by November, 2020. The Joint Petitioners submitted HDI’s PSDAR and DCE in Case 19-E-0730 following their submission with the NRC on December 20, 2019.

In its initial notices issued in Case 19-E-0730, the Commission sought comment on a series of questions concerning the Joint Petition and Transfers, and set a time period to submit initial and reply comments; the public comment period was subsequently extended to afford interested parties additional time to complete their submissions.¹ Pursuant to the Notices, OAG, NYSDEC,

¹ See NYPSC Case 19-E-0730, *supra*, “Notice Seeking Comments” (dated January 17, 2020) (hereinafter, “January Notice”); NYPSC Case 19-E-0730, *supra*, “Notice Extending Comment Dates” (dated March 25, 2020) (hereinafter, taken collectively with the January Notice, the “Notices”).

NYSERDA, Riverkeeper, and the Local Entities filed comments addressing the Joint Petition and NYSDPS questions set forth in the January Notice by May 7, 2020. Comments concerning these matters were also submitted in the public comment file for Case 19-E-0730 by citizens, a number of organizations and other entities, including the unions representing Indian Point employees, elected officials, certain business organizations, and the trade association representing wholesale generators in New York. On May 28, 2020, Joint Petitioners filed reply comments in accordance with the Notices.

Joint Petitioners have agreed with DPS Staff to characterize information requests issued by DPS Staff as informal discovery and have provided responses thereto to DPS Staff, OAG, and NYSERDA for their use only and solely in connection with Case 19-E-0730 to facilitate their assessment of the Joint Petition. Such responses to informal discovery were provided to these parties pursuant to, and in accordance with, the revised protective order issued by the Commission's Records Access Officer on March 10, 2020 (the "Revised Protective Order").

In addition, on October 26, 2020, Joint Petitioners filed and served a letter in Case 19-E-0730 specifying that, subject to expressly reserving all of their rights and fully preserving each of their claims and positions, Joint Petitioners would voluntarily consent to undertake discovery utilizing the same informal process with all parties to Case 19-E-0730, notwithstanding its current procedural status subject to, and in accordance with, the terms of the Revised Protective Order. Since that time, DPS Staff has issued additional information requests under this informal discovery process to which responses were provided to DPS Staff, the OAG, and NYSERDA pursuant to, and in accordance with, the Revised Protective Order. Joint Petitioners have not received discovery requests from any other party to Case 19-E-0730.

On February 23, 2021, two public statement hearings were held using a virtual structure with participation by over 150 individuals, elected officials, and organizations. Additional written comments were submitted in the public file in Case 19-E-0730 thereafter. On March 19, 2021, DPS Staff filed and served a notice advising all parties to Case 19-E-0730 of impending settlement negotiations. Settlement conferences began on March 24, 2021 and continued through April 12, 2021.² Parties participating in settlement negotiations executed a confidentiality agreement. Due to social distancing restrictions in effect to address the novel coronavirus pandemic, all negotiations were held utilizing video conference devices via WebEx with teleconference capabilities also provided to accommodate all interested parties. Responses to the subset of DPS Staff Information Requests that did not require the release of trade secret or confidential commercial information along with certain publicly available documents and drafts of a joint proposal were provided to parties that executed the confidentiality agreement governing the settlement negotiations via a secured data room. All settlement negotiations were scheduled and conducted consistent with the Commission's Settlement Rules.³

Nuclear Regulatory Commission, Indian Point Nuclear Generating Units 1, 2 and 3; Docket Nos. 50-3, 50-247 and 50-286; Provisional Operating License No. DPR-5; Renewed Facility Operating License Nos. DPR-26 and DPR-64

On November 22, 2019, concurrently with the submission of their Joint Petition filed with the PSC, Entergy and HDI filed a joint application to transfer control of the NRC licenses for IP Unit 1, IP Unit 2 and IP Unit 3, including the general license for the ISFSI, from the current owners

² The Signatory Entities recognize and agree that the DEC Order, the Local Government Entities MOU and the Emergency Management and Response provisions were all matters under the jurisdiction of State agencies and local authorities that were properly negotiated outside these settlement negotiations in Case 19-E-0730. The Signatory Entities further agree that the provisions that were reached in each context further contributed to a finding in this case that the Transfers were in the public interest and, for that reason, have either been incorporated by reference and fully made a part hereof or encompassed within text of this agreement.

³ Formal settlement negotiations were conducted, and the terms of this Joint Proposal are, consistent with the Commission's settlement guidelines established in the Commission's order issued in NYPSC Case 92-M-0138 and Section 3.9(d) of its Rules and Regulations, collectively referred to herein as "Settlement Rules."

to Holtec subsidiaries to be known as Holtec IP 2 and Holtec IP 3, and to transfer operating authority from Entergy Nuclear Operations, Inc. (“ENOI”) to HDI (“Indian Point LTA”) (NRC ADAMS Accession No. ML19326B953). Thereafter, on December 20, 2019, HDI submitted its PSDAR and DCE to the NRC. In its PSDAR and DCE, HDI detailed the efforts to be undertaken, estimated costs and projected timeline to implement its DECON Plan to complete radiological decommissioning of Indian Point (except for the ISFSI) and to secure Partial Site Release by the end of 2036 and potentially as early as 2033, which was consistent with the time frame set forth in the Joint Petition. HDI specified in its filings that implementation of its PSDAR was contingent on, *inter alia*, timely receipt of required regulatory approvals, transfer of the Indian Point licenses and closing the Transactions.

On February 12, 2020, HDI submitted a request to the NRC for exemptions to NRC regulations to allow it to utilize the Decommissioning Trust Fund for the management of spent nuclear fuel and site restoration costs for Indian Point. The spent fuel must be removed from the spent fuel pools to dry storage to implement the DECON Plan and complete decommissioning. Also on February 12, 2020, the State of New York, represented by OAG; Riverkeeper; and, jointly, the Local Entities; all parties to Case 19-E-0730, filed petitions in the Indian Point LTA proceeding seeking intervention and an adjudicatory hearing.

On November 23, 2020, NRC Staff confirmed it had completed its review of the Indian Point LTA, issued a safety evaluation with its technical findings, and issued an order consenting to the Indian Point license transfers on terms similar to those applied in other NRC license transfer proceedings. On the same date, the NRC staff granted HDI’s exemption request based on its findings concerning the adequacy of funding in the Decommissioning Trust Fund. Joint Petitioners filed and served these orders in Case 19-E-0730.

Thereafter, based on the record before it, the NRC Commissioners, with two Commissioners dissenting in part, issued an order on January 15, 2021, denying requests for a hearing in the Indian Point LTA proceeding and terminating consideration thereunder. On January 22, 2021, OAG filed a petition for review of these three actions in the United States Court of Appeals for the D.C. Circuit (Case No. 21-1037). On February 18, 2021, ENIP2, ENIP3, ENOI, HDI and Holtec International moved to intervene in the proceeding. On March 3, 2021 and March 5, 2021, respectively, Riverkeeper and the Local Entities each filed a petition for review of these three actions in the D.C. Circuit (Case Nos. 21-1080 and 21-1084, respectively). The D.C. Circuit subsequently consolidated these appeals and set deadlines for early April 2021 for initial procedural filings (collectively, the “Consolidated D.C. Circuit Litigation”).

I. GENERAL PROVISIONS

A. The Signatory Entities expressly present the Joint Proposal as a complete resolution of all issues in Case 19-E-0730. It is understood that each provision of this Joint Proposal is in consideration and support of all other provisions therein and is expressly conditioned upon, and remains effective with, acceptance of the terms of this Joint Proposal in full by the Commission, without further modification, and Commission authorization of the Transactions under NYPSL Section 70. The Signatory Entities agree to the submission of this Joint Proposal to the Commission along with a request that the Commission accept the terms and provisions of this Joint Proposal as set forth herein in their entirety. If the Commission does not adopt the terms of this Joint Proposal without modification, find the Transactions are in the public interest, and authorize them based on the record in Case 19-E-0730, the parties to Case 19-E-0730 reserve their rights to pursue their respective litigation positions in Case 19-E-0730 without prejudice.

B. This Joint Proposal, which by its express terms incorporates in their entirety the terms of the DEC Order and the terms of the Local Government Entities MOU, made fully a part

hereof, contains the entire agreement of the Signatory Entities regarding the matters contained herein and expressly supersedes and replaces any and all prior or contemporaneous written and verbal agreements or understandings.

C. The discussions that produced this Joint Proposal have been conducted with the explicit understanding, pursuant to the Settlement Rules, that any discussions and information shared among the Signatory Entities with respect to this Joint Proposal prior to its execution and filing shall be kept confidential and shall not be subject to discovery or admissible as evidence.

D. The Signatory Entities agree that the list of responses to informal discovery set forth in Attachment C, attached hereto and made a part hereof, the substance of which is to be included herein to further support the record in Case 19-E-0730.⁴ Entergy and Holtec each represent and warrant to every other Party that their respective individual responses to these informal discovery requests and the Joint Petitioners represent and warrant that their joint responses to these informal discovery requests are true and accurate as of the date on which each response was provided either individually or jointly.

E. The Signatory Entities further agree that the Transactions are subject to Commission authorization under NYPSL Section 70 and that the record in this proceeding, inclusive of the Joint Petition and this Joint Proposal, demonstrates that the Transactions are in the public interest and fully supports Commission authorization thereof under NYPSL Section 70. Consistent with the public interest standard applied by the Commission for merchant transfers, there are no market power issues given that the generating units will be permanently retired on the Transaction Closing Date, the proposed transaction as well as the financial assurance and reporting

⁴ The subset of responses to information requests containing trade secret and/or confidential commercial information have previously been provided to, and remain in the possession of, the Records Access Officer. A request for exception from disclosure will be submitted herewith by the Joint Petitioners and the substance of such responses are incorporated by reference herein.

conditions contained in this Joint Proposal support the decommissioning and site restoration of Indian Point as well as the management of spent fuel stored at the Site, and the financial wherewithal and technical capability requirements have been satisfied.

F. The Signatory Parties further agree that issues raised in this proceeding were resolved through good-faith negotiations. They further agree that the resolution of the issues is consistent with law, falls within the range of reasonable outcomes, compares favorably with the likely result of full litigation, and has a rational basis supported by a complete record. The Signatory Parties submit that this Joint Proposal gives fair and reasonable consideration to the interests of all parties and that its approval by the Commission is in the public interest. The Joint Proposal is consistent with sound environmental, social, and economic policies of the Commission and the State.

G. The Signatory Entities recognize that certain provisions of this Joint Proposal contemplate actions to be taken in the future to effectuate fully this Joint Proposal. Accordingly, the Signatory Entities agree to cooperate with each other in good faith in taking such actions.

H. In the event of any disagreement over the interpretation of this Joint Proposal or implementation of any of the provisions of this Joint Proposal, which cannot be resolved informally among the Signatory Entities, such disagreement shall be resolved in the following manner: (a) the Signatory Entities shall promptly convene a conference and in good faith attempt to resolve any such disagreement; and (b) if any such disagreement cannot be resolved by the Signatory Entities, the Signatory Entities hereby reserve all of their rights to take any action available to them under the Joint Proposal or otherwise to resolve such disagreement as further addressed *infra* in Section III.

I. This Joint Proposal is being executed in counterpart originals and shall be binding on all Signatory Entities upon execution of said counterparts.

J. This Joint Proposal represents a negotiated agreement and the terms and provisions of this Joint Proposal apply to, and are binding on, each Signatory Entity solely in the context of the matters addressed in Case 19-E-0730. This Joint Proposal shall also apply to, and bind, any successors or assigns of the Signatory Entities and any person or entity acting by, for, or through such successors or assigns. None of the positions taken herein by any Signatory Entity, including agreement to the terms and provisions of this Joint Proposal, may be cited or relied upon in any fashion as precedent in any other proceeding before this Commission or before any other regulatory agency or any court of law for any purpose, except in furtherance of ensuring the effectuation of the purposes of, and results intended by, this Joint Proposal, including, but not limited to, the closing of the Transactions.

K. Holtec shall not transfer by sale or by lease the whole or any part of its interest in Indian Point without giving the Signatory Entities at least one hundred eighty (180) days prior notice. No transfer in ownership, management, or operation of Indian Point, or any portion thereof, shall relieve Holtec or its managers, officers, directors, agents, successors, assigns, heirs, and/or servants of any obligation under this Joint Proposal unless:

- (1) The proposed transferee agrees, in writing, to undertake the obligations required by this Joint Proposal and to be substituted for Holtec,
- (2) The proposed transferee obtains all necessary NRC approvals for license transfer, permits, or other required authorizations, if applicable,

(3) The proposed transferee maintains all required financial assurance as described in this Joint Proposal at the time of transfer and any financial assurance and liability insurance required into the future, and

(4) The proposed transferee commits to maintaining competent, qualified Site management.

The notice required in this Paragraph must be in writing, and identify the transferee and the nature and proposed, or actual, date of the conveyance, and must notify the transferee in writing, with a copy to the Signatory Entities, of the applicability of this Joint Proposal.

The restrictions and requirements set forth in (1)-(4) above are not meant to apply to leases for (i) use of some or all of the administration building or training center, or (ii) other short-term leases of one year or less for a portion of the Site, provided in all cases the lessee is not expected to cause adverse material environmental impacts to the Site. Holtec will provide notice to the Signatory Entities of such leases as soon as reasonably possible.

L. The Signatory Entities acknowledge that the State and local governments are subject to the public information requirements of FOIL, and that requests for information pursuant to FOIL will be submitted to, and require responses from, the State and local governments. In some cases, public information requests may seek materials that Holtec believes to be trade secret and/or confidential commercial information. The Signatory Entities agree that, upon the receipt of such request, the affected Governmental Entities will notify Holtec and take the steps as set forth in Section 6-1.3 of the Commission's Rules and Regulations and Title 16 of the Public Officers Law.

M. Nothing in this Joint Proposal shall affect, restrict, or limit the jurisdiction or regulatory authority of any State or federal agencies over Holtec or Indian Point, including any

authority to access the Site (subject to security protocols) to review compliance with laws, regulations, licenses and permits within their respective jurisdiction. The Signatory Entities acknowledge and agree that the Joint Proposal is entered into with a full reservation of each Signatory Entity's respective rights under federal and State law and regulations. Nothing in this Agreement shall be interpreted as prohibiting or restricting Holtec from complying with any requirements or orders of the NRC, the NYSDEC, any obligation under the Indian Point licenses or any other federal or State law or regulation.

II. SPECIFIC TERMS OF AGREEMENT AND CONDITIONS

In consideration of the promises and the mutual agreements hereinafter set forth, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Signatory Entities, intending to be legally bound and intending for this Joint Proposal to represent a final and fully enforceable settlement agreement, hereby agree as follows:

A. Financial Assurance Mechanisms

1. Minimum Trust Balance Prior To Partial Site Release

Holtec agrees to maintain a minimum balance of no less than a total of \$400M in the Decommissioning Trust Fund for 10 years following the Transaction Closing Date. Holtec further agrees to maintain a minimum balance of no less than a total of \$360M in the Decommissioning Trust Fund until Partial Site Release, which balance will be subject to adjustment following Partial Site Release as set forth in subsection (2) below.

To assure the pre-Partial Site Release minimum balances described in this subsection (1) are appropriately adjusted for impacts from inflation, Holtec, OAG, and NYSDPS agree to meet before the tenth anniversary of the Transaction Closing Date to determine a mutually agreeable inflationary adjustment to those minimum balances. If Holtec, OAG, and NYSDPS fail to reach agreement on a mutually acceptable mechanism for inflationary adjustment, Holtec will apply the

Producer Price Index (“PPI”): Waste Collection and Remediation Services [WPU50], as determined by the United States Bureau of Labor Statistics, to the pre-Partial Site Release minimum balances no later than 10 years after the Transaction Closing Date. If inflation is less than 1 percent, the parties agree that no adjustment will be required. This obligation will terminate at Partial Site Release.

Within 30 days following the Transaction Closing Date, Holtec will provide NYSDPS, NYSERDA, and OAG with an updated Decommissioning Trust Fund balance and copies of all current trust agreements.

2. Minimum Trust Balance Following Partial Site Release

At Partial Site Release, the \$360M Decommissioning Trust Fund minimum balance will be adjusted to provide financial assurance for costs associated with: (i) transferring spent nuclear fuel and GTCC waste from the Site; (ii) disposal of GTCC waste; (iii) ISFSI decommissioning and site restoration (with consideration given to amounts reasonably expected to be reimbursed by DOE); and (iv) any remaining radiological cleanup necessary to meet the State 10-mrem standard as required under the DEC Order (“Post-Partial Site Release Minimum Balance”). The Post-Partial Site Release Minimum Balance will be calculated using the costs reflected in HDI’s then-current NRC Decommissioning Funding Status Reports, as well as an estimate of the cost to complete radiological remediation to the State’s 10-mrem standard prepared by Holtec and approved by NYSDEC. The Post-Partial Site Release Minimum Balance (and any annual recalculation thereof under this subsection (2)) will be effective thirty (30) days after Holtec provides notice of the calculated (or recalculated) amount to NYSDPS, OAG and NYSERDA. Holtec agrees that the State may request additional information supporting the calculated amount and that Holtec will not unreasonably deny such requests nor delay its response.

