



February 26, 2021

Hon. Michelle L. Phillips, Secretary, and Commissioners, New York State Public Service Commission
Re: Matter Master: Matter Master: 19-02636/19-E-0730: Joint Petition by Entergy Nuclear Indian Point 2, LLC; Entergy Nuclear Indian Point 3, LLC; and Nuclear Asset Management Company, LLC regarding the Proposed Transfers of Indian Points Licenses

Hudson River Sloop Clearwater believes the NYS Public Service Commission should exercise its full jurisdiction by denying the joint application to transfer the Indian Point license from Entergy to Holtec for the following reasons

Because the Nuclear Regulatory Commission has repeatedly granted exemptions and waivers to regulations that would have protected public health and safety, New Yorkers must rely on the PSC to ensure that Indian Point is decommissioned as safely and responsibly as possible. Given Holtec's abysmal track record, we urge the PSC to reject the joint application to transfer the Indian Point license from Entergy to Holtec. We also request that the PSC does NOT make any decision or take any further action until the NYS Attorney General and Riverkeeper cases, still pending, are resolved.

Holtec has a long long-standing, well-documented history of malfeasance that includes bribery, corruption, lying to public officials, and ignoring community and municipal input to the degree that it has been barred from doing business with the World Bank and the Tennessee Valley Authority. This is well-documented in the following examples:

- [Clearwater Background Info on Holtec LTA.3.25.20](#)
- [Holtec is currently under criminal investigation, as cited in lawsuit filed NJ Economic Development Authority](#)
- [Oyster Creek Lawsuit](#)

Just this week, David Lochbaum, formerly Director of the Nuclear Safety Project for the Union of Concerned Scientists and a nuclear engineer who worked in nuclear power plants for nearly two decades, made the following accusation:

“Under the information in NUREG/NR-0240, Rev. 8, “Reporting Safety Concerns to the NRC,” I am submitting this allegation to the agency via ALLEGATION@nrc.gov...

“Holtec International violated federal regulations, specifically 10 CFR 2.390, by falsely claiming that information submitted to the U.S. Nuclear Regulatory Commission pursuant to 10 CFR 72.48(d)(2) contained proprietary and/or trade secret information and should be withheld from public disclosure.”¹

Holtec's financial solvency is highly questionable: Holtec's structure is a group of privately held limited liability corporations (LLCs) with opaque finances. Holtec's business model is based on maximally leveraging the Decommissioning Trust Fund (DTF), created by ratepayer dollars, for their own profit at the expense of public health and safety. On February 12, 2020, NYS Attorney General Letitia James [filed a](#)

¹<https://mail.google.com/mail/u/1/?tab=cm#search/dave+lochbaum/FMfcgxwLsdHTWbGvCbvLZLlvPNCPrxG?projector=1&messagePartId=0.1>

[petition on behalf of the State of New York to intervene in the license transfer, arguing that the transfer violates the NRC's rules for approving a license transfer](#), and questioning whether Holtec has demonstrated adequate financial solvency and whether they will use the DTF as intended. On January 22, 2021 [NY's Attorney General again filed suit over the plant's shutdown plan](#). The NRC has also granted an exemption to allow the DTF to be used for removing spent but still highly radioactive fuel to dry cask storage, which is not an intended use for the fund; the Attorney General is also challenging this misappropriation.

Holtec lacks experience with decommissioning and has a poor safety record: Holtec has very limited experience with actual decommissioning. Their recent acquisitions of Pilgrim in MA, Oyster Creek in NJ, and Palisades in MI show disregard for community input, reduced security, and cessation of support for first responders. In fact, Holtec has [never completed decommissioning](#) of a nuclear power plant. Their current model of “fleet decommissioning” is in its infancy. Its first decommissioning undertaking is Oyster Creek, which it acquired in July 2019, and its entire nuclear “fleet” was acquired less than a year ago. While Holtec has never completed the decommissioning of a nuclear plant before, they have a troubling history of [mishandling nuclear waste](#), [hiding safety violations](#), and [changing processes without approval](#) from the NRC. In public meetings with the Village of Buchanan, when asked about their safety record, they [misled the public](#) that they had never had any problems. They failed to mention any of the issues they'd faced with waste storage or that they had only just recently purchased licenses to begin decommissioning and thus had no history to refer to. This lack of credibility betrays the public trust.

They are trying to acquire [multiple nuclear plants](#) all over the country with plans that rely on [changes to Federal law](#) to complete their decommissioning

What they experience Holtec does have with nuclear waste storage has included dangerous practices. At San Onofre in CA, a canister containing high-level nuclear waste got stuck midway as it was being loaded into a receiving cask and was hung up for hours. Their thin-walled canisters are only 1/2” to 5/8” thick and can easily be scratched, leading to corrosion and possibly leaks.

In May 2019, safety expert Rear Admiral Len Hering, Sr. USN (Ret.) offered the following testimony to Congress, which was broadcast on C-Span:

“What scared me is that we would not have been told about the incident unless a whistleblower had come out in public hearing to tell the world that he couldn't stand by [silent],” said Rear Admiral Len Hering (USN-Ret.), who as the Southwest regional commander was responsible for the nuclear safety of naval operations, and is fiercely critical of Holtec's and the NRC