The Post-Partial Site Release Minimum Balance will remain in the Decommissioning Trust Fund until the later of (i) NYSDEC's issuance of the Satisfactory Completion Letter referenced in Section VIII of the DEC Order or (ii) License Termination; provided, however, that the Post-Partial Site Release Minimum Balance will be subject to annual adjustment, either up or down, based on the estimated future costs for the activities described in this subsection (2) as reflected in HDI's most current NRC Decommissioning Funding Status Reports and/or cost estimates for additional radiological decommissioning prepared by Holtec and approved by NYDEC.

3. Department of Energy Litigation Recoveries

Within 5 years of license transfer, Holtec agrees to file a complaint against DOE for the recovery of all spent fuel management costs incurred after the Transaction Closing Date that are ascertainable at that time. Thereafter, Holtec agrees to seek spent fuel management cost recovery from DOE at recurring intervals not to exceed 5 years. Holtec agrees to deposit no less than 50 percent of each DOE recovery in a dedicated subaccount within the Decommissioning Trust Fund. These DOE recoveries will remain in the Decommissioning Trust Fund until Partial Site Release unless all other Decommissioning Trust Fund monies have been exhausted.

If, during either of the periods described in subsection (1) above, Holtec projects, based on its NRC Decommissioning Funding Status Report or otherwise, that the Decommissioning Trust Fund minimum balance will fall below the prescribed amount, Holtec agrees: (i) to continue depositing 50 percent of future DOE recoveries into the dedicated subaccount as described in the preceding paragraph of this subsection (3) and (ii) to deposit in the Decommissioning Trust Fund so much of the remaining 50 percent of such DOE recoveries as is necessary to ensure that the applicable Decommissioning Trust Fund minimum balance is maintained.

After Partial Site Release, if Holtec projects that the Decommissioning Trust Fund balance will fall below the Post-Partial Site Release Minimum Balance, Holtec agrees to deposit funds in an amount necessary to ensure that the Post-Partial Site Release Minimum Balance is maintained. With respect to the DOE reimbursement litigation, until Partial Site Release Holtec will provide to OAG: (1) notice and copies of its filings upon filing a notice of claim, complaint, and/or petition seeking cost recovery from DOE; (2) copies of settlements, court decisions, and funding transmission documents that delineate when and in what amount Holtec's spent fuel management costs are recovered; and (3) copies of transmission documents showing deposit of 50 percent of Holtec's DOE recoveries into the Decommissioning Trust Fund subaccount described in this subsection (3).

4. DEC Order for Site Restoration

As set forth in Attachment A, and incorporated by reference herein and made fully a part hereof, the NYSDEC and Holtec have executed the DEC Order for the sole purpose of addressing site restoration at Indian Point, which HDI expects to conduct largely at the same time it completes radiological decommissioning as described in the PSDAR and DCE. The site restoration will be conducted pursuant to NYSDEC authority under ECL Articles 3; 27, Titles 9 and 13, and implementing regulations in 6 NYCRR Parts 373-376; Article 71, Title 27 and Navigation Law Article 12. As set forth in the DEC Order, separate and apart from conducting radiological decommissioning to the 25 millirem/year standard required by, and performed under the jurisdiction of the NRC, Holtec will also conduct comprehensive site investigation, characterization, remediation and restoration activities for non-radiological hazardous waste and contaminants. As set forth in the DEC Order, after HDI completes necessary characterization and investigation at the Site, it shall evaluate the remediation of the Site or a partial part thereof to "unrestricted" (aka "greenfield") status. The DEC Order also requires HDI to remediate

radiological contamination below the NRC 25 millirem/year site release standard to the State guidance of 10 millirem/year (or equivalent as determined by NYSDEC) if not met at the time of Partial Site Release.

As provided in Section II of the DEC Order, Holtec will establish restoration-specific, third-party financial assurance in the amount of \$110.593M, with the NYSDEC named as beneficiary. This financial assurance is required so long as the DEC Order remains in effect, subject to certain adjustments, as set forth therein.

In addition, Holtec will obtain and maintain \$30M in pollution liability insurance to offset costs arising from the discovery of previously unknown releases of hazardous substances. As set forth in Section II of the DEC Order, the pollution insurance will be required until NYSDEC issues a Satisfactory Completion Letter, subject to certain possible adjustments, as set forth therein.

The DEC Order also establishes processes for site investigation and characterization, remedy selection, and public participation.

As specified in the ACO, NYSDEC has agreed to the transfer of existing regulatory permits from Entergy entities to the new owners/operators on the Transaction Closing Date.

B. Project and Financial Reporting

1. Monthly Project Meetings

Subject to Site security protocols, Holtec agrees to accommodate staff representation by the OAG, NYSDEC, NYSDOH, NYSERDA, NYSDHSES, NYSDPS, Westchester County, and/or Local Entities at the Site's monthly project update meetings ("Monthly Project Meetings"); provided that participation across all these entities is limited to a maximum of two State staff representatives, one Local Entities representative and one Westchester County representative per meeting and provided further that, depending on the scope of ongoing work at Indian Point, one

additional staff representative from one of the State agencies identified in this section may request to participate in a specific meeting which request shall be considered by Holtec in good faith. These meetings will be conducted through Partial Site Release, either in-person (typically at the Site) or virtually, and may be rescheduled from time-to-time for good cause.

Subject to the development of protocols to maintain the confidentiality of Holtec's trade secret and/or confidential commercial information, a written monthly progress report will be provided to the State and Local Government Representatives in connection with the monthly meetings and the State and Local Government Representatives may retain them in their respective records in a manner consistent with established confidentiality protocols. The confidential, written monthly reports must, at a minimum, include a description of the following: (i) safety record; (ii) status of major activities including, but not limited to, reactor segmentation, building demolition, spent nuclear fuel loading and waste management, as applicable, and a description of any significant changes impacting the project's overall schedule or estimated cost; (iii), project schedule including but not limited to, an updated Waterfall or Gantt-style graphic schedule depicting the status of the major work streams and tasks; (iv) a comparison of budgeted costs against actual costs); and (v) status of regulatory assurance submittals/activities. The monthly reports will typically report on progress through the end of the preceding month.

2. Annual NRC Submittal

On or before March 31 each year, Holtec shall provide copies to NYSDPS, OAG, NYSDEC, NYSERDA, the Local Entities and Westchester County of HDI's annual decommissioning and spent nuclear fuel management funding assurance reports filed with the NRC pursuant to 10 C.F.R. § 50.75(f)(1) and 10 C.F.R. § 50.82(a)(8)(v). The NRC Decommissioning Funding Status Reports shall provide detailed information concerning: (1) the

amount spent on decommissioning, both cumulative and over the previous calendar year, and the remaining balance of any decommissioning funds; (2) an estimate of the costs to complete decommissioning, reflecting any difference between actual and estimated costs for work performed during the year, and the decommissioning criteria on which the estimate is based; (3) any modifications to a licensee's current method of providing financial assurance since the last submitted report; and (4) any material changes to trust agreements or financial assurance contracts. Holtec also agrees to provide copies to NYSDPS, OAG, NYSDEC, NYSERDA, the Local Entities and Westchester County of annual reports submitted to NRC by March 31 each year pursuant to 10 C.F.R. § 50.82(a)(8)(vii), including detailed information concerning: (1) the amount of funds accumulated to cover the cost of managing the irradiated fuel; (2) the projected cost of managing irradiated fuel until title to the fuel and possession of the fuel is transferred to the Secretary of Energy; and (3) if the funds accumulated do not cover the projected cost, a plan to obtain additional funds to cover the cost. Holtec shall provide copies to NYSDPS, OAG, NYSDEC, NYSERDA, the Local Entities and Westchester County of Holtec's NRC Decommissioning Funding Plan submitted to the NRC pursuant to 10 C.F.R. § 72.30(b) within fourteen (14) days of submittal. The NRC Decommissioning Funding Plan must include a detailed decommissioning cost estimate reflecting: (1) the cost of an independent contractor to perform all decommissioning activities; (2) an adequate contingency factor; and (3) the cost of meeting the unrestricted use criteria. Following the submission of reports, Holtec agrees to participate in a meeting, upon request with staff from NYSDPS, OAG, NYSERDA, NYSDEC, the Local Entities and Westchester County to answer questions regarding these reports.

If the deadline for the submittal of any reports mentioned in this Paragraph to the NRC changes, Holtec's obligation under this Section II.B shall correspondingly be modified to match the submittal date required by the NRC.

3. Mid-Year Reporting

To further facilitate monitoring the Trust Fund(s), financial assurance, and other matters, Holtec also agrees, subject to the development of protocols to maintain the confidentiality of Holtec's trade secret and/or confidential commercial information, to the following:

(A) On or before August 30, or at another mutually agreed time, HDI's Chief Investment Officer and Chief Operating Officer (or other comparable positions) will meet with staff from NYSDPS, OAG, NYSERDA, NYSDEC and Westchester County (no more than one staff member from each). The meeting will cover the following topics:

- (1) the Trust Fund balances;
- (2) a description of any changes in the Trust Fund balances since Holtec's most recent NRC Decommissioning Funding Status Report;
- (3) a description of the Trust Fund investment types;
- (4) a description of Trust Fund withdrawals made for the following categories: (a) site restoration, (b) radiological decommissioning, and (c) spent fuel management, and
- (5) the status of the third-party surety and environmental insurance required by the DEC Order and any efforts, including, but not limited to, litigation or administrative actions, to recover money from DOE related to spent fuel management.

Regarding (A)(4) above, it is understood that HDI will be preliminarily reporting on the categorization of the withdrawal amounts, subject to final reconciliation in the NRC Decommissioning Funding Status Report.

B. HDI will provide staff with written documentation in the form of a report of each of the areas discussed at the meeting.

C. NYSDHSES Emergency Management and Response

Holtec will provide annual agency funding for IP Unit 2 and IP Unit 3 as follows:

State Fiscal Year(s)	Annual Amount, subject to Executive Law §29-c
Apr 2021-Mar 2022	\$1,000,000 for Unit 2 and \$1,000,000 for Unit 3 (\$2M aggregate)
Apr 2022-Mar 2023	<p>\$1,000,000 for Unit 2 and \$1,000,000 for Unit 3 up to \$2M aggregate, unless the follow occurs per unit:</p> <ul style="list-style-type: none"> • If all the fuel is at the ISFSI by April 1, 2022, then \$250,000; • If all fuel on ISFSI by Sept 30, 2022, then \$500,000; • If all fuel on ISFSI by Dec 31, 2022 = \$750,000.
Apr 2023 – Mar 2024	<p>\$1,000,000 for Unit 2 and \$1,000,000 for Unit 3 (up to \$2M aggregate), unless the follow occurs per unit:</p> <ul style="list-style-type: none"> • If all the fuel is at the ISFSI by April 1, 2023, then \$250,000; • If all fuel on ISFSI by Sept 30, 2023 then \$500,000;

	<ul style="list-style-type: none"> • If all fuel on ISFSI by Dec 31, 2023 = \$750,000.
Apr 2024 – Mar 2025	\$500,000
Apr 2025-Mar 2026 and subsequent years ending with the fiscal year in which Partial Site Release occurs	\$100,000
The year following Partial Site Release until the fiscal year in which License Termination occurs	\$25,000 annually

In addition, Holtec agrees to the following commitments:

1. Westchester County Coordinator

a. Funding

- i. Until the spent nuclear fuel is placed on the ISFSI, Holtec agrees to a two-year commitment to fund Westchester County which shall be set at \$50,000 for fiscal year 2022 and \$35,000 for fiscal year 2023 in consideration of the County Coordinator performing its emergency preparedness responsibilities.

b. Payment Terms

- i. HDI agrees to make any NYSDHSES and Westchester County payments within 45 days of receipt of an annual invoice from NYSDHSES and Westchester County.

2. Contacts for Emergency Response

a. Chain of Command

- i. HDI will communicate to NYSDHSES, NYSDPS and Westchester County the Site's chain of command, including emergency response contacts.

- b. Knowledge of Rad Systems
 - i. HDI will identify to NYSDHSES, NYSDPS and Westchester County someone from the Site with direct knowledge of Indian Point's radiological systems and equipment.
- c. Dose Projections
 - i. HDI will identify to NYSDHSES, NYSDPS and Westchester County qualified personnel responsible for making offsite dose projections and coordinate the development of dose projections with the State and local assessment teams.
 - ii. This requirement ends once all fuel is on the ISFSI.
- d. Designated Spokesperson
 - i. HDI will designate for NYSDHSES, NYSDPS and Westchester County a spokesperson with access to all necessary information.
- e. Notice of Personnel Changes
 - i. Holtec will notify New York State OEM's Chief of Radiological Emergency Preparedness Program and Westchester County OEM of any changes in the above personnel verbally within 10 days and in writing within 30 days.
- f. Access to Control Room
 - i. Designated representatives of NYSDHSES and NYSDPS will be provided access to the Indian Point control room(s) until removed from service.
 - ii. Unescorted (i.e., badged) access is permitted if certain requirements are met. This applies to all contractors.

- iii. NYSDHSES and NYSDPS understand that the Control Room will still be considered a Vital Area with limited access. NYSDHSES and NYSDPS will provide in writing the names of personnel who require this access (no more than 3 people) and their unescorted access badges will be given the appropriate Access Level.
- g. General Site Access
 - i. Designated representatives of NYSDHSES and NYSDPS will be provided unescorted site access.
 - ii. Unescorted (i.e., badged) access is permitted if certain requirements are met. (This applies to all contractors.)
- h. Offsite Response Organizations (“OROs”)
 - i. HDI will make provisions in consultation with NYSDHSES, NYSDPS and Westchester County to enable onsite response support from OROs in the event of an emergency, including a hostile action-based incident.
 - ii. More specifically, OROs mean Westchester County OEM, law enforcement, fire, ambulance, and EMT.
- i. Length of Requirement
 - i. Unless otherwise noted, these obligations will end when all spent nuclear fuel is removed from the Site.

3. Meteorological & Other Data

- a. Daily Summaries
 - i. HDI will continue to monitor and provide daily summaries of Indian Point’s Meteorological and Effluent and Safety Data. Data will include wind speed,

direction and temperature, ventilation exhaust monitoring, and area radiation monitoring

- ii. With respect to the spent fuel pools, HDI will provide temperature data on a weekly basis (showing the temperature for each day). In addition, HDI will notify NYSDHSES, NYSDPS and Westchester County of any “low level” alarms as part of its reporting obligations.
 - iii. HDI will provide NYSDHSES, NYSDPS and Westchester County with remote access to the information they currently receive, however, fuel pool information will be provided by email or other mutually agreed method.
 - iv. Requirement ends once all the fuel is on the ISFSI.
- b. Towers/Equipment
- i. On-site equipment for collecting the meteorological data must be maintained on-site until all fuel is on the ISFSI.
 - ii. If the meteorological data is temporarily not available, Holtec may use meteorological data collected by the National Weather Service.
- c. Data for OROs
- i. HDI will provide the OROs with remote access to agreed-upon meteorological and other reasonably requested data.
 - ii. HDI will provide OROs remote access to the information they currently receive.
- d. Active Rad Monitoring
- i. HDI will provide the ORO’s with remote access to agreed-upon offsite active radiological monitoring equipment.

- ii. Active monitoring will end after all the fuel is on the ISFSI; thereafter passive “TLDs” will be used.

4. Meetings

a. Frequency & Purpose

- i. Indian Point staff will meet quarterly with NYSDHSES, NYSDPS and local ORO’s to (1) coordinate schedules for drills and exercises, (2) review and discuss any changes to the onsite security plan or the State and local ORO’s offsite response plan, and (3) ensure communication is maintained.
- ii. DHSES will coordinate these meetings.
- iii. Quarterly meetings end once the fuel is on the ISFSI; thereafter, there will be an annual meeting unless otherwise mutually agreed.

5. Communications Hardware

a. 24-Hour Monitoring

- i. HDI will provide for 24-hour manning of communications links.
- ii. Requirement continues past fuel on the ISFSI.

b. Primary/Alternate Communications

- i. HDI will maintain primary and alternate communication with NYSDHSES, Westchester and Rockland Counties. Primary communications will be through the existing Radiological Emergency Communication System (RECS) or a comparable dedicated system, and backup communications will be determined by the parties.
- ii. Requirement ends once all fuel is on the ISFSI.

c. 1 Hour Notice of Emergency Event

- i. Holtec shall notify NYSDHSES, NYSDPS, Westchester and Rockland Counties within 1 hour of initiation of any emergency event through the currently established means of communication with NYSDHSES, Westchester and Rockland Counties so that the ORO's can take appropriate actions to notify the public, including sending Wireless Emergency Alerts (or equivalent) if the circumstances justify sending such alerts.
 - ii. Requirement ends once all fuel is on the ISFSI.
- d. Monthly Testing
 - i. Holtec shall test communications capabilities monthly until all the fuel is on the ISFSI.
- e. ISFSI
 - i. After all fuel is at the ISFSI, the Site will continue to maintain primary (landline) and alternate (mobile phone) means of communication with NYSDHSES, NYSDPS, Westchester and Rockland Counties. Primary communications will be through commercial phones and the backup will be determined by the parties.

6. Exercises

Holtec agrees to participate in annual exercises (on-site and off-site) until fuel is removed from the Site. The participants would include State and local first responders. The parties would mutually agree on the type and scale of exercises (e.g., seminar, workshop, tabletop, etc.) Commensurate with site risks, the type and scale of exercises will transition over time.

7. Public Alerts

Holtec will maintain the current public notification and information system until all fuel is on the ISFSI. After all the fuel is on the ISFSI, the current system will be retired and a replacement system will be implemented, which may include use of the State wireless emergency alerts and/or other radio and television broadcast systems. The parties will agree on the replacement system and transition details at least three months in advance of the estimated date for the changeover. NYSDHSES and Holtec agree to develop a plan for that replacement system. Holtec also agrees to fund certain transition enhancements for the replacement system.

8. Public Communications

a. Website Content

- i. HDI will provide the public with information on Indian Point's emergency plan through an external website maintained by HDI.
- ii. Requirement lasts until all fuel is removed from the Site.

9. Training

- a. HDI will support a training program for instructing and qualifying ORO's for onsite response support. Personnel to include police, security, medical and fire-fighting personnel. This training can be scaled as appropriate.
- b. Commensurate with Site risks, the type and scale of training will transition over time.

c. This requirement lasts until all the fuel is removed from the Site.

10. Fire Systems

DHSES and Holtec acknowledge that many changes to the Site's fire protection systems will occur throughout decommissioning (e.g., deactivation of fire systems as equipment is removed from service). Holtec agrees to maintain fire protection systems as designed, including, but not limited to, fire detection and alarm systems, sprinkler systems, standpipe systems, and fire separations, unless and until any changes to and/or reduction in capabilities of those systems are performed pursuant to a plan previously approved by NYSDHSES in consultation with local and County code enforcement and emergency response officials.

Holtec will prepare a plan for NYSDHSES review and approval with a schedule of activities and thresholds outlining, among other things, when Holtec can progress work with or without prior notice owed to, and approval received from, NYSDHSES. Any proposed changes to this plan shall be submitted to NYSDHSES at least 30 days in advance of when the work is scheduled to occur, unless mutually agreeable to both parties. NYSDHSES agrees not to unreasonably withhold or condition approvals. In addition, the plan will require NYSDHSES to make a decision on such matters within fifteen (15) days otherwise the matter will be deemed approved. For any denial, NYSDHSES shall state the basis for its decision.

Holtec agrees to provide quarterly progress report.

Holtec may request changes to the plan from time-to-time for good cause.

Holtec agrees to provide site access to a NYSDHSES representatives per Section I, M of this Joint Proposal.

The Signatory Entities agree that any of the measures set forth above may be adjusted for the purpose of practicality, and in the case of unforeseen need, as mutually agreed by HDI, NYSDHSES and Westchester County in writing.

D. State Monitoring

1. NYSDEC Oversight Over, and Ongoing State Review of, Indian Point Project

In accordance with the requirements set forth in Section XI of the DEC Order, Holtec agrees that its site restoration subject to State law and radiological decommissioning work to address the State guidance limits of 10 mrem or equivalent as determined by NYSDEC as set forth in Section II.A.4 above will be subject to ongoing oversight by NYSDEC and NYSDOH, and Holtec will provide annual funding for such NYSDEC oversight.

Further, to facilitate the State's implementation of this Joint Proposal under the NYPSL, Holtec will provide annual funding to supplement NYSDPS supervisory resources for NYSDPS equal to \$75,000 for the first six years following the Transaction Closing Date payable within 30 days of receipt of invoice.

2. NYSDPS Notification Requirements

Holtec agrees to provide notification to NYSDPS within one hour for the following events: any nuclear emergency (NRC Unusual Event or greater), fatal accident, any serious security threat to the Site and events likely to be reported immediately by any news organizations.

3. Decommissioning Oversight Board

The Signatory Entities recognize that NYSDPS has been tasked with developing a decommissioning oversight board. All parties agree that the State has the legal authority to form such a board. Holtec agrees not to oppose the fact that this board is being created, provided however, Holtec expressly reserves all of its rights to address its proposed composition, powers,

scope, and/or other responsibilities in relation to decommissioning of Indian Point. NYSDPS agrees to consider any submissions Holtec may make concerning the board and address concerns raised in good faith.

Holtec further agrees that it will meet with the board upon reasonable advance notice and it will address reasonable requests made by the board subject to the development of protocols to protect Holtec's confidential commercial information; provided, however, that nothing contained herein shall obligate Holtec to share trade secrets or proprietary intellectual property.

E. Schedule

As reflected in the Joint Petition, HDI continues to project that it will complete all radiological decommissioning and site restoration activities at Indian Point to achieve Partial Site Release (except for the ISFSI) by the end of 2036, and potentially as early as 2033. HDI further agrees that, absent a Force Majeure Event, HDI shall complete the transfer of spent nuclear fuel from the IP Unit 2 and Unit 3 spent fuel pools to the Indian Point ISFSI by December 31, 2024.

F. NYSERDA Leased Structures

NYSERDA, as its predecessor the New York State Atomic and Space and Development Authority, funded the construction of an outfall at the Site in the late 1960s in implementation of the portion of the 1968 State Power Program pertaining to environmental protection. NYSERDA has, since 1971, leased the outfall and affiliated underwater lands to the Indian Point licensee. The lease provides for assignment of its terms as of right, and as such, the parties expect the lease to be assigned to HDI upon license transfer and effectuation of the sale of the Site. The lease provides procedures for the disposition of the outfall structure and the underwater lands, and therefore no such requirements are imposed via this Joint Proposal. The Signatory Entities acknowledge that any relevant environmental regulatory actions imposed by NYSDEC, as addressed in the DEC Order, will be performed by the appropriate party to that agreement.

G. PILOT Memorandum of Understanding

Holtec, the Local Entities and Westchester County have undertaken good faith negotiations that have culminated in the execution of the Local Government Entities MOU memorializing certain commitments which is attached hereto as Attachment B and incorporated herein by reference.

H. Pipeline Safety

Holtec acknowledges the presence of the Algonquin Gas Transmission Company interstate gas transmission pipelines that traverse the Site as well as the Algonquin Incremental Market line in the vicinity of the Site. Holtec will provide notice of certain of its decommissioning activities with NYSDPS and pipeline owners and operators and commits to take the location of the pipelines into account during the decommissioning and site restoration activities and spent fuel management operations at Indian Point.

HDI or its decommissioning general contractor will:

(a) Provide five (5) business days advance notice to NYSDPS and Enbridge prior to remediation, excavation, or spent fuel management activity that may impact the gas transmission pipelines located within close proximity to the Site;

(b) Provide five (5) business days advance notice to NYSDPS and Enbridge for any decommissioning activity involving a heavy load pipeline crossing (e.g., retired steam generators, transformers, large contaminated components, etc.). Prior to beginning heavy load pipeline crossings, Holtec will consult with Enbridge to determine if any additional protection on the pipelines and/or pressure reductions on the pipelines are required during heavy load pipeline crossings. In addition, Holtec will consult with Enbridge to verify that

there will be no undue stresses on the pipeline as a result of the heavy load pipeline crossings;

(c) Provide ten (10) business days advance notice to NYSDPS and Enbridge for any decommissioning activity involving the use of dredging, blasting or other explosive demolition technologies at the Site;

(d) Maintain Emergency contact numbers for the gas pipeline operations control room at the Indian Point control room for use in the event of a gas emergency at or near the Site. Once Indian Point control rooms are no longer in operation, emergency contact numbers for the gas pipeline operations control room will be kept on Site.

I. Discontinuance of Judicial Proceedings.

Within 10 business days of the Commission's issuance of the PSC Order in Case 19-E-0730 accepting the terms of this Joint Proposal and authorizing the Transfers, all Signatory Entities who have initiated or intervened in the Consolidated D.C. Circuit Litigation hereby agree that they will immediately withdraw that litigation and all Signatory Entities hereby agree they will withdraw any and all court challenges filed by any Signatory Entity with respect to any Commission action and the PSC Order in Case 19-E-0730, or any action by the NRC with respect to the Transfers, including without limitation Case Nos. 21-1037, 21-1080 and 21-1084 pending before the D.C. Circuit. The OAG, Riverkeeper, and jointly, the Local Entities shall each submit a stipulation of dismissal of their respective petitions for review of the NRC decisions approving license transfer and regulatory exemptions, and denying the petitions for intervention and requests for hearing pending in the Consolidated D.C. Circuit Litigation voluntarily and without costs to any party. Thereafter, the Signatory Entities agree that no Signatory Entity shall initiate any new action opposing the Joint Petition or the Transfers before the Commission, the NRC, any other regulatory body, or court of law, nor will a Signatory Entity file any motion or take any other

action that would have the effect of delaying the resolution of the Joint Petition or completion of the Transfers themselves. This provision does not apply to any future enforcement of the Joint Proposal or the DEC Order before the PSC, NYSDEC, or in the State or federal courts consistent with the terms of the Joint Proposal and the DEC Order, respectively.

J. Public Information

Holtec will maintain a publicly facing web site to provide non-confidential project and Site information to the public. That information will include updates at least annually on project progress and a summary of work to be conducted in the next period. In addition, Holtec will post the most current Indian Point Emergency Plan and non-confidential filings with the NRC, DOE and the agencies of the State of New York, including NYSDEC, the New York State Department of Health (“NYSDOH”), NYSDPS and NYSDHSES.

Upon request, but no more than annually, Holtec will provide a written submittal to NYSDPS documenting the effectiveness of the publicly facing web site. This submittal will include metrics regarding usage, to the extent readily available, such as overall site traffic, average time on the site, average page views per visit, and website speed. These submittals will include a summary of public comments received by Holtec concerning the publicly facing web site.

K. Future State Legislation

If an act of the legislature for the State of New York requires Holtec to make any payment or payments to NYSDPS, NYDHSES, Westchester County or NYSDEC that duplicate the funding obligations described in the Joint Proposal or DEC Order, the Signatory Entities agree that such amounts set forth in the Joint Proposal or DEC Order shall be offset by the legislatively required payment(s) and Holtec shall be responsible under the Joint Proposal or DEC Order only for the remainder of the payment due thereunder.

III. ENFORCEMENT

A. Enforcement of this Joint Proposal as a component of the PSC Order may be sought administratively or, in the alternative, in any New York State or New York federal court of competent jurisdiction, and should the alternative be pursued, the Signatory Entities consent to such court's exclusive jurisdiction and venue and agree not to interpose any defenses to venue and not to raise any defense or motion alleging inconvenient forum. Holtec may request reasonable extensions of time from the PSC in the event that it cannot comply with a requirement of the PSC Order as a result of any Force Majeure Event. In the event of a Force Majeure Event, the procedural requirements described in Section XIII Force Majeure of the DEC Order shall be applicable. Enforcement of the DEC Order may be sought administratively or in any New York State or New York federal court of competent jurisdiction. Each Signatory Entity hereby fully reserves all rights under federal and State law and regulation.

B. As of the date of execution of this Joint Proposal, each Party to this Joint Proposal makes the following representations and warranties to every other Party:

1. Formation. Such Party is an entity validly existing under the Laws of the State of its formation and the State of New York.
2. Power and Authority. Such Party has all requisite power and authority to execute, deliver, and perform its obligations under this Joint Proposal and to consummate the transactions contemplated hereby. This Joint Proposal has been duly authorized and validly executed and delivered by such Party. All actions on the part of such Party necessary for the authorization, execution, and delivery of, and the performance of all obligations of such Party under, this Joint Proposal have been taken.

3. Enforceability. This Joint Proposal is a valid and binding obligation of such Party, enforceable against such Party in accordance with its terms, recognizing the Force Majeure Event provisions set forth herein; provided that, with respect to non-governmental parties, such enforceability may be limited by applicable bankruptcy, reorganization, insolvency, fraudulent conveyance, moratorium, receivership, or similar laws affecting creditors' rights generally and by general principles of equity (whether considered at law or in equity).
4. No Contravention. The execution, delivery, and performance of this Joint Proposal by such Party do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other governmental authority applicable to such Party, or any of its assets or any contractual restriction binding on or affecting such Party or any of its assets.
5. Litigation. There is no pending action, suit, or governmental or agency (or utility) proceeding filed by a third party against such Party which questions the validity of this Joint Proposal or seeks to challenge or prohibit any action taken or to be taken by such Party pursuant to this Joint Proposal or in connection with the transactions contemplated hereby, and such Party has not received any written notice threatening any action, suit or other proceeding described in this Paragraph 5. Such Party is not subject to any judgment, order, or decree that restricts its ability to consummate the transactions contemplated by this Joint Proposal.

C. Any notice, communication, request, or demand pertaining to this Joint Proposal to or upon the Parties hereto to be effective shall be in writing and shall be deemed to have been duly given or made when delivered, given, or served by: (a) reputable overnight courier service

guaranteeing next day delivery, which notice shall be effective upon receipt; or (b) by email, sent with a read receipt requested, which notice shall be effective upon the date of confirmation of the read receipt, addressed as follows, or to such address as may be hereafter notified by the

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877-669-2572

IV. ACKNOWLEDGEMENTS

A. The Signatory Entities acknowledge that each of the other Parties is giving up substantial rights (including, for Entergy, its lawful right to address decommissioning pursuant to, and in accordance with, NRC regulations including placing Indian Point in SAFSTOR; for Holtec, its acquiescence to accepting the conditions set forth herein as they apply to its lawful rights as owner and operator of Indian Point; and for the State, municipalities, PULP and Riverkeeper, their lawful rights to pursue existing and future regulatory and civil litigation actions) in consideration for the other Parties' performance of their respective obligations under this Joint Proposal, and that such forbearance constitutes substantial and sufficient consideration for the Parties' obligations set forth herein.

B. The Signatory Parties acknowledge that they are entering this Joint Proposal without regard to future events or circumstances, including political and social conditions, market conditions, prices or costs, change of law (other than a law prohibiting performance of a provision of this Joint Proposal), commencement of litigation or regulatory proceedings (other than an action by a Signatory Party that constitutes a breach), or outcome of any existing litigation or regulatory proceedings other than the withdrawal of such submissions as expressly covered by this Joint Proposal, or current circumstances that may not be fully known to them, and that future events or circumstances may occur, whether foreseeable or unforeseeable, and current circumstances unknown to them may exist, that could have a material adverse effect upon a Signatory Party's benefits or obligations under this Joint

Proposal. Accordingly, the Signatory Parties agree not to seek to avoid any obligations under this Joint Proposal because of any alleged unilateral or mutual mistake of fact, unconscionability of any provision hereof, frustration of purpose, impracticality, cost or difficulty of performance, restraint of trade or unfair trade practices. For avoidance of doubt, this Section B shall not be interpreted such as to deprive or impair a Party's rights with respect to Force Majeure Events or another Party's future act or omission that constitutes a breach of this Joint Proposal, as otherwise provided for in this Joint Proposal.

- C. Holtec has no present intention to site a new nuclear reactor at the Site, and it agrees that it will not propose the siting of new nuclear reactors at the Site unless the local governmental entities (Towns, Village, School District), the County and the State agree to support or not oppose such an application.

V. BENEFITS OF DECON PLAN

Holtec has proposed to cost effectively, safely, and expeditiously decommission Indian Point utilizing HDI's DECON Plan which the Signatory Parties agree will allow the Site to be decommissioned decades sooner than if it remained under Entergy ownership. In contrast, Entergy is not engaged in the decommissioning business and under continued Entergy ownership, a 60-year SAFSTOR approach would be pursued, and Indian Point would remain in a state precluding any significant alternative use and development for decades longer than under HDI's DECON Plan.

The Signatory Parties agree that HDI's DECON Plan-based decommissioning and release of the parcels at Indian Point for future re-use will yield considerable economic and environmental benefits for New Yorkers. First, prompt decommissioning will mean more well-paying jobs are retained at the Site, giving these employees and their families certainty as to their futures in New

York. The local communities and the State as a whole will also benefit when the Transfers are completed and the Transactions are closed. Specifically, HDI's DECON approach will accelerate Site release and reuse, restoring the property tax base for local communities, driving industry, encouraging new investment and innovation as the State implements its Green New Deal, and creating jobs in ways that would otherwise be unavailable. As the Indian Point Closure Task Force has expressly recognized, transferring ownership of nuclear sites to specialty decommissioning entities, like HDI, post-retirement would support prompt decommissioning.⁵ As the record reflects, the Transactions would permit Indian Point to be decommissioned decades sooner, with Partial Site Release (except for the ISFSI) projected by the end of 2036, and potentially as early as 2033.

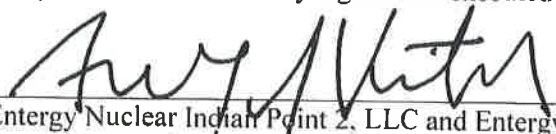
VI. PROPOSED COMMISSION FINDINGS & AUTHORIZATION

The Signatory Entities hereby agree that the record in Case 19-E-0730 supports a Commission determination that the Transfers are in the public interest and the Joint Proposal is in the range of reasonable outcomes and compares favorably with the likely result of full litigation. Accordingly, the Signatory Entities recommend that the Commission authorize the Transfers pursuant to NYPSL Section 70 and in accordance with the Commission's Settlement Rules.

[Signatures on Next Pages]

⁵ See Indian Point Closure Task Force, Annual Report, (dated May 9, 2018) (hereinafter, "2018 Report"), available at <http://documents.dos.nv.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=17-00994&submit=Search>, at 25-26,

IN WITNESS WHEREOF, the Signatory Entities have this day signed and executed this Joint Proposal.



Entergy Nuclear Indian Point 2, LLC and Entergy
Nuclear Indian Point 3, LLC

Name: ANTHONY J. VITALE

Title: SVP-IPEC

Date: 4-14-21

IN WITNESS WHEREOF, the Signatory Entities have this day signed and executed this Joint Proposal.



Nuclear Asset Management Company, LLC

Name: Pamela B. Cowan

Title: Executive Committee Member

Date: 4/14/21

IN WITNESS WHEREOF, the Signatory Entities have this day signed and executed this Joint Proposal.

Pam B Cowan
Holtec Decommissioning International, LLC

Name: Pamela B Cowan

Title: COO & Senior VP

Date: 4/14/21

IN WITNESS WHEREOF, the Signatory Entities have this day signed and executed this Joint Proposal.



Staff of the New York State Department of Public
Service

Name: JOHN SIPOS

Title: Deputy General Counsel

Date: April 14, 2021

IN WITNESS WHEREOF, the Signatory Entities have this day signed and executed this Joint Proposal.

LETITIA JAMES
New York State Attorney General



New York State Office of the Attorney General
Lisa M. Burianek, Deputy Bureau Chief
Joshua M. Tallent, AAG
Channing Wistar-Jones AAG
Environmental Protection Bureau
The Capitol
Albany, NY 12224
Lisa.Burianek@ag.ny.gov

Date: _____

April 14, 2021

IN WITNESS WHEREOF, the Signatory Entities have this day signed and executed this Joint Proposal.



New York State Department of Environmental
Conservation

Name: Basil Seggos

Title: Commissioner

Date: April 14, 2021

IN WITNESS WHEREOF, the Signatory Entities have this day signed and executed this Joint Proposal.



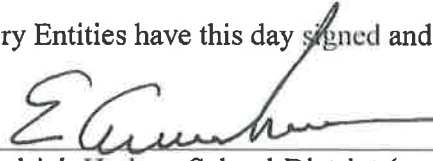
New York State Energy Research and Development
Authority

Name: Peter J. Costello

Title: General Counsel and Secretary

Date: April 14, 2021

IN WITNESS WHEREOF, the Signatory Entities have this day signed and executed this Joint Proposal.



Hendrick Hudson School District (execution
subject to ratification by applicable municipal
governing body)

Name: ENRIQUE CATALAN

Title: ASSISTANT SUPERINTENDENT
FOR BUSINESS

Date: 4/14/21

IN WITNESS WHEREOF, the Signatory Entities have this day signed and executed this Joint Proposal.



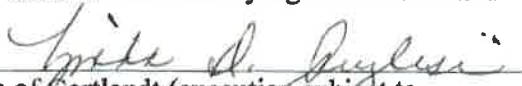
Village of Buchanan (execution subject to
ratification by applicable municipal governing
body)

Name: Theresa Knickerbocker

Title: mayor

Date: 4-14-21

IN WITNESS WHEREOF, the Signatory Entities have this day signed and executed this Joint Proposal.


Town of Cortlandt (execution subject to
ratification by applicable municipal governing
body)

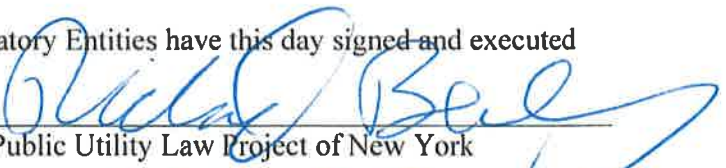
Name: Linda D. Puglisi

Title: Town Supervisor

Date: April 14, 2021

APPROVED
TOWN ATTORNEY
Date: 6/14/21


IN WITNESS WHEREOF, the Signatory Entities have this day signed and executed this Joint Proposal.


Public Utility Law Project of New York

Name: Richard Berkley

Title: Executive Director

Date: 4/14/21

IN WITNESS WHEREOF, the Signatory Entities have this day signed and executed this Joint Proposal.



Riverkeeper, Inc.

Name: Paul Gallay

Title: President and Hudson Riverkeeper

Date: April 14, 2021

Attachment A

Order on Consent and Administrative Settlement

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Implementation of Corrective Action for a Hazardous Waste Management Facility and Remedial Program for an Inactive Hazardous Waste Disposal Site, Pursuant to Article 27, Titles 9 and 13; and Article 71, Title 27 of the Environmental Conservation Law of the State of New York by:

Order on Consent and
Administrative Settlement
re Indian Point Energy Center

Holtec Decommissioning International, LLC

Respondent.

WHEREAS:

Jurisdiction

1. Consistent with the authority granted to the New York State Department of Environmental Conservation ("Department") and the Department's Commissioner by the Environmental Conservation Law of the State of New York ("ECL") Article 1 Title 3, the Department is responsible for carrying out the "policy of the state of New York to conserve, improve and protect its natural resources and environment and to prevent, abate and control water, land and air pollution".

Applicable Law

2. This Order on Consent and Administrative Settlement ("Order and Settlement") is issued pursuant to the Department's authority under the ECL, including, but not limited to:

- a. ECL Article 27, Title 9 and Parts 370-374 and 376 of Title 6 of the Official

Compilation of Codes, Rules and Regulations (“6 NYCRR”) that govern the implementation of the Resource Conservation and Recovery Act Program (“RCRA”) via the Industrial Hazardous Waste Management Program;

b. ECL Article 27, Title 13 and 6 NYCRR Part 375 that govern the implementation of Inactive Hazardous Waste Disposal Site remedial programs through the State Superfund Program (“SSF”);

c. ECL Article 71, Title 27 that governs the enforcement of the provisions of Article 27, and authorizes the Department to enter into orders requiring corrective action;

d. The New York State Navigation Law, Article 12, which governs liability and cleanup of releases of petroleum in New York State, and provisions of 6 NYCRR, Part 613, that regulate the bulk storage of petroleum.

3. Consistent with the authority granted to the Commissioner, the Department may issue orders pursuant to *inter alia* ECL Article 27, Titles 9 and 13 and ECL 71-2727(3) and 71-1929 requiring corrective action/remedial programs, site management and such other measures as necessary to protect public health and the environment from releases of hazardous waste or constituents.

Parties & Facility Background

4. Holtec Decommissioning International, LLC (“HDI” or “Respondent”), is a Delaware limited liability company with its principal place of business at 1 Holtec Blvd., Camden, NJ 08104.

5. The Indian Point site and facilities, referred to in this Order and Settlement as the Indian Point Energy Center (“IPEC”), is a three-unit nuclear generating facility located in the Town of Cortlandt and the Village of Buchanan, New York. Units 1 and 2 have permanently ceased operation (although Unit 2 Spent Fuel Pool operation continues); Unit 3 will cease operation in April 2021. For purposes of this Order and Settlement, IPEC shall be defined herein to include the property and infrastructure shown and described on the map provided as Exhibit A.

6. On April 15, 2019, a Membership Interest Purchase and Sale Agreement (“MIPA”)

was signed by: Nuclear Asset Management Company, LLC and Holtec International (collectively the “Purchaser”), and Entergy Nuclear Indian Point 2, LLC and Entergy Nuclear Indian Point 3, LLC (collectively, the “Seller”). Under the terms of the MIPA, Purchaser will acquire all of the equity interest of two newly formed limited liability companies created by Seller, which at the time of closing of the transaction, will own IPEC and the associated real property, equipment, and other interests (collectively, the “Owners”), all as specifically described in the MIPA (the foregoing is collectively referred to as the “Transaction”).

7. After the Transaction closes, the Owners will sign a Consent Form, attached to this Order and Settlement as Exhibit B, which will make them additional respondents to this Order and Settlement.

8. In connection with the Transaction, on November 21, 2019 HDI, Purchaser and Seller filed a License Transfer Application (“LTA”) with the U.S. Nuclear Regulatory Commission (“NRC”), and thereafter supplemented the application with additional information including a decommissioning cost estimate. After finalizing the Transaction, HDI would be the NRC-licensed operator of IPEC with responsibility, among other things, to decommission IPEC Units 1, 2 and 3. HDI will engage and supervise a decommissioning general contractor for the majority of this effort. None of the reactors will be authorized to operate after permanent defueling and notification to the NRC occurs, which must be the case prior to the license transfer. At the time of the Transaction and license transfer, the Unit 3 reactor will be permanently defueled, and HDI will hold the NRC licenses for Unit 1, Unit 2, Unit 3, and the on-site Independent Spent Fuel Storage Installation(s) (ISFSI) until the NRC releases the Indian Point site from NRC regulation. The Unit 2 and Unit 3 spent fuel pools and the ISFSI will continue to operate after the completion of the Transaction.

9. As detailed below, this Order and Settlement requires investigation, evaluation, and corrective action of IPEC.

Objectives of this Order and Settlement

10. The Department and Respondent agree that the objectives of this Order and

Settlement are to:

- a. Resolve outstanding issues with the Department regarding the corrective action and remedial obligations at IPEC, by following the requirements of this Order and Settlement;
- b. Subject to Section I(a), coordinate, as necessary and appropriate, the corrective actions under this Order and Settlement with the radiological decommissioning process under the jurisdiction of the NRC. Completion of radiological decommissioning will culminate in NRC issuance of a “partial site release.” Partial site release is when the NRC gives written approval to release a portion of a nuclear facility or site for unrestricted use at any time before approving a license termination plan.¹
- c. Complete the evaluation and implementation of corrective actions/remedial activities, as well as site management requirements at IPEC;
- d. Establish the terms and conditions that govern the parties’ rights and responsibilities should there be a dispute, a violation of the ECL or its implementing regulations, or a violation of this Order and Settlement;
- e. Provide certain funding for Department and the New York State Department of Health’s costs;
- f. Provide financial assurance for corrective measures/remedial actions, and necessary site management requirements for IPEC. Such financial assurance shall also contain any required funds for additional radiological remediation beyond the NRC’s 25 millirem level to attain the Department’s guidance value (see DEC’s DER-38, Cleanup Guidelines for Soils Contaminated with Radioactive Materials) of maintaining a total effective dose equivalent (TEDE) to the maximally exposed individual of the public, to a level as low as reasonably

¹ See 10 CFR 50.83(a). Also, under NRC guidelines, a site will be considered for “unrestricted use” when the requirements of 10 CFR 20.1402 are met.

achievable (ALARA), and less than 10 millirem in any one year (mRem/yr.)

g. Implement any future Statement of Basis/Record of Decision (“SOB/ROD”) issued in connection with this Order and Settlement, to be prepared by the Department, as well as supplements or amendments thereto which will detail the corrective actions and site management requirements for IPEC;

h. Ensure that contamination associated with previous spills, explosions or other releases from IPEC at the areas referenced in Exhibit A, including but not limited to radiological contamination, petroleum, polychlorinated biphenyls (PCBs), and per- and polyfluoroalkyl substances (PFAS), is remediated to levels protective of public health and the environment;

i. Support citizen participation in the development of the corrective measures/remedial actions at IPEC, and

j. Allow for the future safe reuse of IPEC after successful decommissioning and necessary corrective actions are undertaken.

11. Respondent consents to the issuance of this Order and Settlement without (i) an admission or finding of liability, fault, wrongdoing, or violation of any law, regulation, permit, order, requirement, or standard of care of any kind whatsoever; (ii) an acknowledgment that there has been a release or threatened release of hazardous waste at or from IPEC; and/or (iii) an acknowledgment that a release or threatened release of hazardous waste at or from IPEC constitutes a significant threat to the public health or environment.

12. By entering into this Order and Settlement, Respondent hereby waives its rights to a hearing concerning this Order and Settlement as may be provided by law (while preserving its rights to dispute resolution as set forth below), consents to and agrees not to contest the authority or jurisdiction of the Department to issue or enforce this Order and Settlement, and agrees to be bound by its terms.

NOW, having considered this matter and being duly advised, **IT IS ORDERED THAT:**

I. Effect of Order and Settlement

A. Hereinafter, investigation, corrective action, remedial action, and site management activities undertaken by Respondent at IPEC will be subject to the terms and provisions of this Order and Settlement, recognizing that the NRC, as the federal radiological licensing authority for nuclear reactors, has the primary responsibility over the radiological decommissioning of IPEC pursuant to NRC requirements, and that the Department has authority over radiological remediation beyond the scope of NRC requirements, as well as other aspects of site restoration.

B. Necessary investigation and corrective action will be taken pursuant to one or more Department-approved work plans ("Work Plan" or Work Plans") to be developed under and in accordance with the terms of this Order and Settlement.

C. This Order and Settlement shall control in the event of any conflicts between it and any prior order, agreement or authorization on the matters contained herein between the Department and the Seller, Purchaser, or Respondent concerning IPEC. As reflected by correspondence annexed as Exhibit C, the Department has confirmed that there are no existing administrative or judicial orders or obligations pertaining to unresolved regulatory duties or actions applicable to IPEC, excluding ongoing obligations related to the 2017 agreement between New York State and Entergy regarding monitoring and environmental benefit projects that New York and others are administering.

II. Financial Assurance

A. Within sixty (60) days of the Effective Date of this Order and Settlement, Respondent will post \$110,597,000 in financial assurance in the form of a surety bond or letter of credit, which will name "New York State Department of Environmental Conservation" as beneficiary. Respondent will provide the Department with an advance

copy of the surety bond or letter of credit, for the Department's prompt review and approval. Once approved and executed, Respondent will provide documentation to the Department of the amount posted within that timeframe. If Respondent fails to post and provide this documentation within that timeframe, this Order and Settlement will terminate and all terms and conditions within it will be null and void. The financial assurance required by this subparagraph covers the anticipated cost of remedial/corrective actions required by this Order and Settlement.

B. At the request of Respondent or on its own initiative, but no more frequently than on an annual basis, the Department will assess the status of work under this Order and Settlement, including the completion of work plans, as well as other information contained in reports submitted by Respondent (including their annual submission to the NRC). The Department will then determine if, and the degree to which, the amount of then existing financial assurance will be adjusted, based on information which shows changes to the estimates of costs of remaining corrective or remedial action.

- i. In the case where Respondent makes a request, the Department may contest the information or estimates provided by Respondent, but it will approve the adjustment if it agrees with Respondent's analysis. The parties agree to timely discuss divergent positions. The Department will notify Respondent of its adjustment and the basis for any denial no later 90 days after HDI's submittal request with supporting information.
- ii. In the case where the Department seeks an adjustment on its own initiative, it will notify Respondent in writing and justify the basis of the adjustment. Respondent may contest the adjustment per Section XVII (Dispute Resolution). If Respondent does not contest

the adjustment, it will update the financial assurance amount within 90 days of the Department's request. Despite the foregoing, if the estimated cost for corrective action or remedial action changes by less than [10%], Respondent shall have 24 months to perform corrective or remedial actions to bring costs in-line with the existing amounts of financial assurance, and Respondent will not be required to adjust the financial assurance during that time frame. If Respondent does not perform the required corrective or remedial actions during that 24-month period, it shall then update the financial assurance amount to meet the required adjustment.

C. Within sixty (60) days of the Effective Date of this Order and Settlement, Respondent will procure a Pollution Liability Insurance policy in the amount of \$30M, which will remain in place and be renewed as needed by Respondent until issuance of a Satisfactory Completion Letter as set forth in Section VIII. Respondent will provide the Department with an advance copy of the insurance policy, for the Department's prompt review and approval. Following the completion of site investigations and the commencement of the work plans as described in Section III, the Department will also consider in good faith Respondent's reasonable request (with supporting information) to reduce the amount of coverage prior to issuance of the Satisfactory Completion Letter. The Department will notify Respondent of its decision no later than ninety (90) days after HDI's request with supporting information and the basis for any denial. The policy shall name "New York Department of Environmental Conservation" as an additional insured on the policy.

D. Respondent's agreement to post financial assurance and maintain insurance in Sections II(A) and (C) above satisfies the financial requirements found in 6 NYCRR Section 373-2.8(h).

E. While this Order and Settlement remains in effect, the financial assurance will remain in effect subject to adjustment as set forth in subsection II.B. above and subject to adjustment for inflation as provided for in 6 NYCRR §373-2.8(c)(2) and 373-2.8(e)(2).

III. Initial Work Plan and future Work Plans at IPEC

A. Within one hundred and fifty (150) days of the effective date of this Order and Settlement, Respondent shall submit for the Department's review and approval a "Scoping Work Plan," which is a work plan that will describe the overall program of remedial investigation of areas at IPEC to be addressed in close coordination with NRC decommissioning efforts.

B. The Scoping Work Plan must summarize known environmental and sampling data at IPEC, include the schedule for investigation of discrete areas, and identify steps in order to fully understand the nature and extent of both radiological and non-radiological contamination (i.e., hazardous substances and petroleum) in soils, groundwater, and any other environmental media at IPEC. For additional clarity, with respect to radiological contamination, the Scoping Work Plan referenced in Section III, A. will include a schedule for completing radiological characterization and other related activities, however, any other Work Plan regarding radiological investigation or remediation (other than work plans developed under this Order and Settlement to achieve reductions from 25 to 10 mRem/yr) will be developed under NRC regulations using the MARSSIM process. As part of the final Scoping Work Plan, Respondent will certify that in compiling the plan and summarizing the data, it requested and exercised diligent, good faith efforts to review environmental records from the Sellers and their affiliates.

C. After approval and implementation of the Scoping Work Plan, other work plans will be proposed by Respondent for review and approval by the Department, under the procedures described in this Section, and those set forth in 6 NYCRR Part 375.

D. Any proposed Work Plan submitted under this Order and Settlement must be submitted for the Department's review and approval and must include, at a minimum, a chronological description of the anticipated activities, a schedule for performance of those activities, and sufficient detail to allow the Department to evaluate that Work Plan. Respondent may also submit requests to the Department for approval through email for incidental tasks or administrative issues not otherwise covered herein. During approval review, Respondent is able to continue work with the understanding that the work is being performed at risk. Notwithstanding the foregoing, Department understands schedule variances are expected throughout decommissioning and the Department will not unreasonably withhold approval of any proposed schedule change so as to impact the ability to implement it as requested. Other than providing notice to the Department, Respondent is not required to seek Department approval for schedule variances estimated to be less than sixty (60) days, which are (i) related to radiological cleanup performed under NRC oversight, or (ii) related to other cleanup subject to this Order and Settlement; and such schedule delays shall not be subject to penalties under Section XII.

E. Types of Future Work Plans: A "Work Plan" may take the following form:

1. "Remedial Investigation or Remedial Facility Investigation Work Plan" or "RIWP/RFIWP" – a work plan that provides for the investigation of the nature and extent of contamination at IPEC;
2. "Feasibility Study or Corrective Measures Study Work Plan" or "FSWP/CMSWP" – a work plan that evaluates remedial alternatives/corrective measure alternatives at IPEC or a portion of IPEC. This work plan will include a range of remedial/corrective measures, at least one of which must be remediation of the facility to "its original state" as required by Article 27, Title 9, of the ECL. Other remedial alternatives will take into consideration the reasonably anticipated reuse of IPEC or a portion of IPEC.

3. “Remedial Action Work Plan or Corrective Measure Implementation Work Plan” or “RAWP/CMIWP” – provides for the development and implementation of a remedial/corrective measure program for contamination at IPEC or a portion of IPEC, in compliance with a Department-issued SOB/ROD.

4. “Interim Remedial Measure or Interim Corrective Measure Work Plan” or “IRMWP/ICMWP” – provides for the implementation of an interim remedial/corrective measure at IPEC or a portion of IPEC; and

5. “Site Management Plan” or “SMP” – provides for the identification and implementation of institutional and/or engineering controls as well as any necessary monitoring and/or operation and maintenance of the remedy(ies) at IPEC.

6. “Supplemental” if an additional work plan other than those set forth above is required to be prepared or implemented, whether proposed by Respondent or requested by the Department.

F. Review of Work Plans:

The Department will make a good faith effort to review and respond in writing to each submittal Respondent make pursuant to this Order and Settlement within ninety (90) days. The Department’s response will include an approval, modification request, or disapproval of the submittal, in whole or in part.

1. Approval of Work Plan

Upon the Department's written approval of a Work Plan, such Department-approved Work Plan shall be deemed to be incorporated into and made a part of this Order and Settlement and shall be implemented in accordance with the schedule contained therein.

2. Modification to Work Plan

If the Department modifies or requests modifications to a submittal, it shall specify the reasons for such modification(s). Within thirty (30) days after the date

of the Department's written notice that Respondent's submittal must be modified, Respondent must notify the Department in writing of its election in accordance with 6 NYCRR 375-1.6(d)(3). If Respondent elects to modify or accept the Department's modifications to the submittal, Respondent shall transmit a revised submittal that incorporates all of the Department's modifications to the first submittal in accordance with the time period set forth in 6 NYCRR 375-1.6(d)(3). In the event that Respondent's revised submittal is disapproved, the Department will set forth its reasons for such disapproval in writing and Respondent will be in violation of this Order and Settlement unless it invokes dispute resolution pursuant to Section XVII and its position prevails. Failure to make an election or failure to comply with the election is a violation of this Order and Settlement.

3. Disapproval of Work Plan

If the Department disapproves a submittal, it shall specify the reasons for its disapproval. Within thirty (30) days after the date of the Department's written notice that Respondent's submittal has been disapproved, Respondent shall notify the Department in writing of its election in accordance with 6 NYCRR 375-1.6(d)(4). If Respondent elects to modify the submittal, Respondent shall make a revised submittal that addresses all of the Department's stated reasons for disapproving the first submittal in accordance with the time period set forth in 6 NYCRR 375-1.6(d)(4). In the event that Respondent's revised submittal is disapproved, the Department shall set forth its reasons for such disapproval in writing and Respondent shall be in violation of this Order and Settlement unless it invokes dispute resolution pursuant to Section XVII and its position prevails. Failure to make an election or failure to comply with the election is a violation of this Order and Settlement.

G. Upon completion of the RIWP/RFIWP and submission of the applicable final report issued pursuant to Section VI, the Department will determine if one or more areas

do not require further remedial or corrective action. The Department shall make such determination in writing within ninety (90) days of accepting the final report. The Department may request additional time for review, for good reason. Respondent understands that areas no longer subject to further remedial or corrective action may still be subject to other conditions that would need to be satisfied in order for such areas to be no longer subject to the terms of this Order and Settlement (i.e., specified site management or institutional controls).

H. The Department will notify Respondent in writing if the Department determines that any element of a Department-approved Work Plan needs to be modified in order to achieve the objectives of the Work Plan or to ensure that the corrective action/remedial program otherwise protects public health and the environment. Upon receipt of such notification, Respondent must, subject to dispute resolution pursuant to Section XVII, modify the Work Plan.

I. During field activities conducted under a Department-approved Work Plan, Respondent must have an on-site licensed and registered Professional Engineer, or an on-site representative that is directly supervised by a Professional Engineer, for activities involving hazardous waste or petroleum remediation.

J. Following partial site release, and assuming Respondent has not yet achieved the Department's requirements for radiological cleanup, whenever radiological field activities are occurring (meaning characterization, radiological material handling, remediation, and waste management), Respondent must have an on-site entity licensed by the DOH as a Decontamination and Decommissioning Health Physics Consultant (D&D consultant), or an entity recognized as meeting reciprocity requirements by the DOH.

K. A Professional Engineer, licensed, and registered in New York State, must sign, stamp and certify all Work Plans, Work Plan Reports, other reports (including any final engineering report), and design documents submitted in final form - all in accordance

with 6 NYCRR 373-1.4(a)(5)(iv). Respondent should only undertake work required under this Order and Settlement pursuant to one or more approved Work Plans. However, Respondent may proceed to implement work while awaiting Departmental approvals on Work Plans or other determinations, upon notice to the Department, at its own risk. Such unapproved work could result in the imposition of penalties, corrective actions, or other enforcement against Respondent if the work violates the Department's regulations or the ECL. Furthermore, Respondent risks that the Department will require additional or re-implementation of work to the Department's standards at IPEC or a portion of IPEC upon its ultimate approval. For additional clarity, the foregoing is not meant to restrict or prohibit work regulated under the NRC's authority.

L. The work required under this Order and Settlement is extensive and is expected to take many years to complete. The Department agrees to provide flexibility, extensions of schedules, and other accommodations to Respondent based on legitimate and justifiable delays in progress or unforeseen changes in circumstances. Respondent can request extensions for notice/submittal deadlines set forth in this Order and Settlement, which the Department will not unreasonably withhold, condition, or delay.

IV. Citizen Participation Plan

A. Within (30) days of the Effective Date of this Order and Settlement, Respondent must submit for review and approval a written Citizen Participation Plan ("CPP") prepared consistent with the requirements of 6 NYCRR 375-1.10. Upon approval, the CPP will be deemed to be incorporated into and made a part of this Order and Settlement.

B. Respondent must cooperate with the Department and provide reasonable assistance, consistent with the CPP, in soliciting public comment on the work plans and reports identified for public comment in the CPP, proposed remedial action plans, and

additional work plans and/or reports as the Department may require.

C. The CPP may need to be supplemented, modified, or updated as mutually agreed by Respondent and the Department with respect to the corrective measure/remedial action activities, site management activities, or decommissioning activities from time to time.

V. Department's Issuance of a SOB/ROD

A. Respondent must cooperate with the Department and provide reasonable assistance, consistent with their CPP discussed above, to solicit public comment on any proposed remedial action plans ("PRAPs") issued pursuant to a draft SOB/ROD at IPEC.

B. After the close of the public comment period on a PRAP, the Department will select the remedial action(s)/corrective measure(s) to be implemented by Respondent at IPEC or a portion of IPEC.

C. A final SOB/ROD will incorporate the appropriate soil cleanup objective (SCO) based on the factors in 6 NYCRR 375-1.8(f) and CP-51. The final SOB/ROD will also incorporate the 10 millirem per year guidance value in the Department's "Cleanup Guidelines for Soils Contaminated with Radioactive Materials" (DER-38).

D. Should contamination be discovered during corrective measure/remedial action work under this Order and Settlement, that was unknown and unexpected when the SOB/ROD was issued, Respondent must provide written notice to the Department, within timeframes required pursuant to applicable laws, but no later than within five (5) business days of the discovery. Discovery of unknown or unexpected contamination may include a tank, visibly stained soils, or superficially-scanned soils or groundwater, or unexpected or unique contamination in buildings or environmental media.

E. For the purposes of satisfying this notice requirement (in addition to any required spills reporting), Respondent may utilize the Department's Project Manager's electronic

mail address and phone number. Should the Department then determine that the previously unknown contamination requires remediation, the scope of the required corrective measure/remedial action work will be expanded to include such newly-discovered contamination.

VI. Submission of Final Reports and Periodic Reports:

A. In accordance with the schedule to be contained in an approved Work Plan, or any subsequent schedule agreed to and approved by the Department, Respondent shall submit a draft final report for each Work Plan as provided at 6 NYCRR 375-1.6(b). Such draft final report shall contain all relevant data gathered and drawings and submittals made pursuant to such Work Plan, in an electronic format acceptable to the Department. If any document cannot be converted into electronic format, Respondent shall submit such document in an alternative format acceptable to the Department.

B. The Department will review the draft final report, and will make a good faith effort to provide comments or approve the draft final report within one hundred twenty (120 days) of the submittal of the draft final report.

C. Within sixty (60) days after the Department's approval of a final report, Respondent must submit such additional Work Plans as is reasonably required by the Department in its approval letter of such final report. Subject to Section XII, failure to submit additional Work Plans within such period will be a violation of this Order and Settlement.

D. Any final report or final engineering report that includes construction activities shall include "as built" drawings showing any changes made to the corrective measure/remedial design or the IRM/ICM.

VII. IPEC Facility Institutional Controls and Use

A. If the Department-approved SOB/ROD for IPEC relies upon one or more institutional and/or engineering controls, Respondent must submit to the Department for approval an Environmental Easement to run with the land in favor of the State which complies with the requirements of ECL Article 71, Title 36, and 6 NYCRR 375-1.8(h)(2). Upon acceptance of the Environmental Easement by the Department, Respondent must comply with the requirements of 6 NYCRR 375-1.8(h)(3).

B. Failure to cause such environmental easement to be recorded in accordance with 6 NYCRR 375-1.8(h)(2), will be a violation of this Order and Settlement and may result in the Department filing an Environmental Notice on the Site. If the Department files an Environmental Notice, Respondent will not be entitled to the satisfactory completion letter detailed in Section VIII of this Order and Settlement.

C. Respondent must notify the Department at least sixty (60) days in advance of any change of use, which is proposed for IPEC in accordance with the provisions of 6 NYCRR 375-1.11(d). For purposes of this Order and Settlement, "change of use" shall be as defined in 6 NYCRR 375-2.2(a). If the Department determines that the proposed change of use is prohibited, the Department will make a good faith effort to notify Respondent of such determination, with a reasonable basis for the determination, within forty-five (45) days of receipt of such notice.

VIII. Termination of Order and Settlement and Satisfactory Completion Letter

A. This Order and Settlement will terminate upon the Department's written determination that Respondent has completed all phases of the corrective action/remedial program (other than site management) at IPEC, which Respondent anticipates will be at or near the time of "partial site release" from the NRC in its decommissioning process. Any site management for the ISFSI or as otherwise required

under this Order and Settlement will remain in place until such time as the Department determines it is no longer necessary.

B. Such written determination will be in the form of a Satisfactory Completion Letter from the Department. Such Satisfactory Completion Letter will document that Respondent has completed its obligations under this Order and Settlement, including all necessary corrective/remediation actions, and that no further action (other than site management) is required to render IPEC (or a portion thereof) acceptable for the land use provided for in an SOB/ROD or Environmental Easement. Notwithstanding the foregoing, nothing in this Section shall limit the Department's ability under Section III.G. hereof to determine that one or more areas of IPEC do not require further remedial or corrective action and release such areas of IPEC from coverage under this Order and Settlement.

C. Notwithstanding the foregoing, the provisions contained in Section XIV shall survive the termination of this Order and Settlement.

IX. Public Notice & Transfer Requirements

A. Within thirty (30) days after the effective date of this Order and Settlement, Respondent must provide notice consistent with the requirements set forth in 6 NYCRR 375-1.5(a). Within sixty (60) days of such submission, Respondent must provide the Department with a copy of such instrument certified by the recording officer to be a true and faithful copy.

B. Upon sale of IPEC to Purchaser, the Owners, or another entity that purchases IPEC or any portion of IPEC, shall sign a "Consent of Owner" attached as Exhibit B, which will require Owners to comply with all of the provisions of this Order and Settlement, in the same manner as Respondent is bound.

C. Respondent (and Owners thereafter) shall not transfer by sale or by lease the whole or any part of its interest in IPEC without giving the Department at least one hundred and eighty (180) days prior notice. No transfer in ownership, management, or operation of IPEC, or any portion thereof, shall relieve Respondent or Owners or their managers, officers, directors, agents, successors, assigns, heirs, and/or servants of any obligation under this Order and Settlement, unless:

1. The proposed transferee² agrees, in writing, to undertake the obligations required by this Order and Settlement and to be substituted for Respondent,
2. The proposed transferee obtains all necessary NRC approvals for license transfer, permit, or other required authorizations, if applicable,
3. The proposed transferee maintains all required financial assurance and liability insurance set forth in Section II at the time of transfer and any financial assurance and liability insurance required into the future, and
4. The proposed transferee maintains all required site management until the Department determines it is no longer necessary and completed.

D. The notice required in this Section must be in writing, and identify the transferee and of the nature and proposed, or actual, date of the conveyance, and must notify the transferee in writing, with a copy to the Department, of the applicability of this Order and Settlement.

E. The restrictions and requirements set forth in Section IX, A-D are not meant to apply to leases for (i) use of some or all of the administration building or training center,

² Any entity that leases, owns, or exerts operational control of IPEC or a portion of IPEC.

or (ii) other short-term leases of one year or less for a portion of the site, provided in all cases the lessee is not expected to cause adverse material environmental impacts to the site. Respondent will provide notice to the Department of such leases, as soon as reasonably possible.

X. Entry Upon IPEC facility and State Costs

A. Respondent hereby consents, upon reasonable notice and safety preparation to allow an authorized representative of the Department to visit IPEC for purposes of observing and inspecting major work activities, obtaining samples and reviewing/copying records (not related to personnel or business confidential information) related to contamination, testing, and any other activities reasonably necessary to ensure Respondent's compliance with this Order and Settlement. The Department's representative shall present appropriate identification and shall abide by access, health, and safety rules in effect for IPEC. Review and copying of documents may also be subject to confidentiality restrictions to protect proprietary information. Respondent will clearly identify what it believes constitutes proprietary or confidential business information. Access to confidential business information would be limited to appropriate Department staff and any consultants assisting the Department with oversight, monitoring, etc. will enter into appropriate confidentiality agreements with HDI. Further, the Department's safety representative shall undertake reasonable efforts to minimize disruptions to work activities unless for immediate safety-related concerns.

B. To facilitate the Department's role in monitoring decommissioning activities, obtaining samples, and monitoring Respondent's compliance with the ECL and this Order and Settlement, Respondent agrees to reimburse the Department's costs as detailed in Section XI.

C. Upon request and at least five (5) business days advance notice, Respondent shall (i) provide the Department with suitable workspace at the IPEC facility including access to a telephone, to the extent available and (ii) permit the Department full access

to non-privileged records relating to matters addressed by this Order and Settlement. Raw data related to testing, sampling, radiological surveying, and other environmental monitoring is not considered privileged and that portion of any privileged document containing raw data must be provided to the Department. In the event Respondent is unable to obtain any authorization from third-party property owners necessary to perform its obligations under this Order and Settlement (e.g., accessing NYSERDA-owned real property), the Department may, consistent with its legal authority, assist in obtaining such authorizations.

XI. Payment of State Costs

A. In consideration of the Department's and the New York State Department of Health's ongoing monitoring and other costs related to IPEC, Respondent agrees to provide the Department with annual funding as follows:

- An annual amount that will not exceed \$300,000.
- The annual funding estimate not to exceed \$300,000 will be updated annually for inflation at 1% for the Department's first ten (10) fiscal years following the effective date of this Order and Settlement.
- The Department and the Department of Health may employ contractors or consultants to perform the oversight required by this Order and Settlement, and the Department may provide those invoices to Respondent as laid out below, which would be reimbursed up to the annual cap number of \$300,000 plus inflation. Contractor costs shall be in line with industry norms.

B. After incurring costs, the Department will provide Respondent invoices representing the costs of monitoring IPEC and the costs of ensuring fulfillment and compliance with this Order. Respondent will make the required payment within forty-five

(days) after receipt of an invoice from the Department. Failure to timely pay any undisputed invoice will be subject to interest at a rate of 9% from the date the payment is due until the date the payment is made.

C. Invoices to Respondent will be sent electronically, if possible, to the following address:

accountspayable@holtec.com

with a copy to:

Holtec Decommissioning International, LLC
Attn: Vice President Regulatory and Environmental Affairs
1 Holtec Blvd.
Camden, NJ 08104

Each such payment must be made payable to the New York State Department of Environmental Conservation and shall be sent to:

New York State Department of Environmental Conservation
Division of Management & Budget, 10th Floor
625 Broadway
Albany, NY 12233-4900

D. Each party shall notify the other within thirty (30) days after any change in the addresses listed in this Section.

XII. Penalties

A. Subject to the provisions below regarding Force Majeure Events, Respondent's failure to comply with any material term of this Order and Settlement constitutes a violation of this Order and Settlement and the ECL. If the Department determines that Respondent has failed to materially comply with this Order and Settlement, the Department will notify Respondent in writing, specifying such noncompliance and giving Respondent a reasonable opportunity to cure before any penalties are imposed. Such

cure period shall not be less than thirty (30) days from the date Respondent receives the Department's notice. Payment of any penalty shall not in any way alter Respondent's obligation to comply with any term of this Order and Settlement or to complete performance under the terms of this Order and Settlement. The payment of penalties as set forth below will not limit the Department's right to seek such other relief as may be authorized by law. Nothing herein abridges Respondent's right to contest any allegation that it has failed to comply with this Order and Settlement.

B. Civil and administrative sanctions: As provided by ECL §71-2705, the civil penalty for failing to comply with the requirements of this Order and Settlement shall not exceed thirty-seven thousand five hundred dollars (\$37,500), with additional penalty of not more than thirty-seven thousand five hundred dollars (\$37,500) for each day during which such violation continues. In the case of a second and any further violation, the liability is for a civil penalty not to exceed seventy-five thousand dollars (\$75,000) for each such violation, with additional penalty not to exceed seventy-five thousand dollars (\$75,000) for each day during which that violation continues.

C. Any penalty assessed pursuant to the terms and conditions of this Order and Settlement must be paid by submitting a certified or cashier's check or money order, payable to the Department of Environmental Conservation, to: Andrew Guglielmi, Esq., Department of Environmental Conservation, Office of General Counsel, 625 Broadway, Albany, New York 12233-1500. Unpaid and undisputed penalties imposed by this Order and Settlement will be subject to interest at the rate of 9 percent per annum for each day the penalty, or any portion thereof, remains unpaid. Payments received will first be applied to accrued interest charges and then to the unpaid balance of the penalty.

D. Default of Payment: The penalties assessed pursuant to the Order and Settlement constitutes a debt owed to the State of New York. Failure to pay the assessed penalty or any part thereof may result in referral to the New York State

Attorney General for collection of the entire amount owed (including the assessment of interest, and a charge to cover the cost of collecting the debt), or referral to the New York State Department of Taxation and Finance, which may offset any tax refund or other monies owed by the State of New York by the penalty amount.

XIII. Force Majeure

A. Respondent shall not suffer any penalty or be subject to any proceeding or action in the event it cannot comply with any requirement of this Order and Settlement as a result of any event arising from causes beyond the reasonable control of Respondent, of any entity controlled by Respondent, and of Respondent's contractors, that delays or prevents the performance of any obligation under this Order and Settlement despite Respondent's efforts to fulfill the obligation, such as where the failure is a result of acts of God, work stoppages due to labor disputes or strikes, fires, explosions, epidemics, pandemics, riots, war, rebellion, sabotage or any other condition which was not caused by the negligence or willful misconduct of Respondent and which could not have been avoided by the Respondent through the exercise of due care ("Force Majeure Event").

B. The requirement that Respondent exercise efforts to fulfill the obligation includes using efforts to anticipate the potential Force Majeure Event, efforts to address any such event as it is occurring, and efforts following the Force Majeure Event to minimize delay to the greatest extent possible. As referenced above, Respondent's efforts to fulfill its obligations includes using diligent, good faith actions to anticipate the potential Force Majeure event and minimize delays to the extent reasonably possible. "Force Majeure" does not include Respondent's economic inability to comply with any obligation; failure to perform work due to obligations in other states or with respect to other agreements with state or federal governments; the failure of Respondent to make, complete, or timely file an application for any required approval or permit; and non-attainment of the goals, standards, and requirements of this Order and Settlement (unless the non-

attainment is caused by the Force Majeure Event).

C. Respondent must notify the Department as soon as practicable by email or other writing, but in any event no later than fifteen (15) days after it obtains knowledge of any Force Majeure Event. Respondent must, as applicable, include in such notice the measures taken and to be taken to prevent or minimize any delays and shall request an appropriate extension or modification of this Order and Settlement. Failure to give such notice within such fifteen (15) day period constitutes a violation of the Order and Settlement and is a waiver of any claim that a delay is not subject to penalty.

Respondent shall be deemed to know of any circumstance that it, any entity controlled by it, or its contractors knew or should have known by exercise of reasonable diligence.

D. Respondent shall have the burden of proving, by a preponderance of the evidence, that (i) the delay or anticipated delay has been or will be caused by a Force Majeure Event; (ii) the duration of the delay or the extension sought is supported by the circumstances; (iii) efforts were exercised to avoid and mitigate the effects of the delay; and (iv) Respondent complied with the requirements of Section XIII(C) regarding timely notification.

E. If the Department agrees that the delay or anticipated delay is attributable to a Force Majeure Event, the time for performance of the obligations that are affected by the Force Majeure Event shall be extended for such time as is reasonably necessary to complete those obligations.

F. If the Department rejects Respondent's assertion that an event provides a defense to non-compliance with this Order and Settlement, Respondent will be in violation of this Order and Settlement unless it invokes dispute resolution pursuant to Section XVII and Respondent's position prevails.

XIV. Reservation of Rights

A. Nothing contained in this Order and Settlement shall be construed as barring, diminishing, adjudicating or in any way affecting (i) any legal, administrative or equitable rights or claims, actions, suits, causes of action or demands whatsoever that the Department may have against anyone other than Respondent; (ii) any right of the Department to enforce administratively or at law or in equity, the terms, provisions and conditions of this Order and Settlement; (iii) any right of the Department to bring any future action, either administrative or judicial, for natural resource damages, or for any other violations of the ECL, the rules and regulations promulgated thereunder, or conditions contained in orders or permits, if any, issued by the Department to Respondent; (iv) the summary abatement powers of the Department, either at common law or as granted pursuant to statute or regulation.

B. Except as otherwise provided in this Order and Settlement, Respondent reserves all rights and defenses under applicable law regarding remedial liability and/or natural resource damages and further reserves all rights respecting the enforcement of this Order and Settlement, including the rights to notice, to be heard, to appeal, and to any other due process.

XV. Indemnification

To the fullest extent permitted by law, Respondent shall indemnify and hold the Department, the Commissioner, the State of New York, and their representatives and employees harmless for all claims, suits or actions for personal injury or property damage and costs, arising out of, or resulting from, Respondent's fulfillment or attempted fulfillment of this Order and Settlement, except for those claims, suits, actions and costs arising from the gross negligence or willful or intentional misconduct by the State of New York and/or its representatives and employees during the course of any activities conducted pursuant to this Order and Settlement.

XVI. Progress Reports and Communications

A. In addition to any reports required by individual work plans approved pursuant to this Order and Settlement, Respondent must provide monthly reports to the parties identified in this Section.

B. The monthly reports are to be submitted on or before the last business day of the month in question, with the first submission by the end of the first full month following the Effective Date of this Order and Settlement.

C. All monthly reports must, at a minimum, include a description of the following: safety record, status of major activities (e.g., reactor segmentation, building demolition, spent nuclear fuel loading, waste management), project schedule, project budget (including a comparison of budgeted costs against actual costs), and regulatory compliance. Department acknowledges that the monthly reports will typically report on progress through the end of the preceding month.

D. Following the submission of each monthly report, the Department may request that one or more members of Respondent's team be made available at a mutually agreeable time and place (which may be in-person or by teleconference or videoconference) to answer any questions the Department may have about the report, and Respondent must comply with such requests.

E. Communications

1. All written communications required by this Order and Settlement shall be transmitted by electronic transmission whenever possible, including e-mail.

2. Communication from Respondent to the Department shall be sent to:

Lynn Winterberger
NYS Department of Environmental Conservation
Division of Materials Management
625 Broadway
Albany, NY 12233-7256
lynn.winterberger@dec.ny.gov

Timothy Rice
NYS Department of Environmental Conservation
Division of Materials Management
625 Broadway
Albany, NY 12233-7255
timothy.rice@dec.ny.gov

With copies to:

Andrew Guglielmi, Esq.
NYS Department of Environmental Conservation
Office of General Counsel
625 Broadway
Albany, NY 12233-1500
andrew.guglielmi@dec.ny.gov

Cynthia A. Costello, MS, MPH, CHP
Chief, Environmental Radiation/Radon Section
NYS Department of Health
Bureau of Environmental Radiation Protection
Corning Tower, Room 1218
Empire State Plaza
Albany, NY 12237
Phone (518) 402-7556
cynthia.costello@health.ny.gov

3. Communication from the Department to Respondent shall be sent to:

Holtec Decommissioning International, LLC
Attn: Andrea L. Sterdis, Vice President Regulatory and Environmental Affairs
1 Holtec Blvd.
Camden, NJ 08104
a.sterdis@holtec.com

Holtec Decommissioning International, LLC
Attn: Katherine L. Perkins, Esq.
1 Holtec Blvd.
Camden, NJ 08104
k.perkins@holtec.com

F. The Department and Respondent reserve the right to designate additional or different addressees for communication on written notice to the other.

G. Each party shall notify the other within thirty (30) days after any change in the addresses listed in this Section.

H. The Department has implemented an Environmental Information Management System (EIMS). The EIMS requires that electronic data be provided in specific formats. In an effort to better manage environmental data, the Department requests that Respondent make reasonable efforts to provide data submissions in a Department-accepted Electronic Data Deliverable (EDD) format. Respondent shall make reasonable efforts to supply Work plans and reports (including all attachments and appendices) required by the Order and Settlement in an accessible electronic format. Respondent may instead provide the Department with a paper copy if difficulties in providing the submittals through the EIMS are encountered. The Department reserves the right to request that Respondent provide a paper copy of any Work Plan or report.

XVII. Dispute Resolution

A. In the event a dispute arises under this Order and Settlement, the parties will first undertake to resolve such dispute through informal negotiations. Respondent may commence this negotiation by sending the Department written notice describing the objection(s) in reasonable details. Within fifteen (15) days of receipt of the notice, the parties shall commence good faith discussions at a mutually agreeable time and place.

B. If the dispute is not resolved within thirty (30) days of the date of the meeting described above, Respondent may, initiate formal dispute resolution in accordance with the provisions of 6 NYCRR 375-1.5(b)(2).

C. All costs incurred by the Department associated with dispute resolution are State costs subject to reimbursement (and subject to the “do not exceed” figure in Section XI above) pursuant to this Order and Settlement.

D. Nothing contained in this Order and Settlement shall be construed to authorize Respondent to invoke dispute resolution with respect to any remedy selected by the Department in the SOB/ROD, or any element of such remedy, nor to impair any right of Respondent to seek judicial review of the Department's selection of any remedy. As used herein, "remedy" means the technical approach to address contamination subject to RCRA (or New York's analogous regulations).

E. With respect to disputes relating to State costs the provisions of 6 NYCRR 375-1.5 (b)(3) apply.

XVIII. Modifications

A. The terms of this Order and Settlement constitute the complete and entire agreement between Department and Respondent with respect to the matters contained herein. No term, condition, understanding, or order purporting to modify or vary any term of this Order and Settlement shall be binding unless made in writing and signed by both parties.

B. No informal advice, guidance, suggestion, or comment by the Department regarding any report, proposal, plan, specification, schedule, or any other submissions shall be construed as relieving Respondent of their obligation to obtain such formal approvals as may be required by this Order and Settlement.

C. If Respondent desires that any provision of this Order and Settlement be changed, Respondent must make timely written application to the Department setting forth reasonable grounds for the relief sought. Respondent has the burden of proving entitlement to any modification requested. Copies of such written application shall be sent to the New York State Department of Environmental Conservation at the addresses provided in Section XVI(E).

D. Respondent's request for modification shall not be unreasonably denied by the Department, which may impose such additional conditions upon Respondent as the Department deems appropriate. Notwithstanding the foregoing, if Respondent seeks to

modify an approved Work Plan, a written request must be made to the Department's project manager, with copies to the parties listed in Section XVI(E).

E. No change or modification to this Order and Settlement shall become effective except as specifically set forth in writing and approved by the Commissioner or a duly authorized representative.

XIX. Tolling Agreement

Any time limitations set forth in Section 113(g)(1) of CERCLA, as amended, 42 U.S.C. § 9613(g)(1), Section 1012(h)(2) of the Oil Pollution Act, as amended, 33 U.S.C. § 2712(h)(2), the Federal Water Pollution Control Act, the New York Navigation Law, the New York Environmental Conservation Law, or any other federal or state statute or regulation with respect to potential claims for natural resource damages against Respondent or any other time limitations for the filing of potential natural resource damages claims against Respondent under any other applicable state or federal law are tolled in their entirety until termination of this Order and Settlement. This tolling agreement shall not serve to revive any claims that are untimely as of the effective date of this Order and Settlement.

XX. Permits

Permits issued by the Department and currently held by Seller shall be transferred to Purchaser or its designees as described in the letter attached hereto as Exhibit D.

XXI. Miscellaneous

A. Respondent shall retain (as employees or contractors) qualified professional consultants, engineers, contractors, laboratories, quality assurance/quality control

personnel, third party data validators, and ELAP³ Certified Analytical Laboratories to perform the technical, engineering, and analytical obligations required by this Order and Settlement. The Department may object to Respondent using certain persons or firms and Respondent agrees to undertake good faith efforts to find a replacement. If no qualified replacement is available, Respondent will consult Department about alternatives. The responsibility for the performance of the professionals retained by Respondent rests solely with Respondent.

B. The Department has the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled by Respondent, and the Department also has the right to take its own samples. Respondent must make available to the Department the results of all sampling and/or tests or other data generated by Respondent with respect to implementation of this Order and Settlement and must submit these results in the progress reports required by this Order and Settlement. Respondent has the right to obtain split samples, duplicate samples, or both of all substances and materials sampled by the Department, and the Department will promptly make available to Respondent the results of all sampling, tests or other data generated by the Department with respect to this Order and Settlement.

C. Respondent must obtain all permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations necessary to perform Respondent's obligations under this Order and Settlement.

D. Notwithstanding Section IX above, if there are multiple parties signing this Order and Settlement the obligations of each party under this Order and Settlement are joint and several, and the insolvency of or failure by any Respondent to implement any

³ The Environmental Laboratory Accreditation Program (ELPA) was established in 1984 under NYCL, Public Health Law - PBH § 502 and is responsible for the certification of laboratories performing environmental analyses on samples originating from New York State.

obligations under this Order and Settlement shall not affect the obligations of the remaining Respondent under this Order and Settlement.

E. The provisions, terms, and conditions of this Order and Settlement shall be deemed to bind Respondent and Respondent's heirs, legal representatives, receivers, trustees in bankruptcy, successors, and assigns.

F. Subject to Section IX, any change in ownership including, transfer of assets or real property at IPEC shall in no way alter Respondent's responsibilities under this Order and Settlement.

G. Respondent is responsible for ensuring that its contractors and subcontractors perform the work in satisfaction of the requirements of this Order and Settlement.

H. All references to "days" in this Order and Settlement are to calendar days unless otherwise specified.

I. The Section headings set forth in this Order and Settlement are included for convenience of reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Order and Settlement.

J. The Effective Date of this Order and Settlement shall be the later of the date that the Commissioner or his designee signs this Order and Settlement or the date the Transaction closes. The Department will provide Respondent (or Respondent's counsel) with a fully executed electronic copy of this Order and Settlement as soon as practicable after the Commissioner or his designee signs it.

K. In the event of an inconsistency between the provisions of any attachment or appendix of this Order and Settlement and any term, condition, or provision contained in Sections I through XX of this Order and Settlement, the term, condition, or provision contained in that Section, and not that in any attachment or appendix of this Order and Settlement, shall control.

L. Respondent and Respondent's corporate successors and assigns hereby affirmatively waive any right they had, have, or may have to make a claim against the New York environmental protection and spill compensation fund, pursuant to New York

State Navigation Law, Article 12, Part 3, Sections 179 and 179-A.

M. This Order and Settlement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same instrument. Electronic signatures are acceptable.

N. Service of a duly executed copy of this Order and Settlement upon Respondent's counsel by electronic mail, shall be deemed good and sufficient service.

[Signatures Follow]

DATED: April 14, 2021

Albany, New York

Commissioner
New York State Department of
Environmental Conservation

By: 

Basil Seggos
Commissioner

Respondent Holtec Decommissioning International, LLC hereby consents to the issuing and entering of this Order and Settlement, waives its right to a hearing herein as provided by law, and agree to be bound by this Order and Settlement.

Date: April 14, 2021

On this 14th day of April, 2021, before me personally came Andrea L. Sterdis, to me known, who being duly sworn, did depose and say that she is the Chief Operating Officer of Holtec Decommissioning International, LLC, the limited liability company (Respondent) described herein and that he/she is authorized by the governing body of said Corporation to sign on behalf of the Corporation, and that he/she did sign the foregoing instrument on behalf of, and with the authority to bind, said Corporation.

Erika Grandrimo
NOTARY PUBLIC
STATE OF NEW JERSEY
MY COMMISSION EXPIRES January 17, 2022

EXHIBIT “A”

Map of IPEC subject to this Order and Settlement

EXHIBIT A

Indian Point Energy Center



Notes:

1. Property boundary locations are approximate, and do not necessarily represent the limits of the required extent of investigation or remediation. If site-related contamination is discovered during investigatory activities at or near the boundaries, the Department may require further investigation beyond the boundary to confirm corrective actions are required in those areas.
2. Indian Point Energy Center boundaries adjacent to the Hudson River coincide with the approximate high-water line.

EXHIBIT A

Indian Point Energy Center

3. The boundary line for the ISFSI is the anticipated fence line after expansion.
4. The dark blue line is the approximate location of property owned by the State of New York through the New York State Energy Research and Development Authority (NYSERDA), and represents the discharge canal and associated property currently leased by Entergy from NYSERDA. This property will be subject to further refinement and survey, as investigatory actions progress.

EXHIBIT "B"

CONSENT OF OWNER

The party executing this form, _____, hereby consents to being added as a Respondent to the Order on Consent and Administrative Settlement, Index No. _____ regarding the Indian Point Energy Center, and further consents to the issuing and entering of the referenced Order and Settlement, waives Respondent's right to a hearing herein as provided by law, and agrees to be bound by this Order and Settlement.

By: _____

Title: _____

Date: _____

STATE OF NEW YORK)

) s.s.:

COUNTY OF)

On the _____ day of _____, in the year 20 __, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Signature and Office of individual taking acknowledgment

EXHIBIT “C”

Correspondence regarding prior orders

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of the General Counsel

625 Broadway, 14th Floor, Albany, New York 12233-1500

P: (518) 402-9185 | F: (518) 402-9018

www.dec.ny.gov

April 9, 2021

Peter C. Trimarchi, Esq.
Partner
Nixon Peabody LLP | 677 Broadway, 10th Floor
Albany, NY 12207-2996
ptrimarchi@nixonpeabody.com

Re: Close out of Indian Point Consent Orders with Entergy

Dear Mr. Trimarchi –

This letter is sent to confirm that Entergy Nuclear Indian Point 2, LLC and Entergy Nuclear Indian Point 3, LLC (collectively “Entergy”) have complied with the Consent Orders issued by the Department of Environmental Conservation (DEC) to date regarding the Indian Point Energy Center.

These Consent Orders include a 2011 mixed waste order, and a 2011 and 2015 enforcement order relating to releases from equipment, including transformers at the Indian Point Entergy Center. Specifically, Entergy has transported and disposed of the known mixed waste present which was required to be disposed of in the 2011 mixed waste order and Entergy paid the required penalties and damages and took whatever corrective actions were necessary arising from releases related to the 2011 and 2015 enforcement orders. DEC considers these orders closed.

Please note that Entergy has ongoing obligations related to the 2017 agreement between New York State and Entergy (which required the wind down and cessation of nuclear power operation of Indian Point) regarding monitoring and environmental benefit projects that New York and others are administering.

Additionally, please note that nothing in this letter waives rights that DEC may have against Entergy, Holtec, or any other party that are available under applicable law.

Sincerely,

Andrew Guglielmi

Andrew Guglielmi

Chief, Bureau of Remediation

EXHIBIT “D”

Correspondence regarding permit transfers



NIXON PEABODY LLP
ATTORNEYS AT LAW

NIXONPEABODY.COM
@NIXONPEABODYLLP

Peter C. Trimarchi
Partner
T 518-427-2671
ptrimarchi@nixonpeabody.com

677 Broadway, 10th Floor
Albany, NY 12207-2996
518-427-2650

April 8, 2021

VIA EMAIL

Christopher Hogan
Chief, Bureau of Energy Projects
Management
NYS Department of Environmental
Conservation
625 Broadway, 14th Floor
Albany, NY 12233-1500

Andrea L. Sterdis
Vice President Regulatory and Environmental
Affairs
Holtec Decommissioning International
Krishna P. Singh Campus
1 Holtec Boulevard
Camden, NJ 08104

RE: Indian Point Energy Center - Transfer of SPDES Permits (0004472, 0234826, 0250414), 401 Water Quality Certificate, Air State Facility Permits (#3-5522-00011/00026), and Major Oil Storage Facility License (3-2140), Water Withdrawal Permit application and Endangered Species Permit application (the “DEC Permits”)

Dear Chris:

As you are aware, Holtec International, Nuclear Asset Management Company, LLC, Entergy Nuclear Indian Point 2, LLC (“ENIP 2”) and Entergy Nuclear Indian Point 3, LLC (“ENIP 3”) signed an agreement in 2019 by which Nuclear Asset Management Company, LLC (a subsidiary of Holtec International) (“NAMco”) would acquire ownership of the Indian Point Energy Center (the “Transaction”). This letter is intended to memorialize the agreement between the New York State Department of Environmental Conservation (“DEC”), the Entergy entities identified as permittees under the above-referenced DEC Permits and applications (collectively, “the DEC Permits”), Holtec International, and NAMco regarding the procedures for transferring the DEC Permits following the closure of the sale of the Indian Point Entergy Center.

As we have discussed, Entergy Corporation is in the process of undertaking an internal restructuring, which has resulted in the creation of two new Entergy subsidiaries – Indian Point 1&2 LLC and Indian Point 3 LLC (the “New Entergy Subsidiaries”). Prior to the closing of the Transaction, Entergy Corporation will have transferred the assets and liabilities of ENIP 2 and ENIP 3 to the New Entergy Subsidiaries. NAMco will then acquire the membership interests of the New Entergy Subsidiaries upon the closing of the Transaction. To complete the transfer of the DEC Permits, DEC, ENIP 2, ENIP 3, and Holtec International/NAMco agree that the parties will each take the following actions:

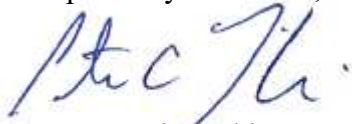
- No less than 30 days prior to the anticipated closing date of the Transaction, ENIP 2, ENIP 3, and, as necessary, Entergy Nuclear Operations Inc. (“ENOI”) will submit separate permit transfer requests for each of the DEC Permits on DEC form “Application for Permit Transfer and Application for Transfer of Pending Application.” The forms will identify ENIP 2, ENIP 3, and/or ENOI as the “Transferor,” and the New Entergy Subsidiaries as the “Transferee.” ENIP 2, ENIP 3, and ENOI will submit the forms to you and to the Regional Permit Administrator in Region 3.
- Upon Entergy’s completion of the transfer of assets and liabilities of ENIP 2 and ENIP 3 to the New Entergy Subsidiaries, Entergy will notify DEC that the transfer has taken place.
- Upon receipt of such notice, DEC will immediately (i.e., same day) provide to ENIP 2, ENIP 3, ENOI, and the New Entergy Subsidiaries a copy of the Application for Permit Transfer and Application for Transfer of Pending Application that has been fully approved and counter-signed by DEC.
- Upon completion of the closing of the Transaction (expected to be completed 24 hours after the transfer of assets and liabilities to the New Entergy Subsidiaries has been completed), NAMco will provide notice to DEC that the closing has occurred.

The New Entergy Subsidiaries will be subsidiaries of Entergy until the closing of the Transaction, at which point they will become subsidiaries of NAMco. In the unlikely event a permit violation was to occur following the transfer of the assets and liabilities to the New Entergy Subsidiaries, but before closing (a situation that would seem unlikely given that Unit 3 will be shut down at that point), the New Entergy Subsidiaries would be responsible for such violations as the permittees on the DEC Permits.

If this letter accurately sets forth your understanding of the parties’ intentions and agreements with respect to the transfer of the DEC Permits, please sign the acknowledgment below and forward a copy to my attention at your earliest convenience.

Thanks very much for your assistance and cooperation in this matter.

Respectfully submitted,



Peter C. Trimarchi
Counsel for Entergy Corporation

PCT/kmp

Christopher Hogan
April 8, 2021
Page 3

NIXON PEABODY LLP
ATTORNEYS AT LAW

NIXONPEABODY.COM
@NIXONPEABODYLLP

cc: Mark Sanza, Esq.
Gene Kelly, Esq. (Counsel for Holtec International)
Andrea Sterdis (Holtec International)
Susan Floyd, Esq. (Senior counsel for Entergy)
Carlos Garcia (Entergy)
Anthony DeNully (Entergy)

Acknowledged and agreed to by the NYS
Department of Environmental Conservation

Christopher M. Hogan

Name: Christopher M. Hogan
Title: Chief, Bureau of Energy Project Management
Date: April 8, 2021

Acknowledged and agreed to by Nuclear Asset
Management Company, LLC

**Andrea
Sterdis**

Digitally signed by Andrea Sterdis
DN: cn=Andrea Sterdis, o=US,
o=Holtec Decommissioning
International, ou=HDI,
email=as.sterdis@holtec.com
Date: 2021.04.13 11:24:00 -0400

Name: Andrea L. Sterdis
Title: VP Regulatory and Environmental Affairs
Date: April 13, 2021

Attachment B

Local Government Entities Memorandum Of Understanding

MEMORANDUM OF UNDERSTANDING

by and between

**NUCLEAR ASSET MANAGEMENT COMPANY, LLC, and
HOLTEC DECOMMISSIONING INTERNATIONAL, LLC
("Holtec")**

and

**VILLAGE OF BUCHANAN,
TOWN OF CORTLANDT,
COUNTY OF WESTCHESTER, and
HENDRICK HUDSON SCHOOL DISTRICT
("Taxing Jurisdictions")**

*any or all of which shall be hereinafter referred to as "Party" or "Parties",
respectively.*

MEMORANDUM OF UNDERSTANDING

THIS AGREEMENT made this 14th day of April, 2021 by, and effective as of the closing date of the IPEC Sale (defined below), between, and among, **Nuclear Asset Management Company, LLC** (“**NAMCO**”) and **Holtec Decommissioning International, LLC** (“**HDI**” and, together with NAMCO, “**Holtec**”), limited liability companies duly organized and validly existing under the laws of the State of Delaware, and the following taxing authorities: **Village of Buchanan**, a body corporate and politic existing under the laws of the State of New York (the “**Village**”); **Town of Cortlandt**, a body corporate and politic existing under the laws of the State of New York (the “**Town**”); **County of Westchester**, a body corporate and politic existing under the laws of the State of New York (the “**County**”); and **Hendrick Hudson School District**, a body corporate and politic existing under the laws of the State of New York (the “**School District**”) (together, the “**Taxing Jurisdictions**” and, together with NAMCO and HDI, the “**Parties**”).

WHEREAS, **Entergy Nuclear Indian Point 2, LLC** and **Entergy Nuclear Indian Point 3, LLC**, limited liability companies duly organized and validly existing under the laws of the State of Delaware (“**Entergy**”) entered into certain “Payment in Lieu of Taxes Agreement(s) for the Indian Point Energy Center” pursuant to Real Property Tax Law (“**RPTL**”) Section 485 and applicable local and Village board resolutions (collectively, the “**PILOT Agreements**”) with the Taxing Jurisdictions.

WHEREAS, the PILOT Agreements pertain to certain property and improvements which make up and/or are associated with the Indian Point 2 Nuclear Generating Station (“**IP2**”), Indian Point 3 Nuclear Generating Station (“**IP3**”), the Generation Support Building (“**GSB**”), and the Independent Spent Fuel Storage Facility (“**ISFSI**”), all as identified, described, and defined in the PILOT Agreements. IP2, IP3, the GSB, and ISFSI are collectively referred to herein as the “**Facility**” and consistent with such definitions as set forth in the PILOT Agreements.

WHEREAS, the Taxing Jurisdictions and Entergy entered into a series of First Amendments to the Pilot Agreements between June 2020 and February 2021 (the “**First Amendments**” and, together with the PILOT Agreements, the “**Current PILOT Agreements**”).

WHEREAS, the First Amendments provided stability in property tax payments for Entergy and the Taxing Jurisdictions.

WHEREAS, the commitments made in each of the Current PILOT Agreements are scheduled to extend until certain dates in the year 2022, and all PILOT Agreements cover through Tax Year 2021-2022.

WHEREAS, representatives from HDI were present for the negotiations to the First Amendments.

WHEREAS, on April 15, 2019, Entergy entered into a Membership Interest Purchase and Sale Agreement whereby NAMCO will, following a two-part transaction, acquire all of the assets and liabilities associated with the Facility after IP2 and IP3 permanently cease operations (the “**IPEC Sale**”), after which HDI will become the licensed operator of the Facility.

WHEREAS, NAMCO and Entergy filed a joint petition with the New York Public Service Commission (“**NYPSC**”) in Matter Number 19-E-0730 seeking approval of a two-part transaction that will allow Holtec to effectuate its objective of completing the vast majority of the Facility decommissioning and securing partial site release decades earlier than would occur under continued Entergy ownership.

WHEREAS, approval of the two-part transaction will allow the Facility and site to be redeveloped to support economic and community development, and all Parties agree that this transfer is in the public interest and support NYPSC action to authorize the transfer.

WHEREAS, as anticipated and expressly stated in each of the Current PILOT Agreements, Holtec commits to continue good faith discussions to negotiate successor agreements (the “**Successor PILOT Agreements**”) with the respective Taxing Jurisdiction with respect to a payment in lieu of tax agreement for the Facility.

WHEREAS, the Parties have determined that it is in their collective interests to enter into Successor PILOT Agreements to provide further stability for all Parties should Holtec receive the regulatory approvals necessary to consummate the IPEC Sale.

NOW THEREFORE, with this *Memorandum of Understanding* (the “**Agreement**”), and in consideration of the mutual promises made herein, the Parties desire to formalize a framework for negotiations to agree and execute Successor PILOT Agreements between Holtec and each of the Taxing Jurisdictions, as follows:

1. Following the IPEC Sale, Holtec shall assume all rights and obligations of Entergy under the Current PILOT Agreements. For the avoidance of doubt, Holtec hereby expressly commits to assume and be bound by the terms of the Current PILOT Agreements, including the First Amendments. Holtec shall make the PILOT payments required by the Current PILOT Agreements following the IPEC Sale.
2. The Parties agree to negotiate in good faith to enter into Successor PILOT Agreements.
3. Although the Taxing Jurisdictions are separate entities and will execute separate Successor PILOT Agreements, the Taxing Jurisdictions may choose a shared team of negotiation representatives (the “**Negotiating Representatives**”), and Holtec will restrict its negotiations to the Taxing Jurisdictions’ Negotiating Representatives unless a particular Taxing Jurisdiction notifies Holtec otherwise,

at which time Holtec shall negotiate with both the Negotiating Representatives and the Taxing Jurisdiction(s) representatives that opted out of this shared negotiation arrangement in whole or in part.

4. Within forty-five (45) days after the closing of the IPEC Sale, the Parties will initiate negotiations on each Successor PILOT Agreement, and commit to continue to meet and discuss tax assessment and other related matters associated with the decommissioning of the Facility. The Taxing Jurisdictions and Holtec will continue to meet no less than once per month, or on such other schedule as otherwise determined to be appropriate by the respective Parties to reach and execute the Successor PILOT Agreements.
5. During these initial discussions, Holtec will meet with the Negotiating Representatives to determine the goals, priorities, and issues for consideration in Successor PILOT Agreements, and to mutually set the guidelines for negotiations between the respective Parties. Such meetings may be held in person or by videoconference.
6. The Taxing Jurisdictions shall be permitted to submit written questions and request to view documents or electronically stored information (“**Documents**”) within Holtec’s possession, custody, or control, provided that such requests shall be reasonably related to the fair-market appraisal of the Facility, including but not limited to information related to dry casks stored at the Facility and the costs for storage of spent fuel. to the extent that such information is related to the fair-market appraisal of the Facility under applicable law. Holtec shall respond to such questions and requests for Documents within a mutually agreed upon reasonable time when requested.
7. Designation of information or Documents as proprietary shall not be a basis for withholding such information. All information or Documents deemed proprietary by Holtec shall be so designated, and the viewing of such information shall be subject to strict confidentiality obligations. All Taxing jurisdictions and Negotiating Representatives shall enter into a non-disclosure agreement with Holtec (the form and substance to be mutually agreed by the Parties), and any proprietary or confidential information shall not be used for any purpose except the negotiations of the Successor PILOT Agreements, shall be disclosed only to individuals within each Taxing Jurisdiction and its respective Negotiating Representatives who have signed such confidentiality agreements, and shall not be disclosed to any third-party without Holtec’s explicit written consent.
8. As soon as reasonably practicable, but no later than 180 days from the closing date of the IPEC Sale, Holtec shall furnish for the Taxing Jurisdictions’ evaluation a

fair-market appraisal of the Facility with sufficient detail for the Taxing Jurisdictions to fairly evaluate the appraisal.

9. As soon as possible, but not to exceed 90 days following the exchange of Holtec's fair-market appraisal, the Taxing Jurisdictions will provide written comments on Holtec's fair-market appraisal of the Facility.
10. Holtec agrees to maintain an open dialog with the Taxing Jurisdictions regarding the Facility's acreage and other potential future uses and release dates, including advancing the release of appropriate sections of the Facility's acreage, as applicable.
11. Holtec acknowledges that the decommissioning process may result in excess wear on local roads and streets, and as such, Holtec agrees to maintain an open dialog with the affected Taxing Jurisdictions on these issues. Holtec further affirms that it has an obligation to pay for repairs to the extent that damage to roads and streets is directly and verifiably caused by Holtec's decommissioning, site restoration, and spent fuel management activities.
12. Unless the Parties mutually agree otherwise, the Parties expressly intend to reach agreement on terms and conditions of Successor PILOT Agreements satisfactory to all Parties and execute each of the respective Successor PILOT Agreements by or before sixty (60) days prior to the expiration date of each Current PILOT Agreement,¹ or any extension thereof, subject to ratification by the applicable governing bodies.
13. If the Parties are unable to enter into and execute Successor PILOT Agreements by the time set forth in Paragraph 12 or such additional time as the Parties mutually agree is appropriate, then the Parties agree to submit the issue of the appropriate assessment of the Facility to non-binding mediation in the State of New York. The mediator shall be selected from the panel of mediators maintained by JAMS Mediation and Arbitration Service. Holtec and the Taxing Jurisdiction (or Taxing Jurisdictions, collectively, as applicable) shall each be responsible for fifty percent (50%) of the costs of mediation.
14. In the event the Parties do not reach and execute any Successor PILOT Agreements prior to the Current PILOT Agreements' respective expiration dates in 2022, each

¹

Expiration date of each respective Current PILOT Agreement:

The Village	5/31/2022
The School District	6/30/2022
The Town	12/31/2022
The County	12/31/2022

Taxing Jurisdictions shall have the sole option to either (i) extend the Current PILOT Agreements for one (1) year at the following annual payment rates:

County:	\$1,800,000.00
Village:	\$1,200,000.00
Town:	\$550,000.00
School District	\$4,000,000.00

Or (ii) the affected Taxing Jurisdiction(s) may send a bill with their assessment; provided that per the terms of the Current PILOT Agreements, Holtec retains the right to challenge any assessment(s). In the event that the Taxing Jurisdictions exercise their option to extend the Current PILOT Agreements as stated in subparagraph (i) of this section and the Parties still cannot reach an agreement within the timeframe contemplated herein, the affected Taxing Jurisdiction(s) may send a bill with their assessment; provided that per the terms of the Current PILOT Agreements, Holtec retains the right to challenge any assessment(s). Holtec shall retain all rights and remedies of a taxpayer with respect to any proposed assessment or change in assessment with respect to the Facility by any of the Taxing Jurisdictions and shall be entitled to take any and all appropriate appeals or initiate any proceedings. The Taxing Jurisdictions reserve any and all rights with respect to enforcement of any assessment or establishing the validity of same.

15. The amount of the PILOT payment for the extended year referenced in Section 14 herein is not intended by the Parties to be and does not constitute an indication of the appropriate amount of the Successor PILOT Agreements or any future PILOT agreement or assessment for the Facility, nor is intended to act as a floor or guide to establishing future tax or PILOT payments or assessments, and no party shall use the amounts agreed to herein as evidence of an appropriate PILOT or tax payment or assessment.
16. Apart from the extension and reduction of payment rate referred to in Paragraph 14, nothing in this Agreement is intended to limit, restrict, terminate, extend, amend or modify the terms of any of the Current PILOT Agreements, and the Parties shall be bound by all terms of the respective Current PILOT Agreements.
17. Any information exchanged during discussions between Holtec and any of the Taxing Jurisdictions is confidential and shall not be disclosed to any third party. No information, release, or public announcement, or confirmation or denial of same, relating to the content of any discussions or negotiations under this Agreement will be made without prior coordination with and express written approval of the related Parties.

18. Notwithstanding anything in the foregoing, the parties acknowledge that the Taxing Jurisdictions are subject to the public information requirements of the Freedom of Information Law as set forth in Article 6 of the Public Officers Law, Sections 84 through 90 (“**FOIL**”), and that requests for information pursuant to FOIL will be submitted to, and require responses from, the Taxing Jurisdictions. In some cases, public information requests may seek materials that Holtec believes to be trade secret and/or confidential commercial information. The parties agree that, upon the receipt of any such request, the affected Taxing Jurisdiction(s) will notify Holtec and cooperate with Holtec to limit or exclude disclosure of information.
19. Upon execution, this Agreement shall be binding upon the Parties.
20. The Parties have entered into this Agreement only after full and due consideration thereof and with the advice of their counsel and of their independent consultants.
21. This Agreement shall bind and inure to the benefit of the Parties to this Agreement and any successor or assignee acquiring an interest hereunder.
22. This Agreement and the rights and duties of the Parties hereunder shall be governed by and shall be construed, enforced, and performed in accordance with the laws of the State of New York without regard to principles of conflicts of law. Venue for any legal proceeding shall be the New York State Supreme Court in Westchester County.
23. This Agreement shall be considered the work product of all Parties hereto, and, therefore, no rule of strict construction shall be applied against any Party.
24. All signatories are legally authorized to sign on behalf of the respective legal entity that he or she signs for; provided that the Taxing Jurisdictions’ execution is subject to ratification by their applicable governing municipal bodies.
25. All rights, duties, and obligations established by this Agreement shall be exercised in good faith and in a commercially reasonable manner.
26. This Agreement, along with any Exhibit(s) attached (or to be attached) hereto constitute the entire and complete Agreement of the Parties with respect to the subject matter hereof, exclusive of all prior understandings, arrangements, and commitments, all of which, whether oral or written, having been merged herein, except for contemporaneous or subsequent written understandings, arrangements, or commitments signed by the Parties intended to be bound thereby.
27. Unless the Parties mutually agree otherwise, notices and communications in furtherance of this MOU shall be sent to:

For the County:

Hon. George S. Latimer
County Executive
148 Martine Avenue
White Plains, New York 10601
GLatimer@westchestergov.com
914-995-2910

With a copy to:

Susan Spear
Deputy Commissioner
Department of Emergency Services
4 Dana Road
Valhalla, New York 10595
SSpear@Westchestergov.com
914-231-1686

John M. Nonna
County Attorney
18 Martine Avenue
White Plains, New York 10601
JNonna@westchestergov.com
914-995-2690

For the Town, Village, and School District:

Town of Cortlandt
Town Hall
1 Heady Street
Cortlandt Manor, New York 10567
Attn: Supervisor
Telephone: (914) 734-1002

Town of Cortlandt
Department of Law
1 Heady Street
Cortlandt Manor, New York 10567
Attn: Thomas F. Wood, Esq.
(914) 736-0930
tfwesq@aol.com

Village of Buchanan
Village Hall
236 Tate Avenue
Buchanan, New York 10511
Attn: Mayor

Stephanie Porteus
Village Attorney
236 Tate Avenue
Buchanan, New York 10511
(914) 556-6217
sporteus@villageofbuchanan.com

Hendrick Hudson School District
61 Trolley Road
Montrose, New York 10548
Attn: Assistant Superintendent for Business
(914) 257-5132

With a copy to:

Daniel Riesel
Sive, Paget & Riesel P.C.
560 Lexington Avenue, 15th Floor
New York, NY 10022
(212) 421-2150
driesel@sprlaw.com

For Holtec:

Holtec Decommissioning International
1 Holtec Boulevard
Camden, New Jersey 08104
Attn: Legal Department
(856) 797-0900
Legal@Holtec.com

[SIGNATURE PAGE FOLLOWS]

Acknowledged and Agreed this 14th day of April, 2021:

NUCLEAR ASSET MANAGEMENT COMPANY, LLC

Signed: Pamela B. Cowan

Name: Pamela B. Cowan

Title: Exec Cmte Member

Date: 4/14/21

HOLTEC DECOMMISSIONING INTERNATIONAL, LLC

Signed: Pamela B. Cowan

Name: Pamela B. Cowan

Title: COO, & Senior VP

Date: 4/14/21

VILLAGE OF BUCHANAN

Signed: _____

Name: _____

Title: _____

Date: _____

Acknowledged and Agreed this 14th day of April, 2021:

NUCLEAR ASSET MANAGEMENT COMPANY, LLC

Signed: _____

Name: _____

Title: _____

Date: _____

HOLTEC DECOMMISSIONING INTERNATIONAL, LLC

Signed: _____

Name: _____

Title: _____

Date: _____

VILLAGE OF BUCHANAN

Signed: Theresa Knickerbocker

Name: Theresa Knickerbocker

Title: mayor

Date: 4-14-2021

TOWN OF CORTLANDT

Signed: Linda D. Puglisi
Name: Linda D. Puglisi
Title: Town Supervisor
Date: April 14, 2021

APPROVED
TOWN ATTORNEY
Date: 4/14/21
[Signature]

COUNTY OF WESTCHESTER

Signed: _____
Name: _____
Title: _____
Date: _____

HENDRICK HUDSON SCHOOL DISTRICT

Signed: _____
Name: _____
Title: _____
Date: _____

TOWN OF CORTLANDT

Signed: _____

Name: _____

Title: _____

Date: _____

COUNTY OF WESTCHESTER

Signed: George Labrecque

Name: George Labrecque

Title: Westchester County Executive

Date: April 14, 2021

APPROVED AS TO FORM.

John M. Harner
COUNTY ATTORNEY

HENDRICK HUDSON SCHOOL DISTRICT

Signed: _____

Name: _____

Title: _____

Date: _____

TOWN OF CORTLANDT

Signed: _____

Name: _____

Title: _____

Date: _____

COUNTY OF WESTCHESTER

Signed: _____

Name: _____

Title: _____

Date: _____

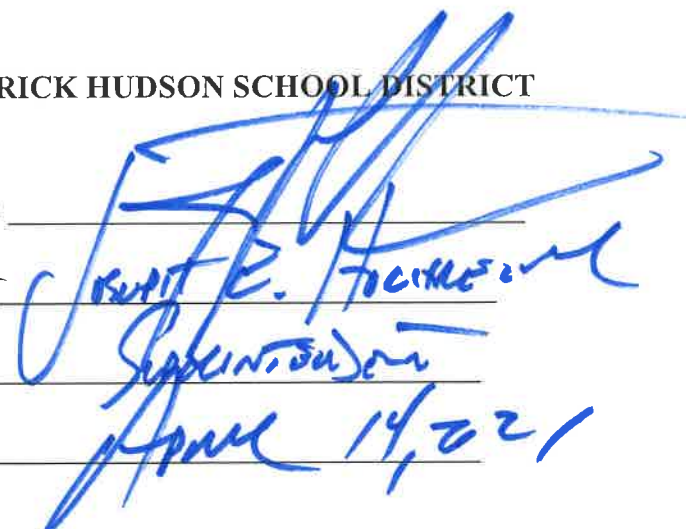
HENDRICK HUDSON SCHOOL DISTRICT

Signed: _____

Name: _____

Title: _____

Date: _____


Joseph E. Hutchinson
Superintendent
June 14, 2021

ATTACHMENT C

List of Information Request Responses

Attachment C

Joint Petitioners' Responses to DPS Information Requests

The Signatory Entities to the Joint Proposal agree that the Joint Petitioners' respective responses to the information requests issued by the New York State Department of Public Service listed in the table below are to be made a part of the record for Case 19-E-0730. The inclusion of these responses in the record for Case 19-E-0730 shall not affect any protection previously sought by the Joint Petitioners for their confidential commercial information or trade secrets under the March 20, 2020 Protective Order issued in this case, under any applicable provision of New York's Freedom of Information Law, or under any regulations promulgated thereunder.

Information Request No.	Produced by:	Date
DPS-01-01	NAMCo	3/5/2020
DPS-01-02	NAMCo	3/5/2020
DPS-01-03	NAMCo	10/13/2020
DPS-01-06	NAMCo	3/5/2020
DPS-01-16	NAMCo	3/5/2020
DPS-02-01	NAMCo	3/9/2020
DPS-02-02	NAMCo	3/9/2020
DPS-03-01	NAMCo	3/9/2020
DPS-03-02	NAMCo	3/9/2020
DPS-04-02	NAMCo	3/9/2020
DPS-04-04	NAMCo	3/9/2020
DPS-05-06	NAMCo	3/9/2020
DPS-05-07	NAMCo	3/9/2020
DPS-10-01	NAMCo	3/10/2020
DPS-13-01	NAMCo	7/17/2020
DPS-13-02	NAMCo	7/17/202
DPS-23	NAMCo	10/23/2020
DPS-24-02	NAMCo	10/29/2020
DPS-25-01	NAMCo	12/14/2020
DPS-28	Entergy	3/8/2021
DPS-28	Entergy	3/25/2021
DPS-30-01	NAMCo	3/22/2021
DPS-30-02	NAMCo	3/22/2021
DPS-31-01	NAMCo	3/22/2021
DPS-33-01	NAMCo	3/22/2021
DPS-34	Entergy	3/22/2021
DPS-34-07	NAMCo	3/22/2021
DPS-35	NAMCo	4/12/2021

APPENDIX B

Notice of Determination of Significance

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 19-E-0730 - Joint Petition of Entergy Nuclear Indian Point 2, LLC; Entergy Nuclear Indian Point 3, LLC; and Nuclear Asset Management Company, LLC for a Declaratory Ruling Disclaiming Jurisdiction Over or Abstaining from Review of the Proposed Transfers or, in the Alternative, an Order Approving the Proposed Transfers Pursuant to Section 70 of the New York Public Service Law.

NOTICE OF DETERMINATION OF SIGNIFICANCE
(NEGATIVE DECLARATION)

Notice is hereby given pursuant to the State Environmental Quality Review Act (SEQRA) (Environmental Conservation Law Article 8) that an environmental impact statement will not be prepared in connection with the proposed transfer of the corporate ownership interests in the Indian Point electric plants and related assets and liabilities (Indian Point) from Entergy Nuclear Indian Point 2, LLC, and Entergy Nuclear Indian Point 3, LLC, to Nuclear Asset Management Company, LLC.

Public Service Law (PSL) §70 authorizes the New York State Public Service Commission (Commission) to review and approve the proposed transfer of corporate ownership interests. Since no other agency is involved in the exercise of PSL §70 authority concerning the proposed action, the Commission assumes lead agency status for conducting the environmental review.

The Commission has conducted and completed its review of the proposed action. After reviewing the Joint Petition, the accompanying Short Environmental Assessment Form (SEAF) Part 1,

supporting documentation, and SEAF Parts 2 and 3, which were completed by DPS Staff, the Commission finds that the proposed transfer is an Unlisted Action because it does not meet the regulatory criteria for Type I or Type II actions set forth in 6 NYCRR §§617.2, 617.4, and 617.5, and 16 NYCRR §7.2.

The Commission concludes, based on consideration of the criteria for determining significance listed in 6 NYCRR §617.7, the information in the completed EAF, and the record, that the proposed action and transfer is not expected to have any significant adverse impacts on the environment. The Commission finds that the proposed action, which involves the transfer of ownership interests, will not have a significant adverse impact on the environment because it simply transfers existing decommissioning, site restoration, and spent fuel management obligations from one entity to another. These obligations have been imposed by, among others, the United States Nuclear Regulatory Commission. The obligations will attach to any owner of Indian Point, whether that owner is an Entergy affiliate, a Holtec affiliate, or some other entity. In this proceeding, the Commission decides only whether the transfer of the ownership interests in the existing assets, liabilities, and obligations from Entergy-owned entities to Holtec-owned entities is in the public interest pursuant to Public Service Law §70. That proposed transfer of the ownership interests, in and of itself, will not result in any adverse environmental impacts. The Commission therefore finds that the proposed action will not have a significant adverse environmental impact, and therefore issues this negative declaration.

The address of the Public Service Commission, the lead agency for purpose of the Environmental Quality Review of this

action, is Three Empire State Plaza, Albany, New York 12223-1350. Questions may be directed to Ryan Coyne at (518) 474-3137, Ryan.Coyne@dps.ny.gov, or the address above.

MICHELLE L. PHILLIPS
Secretary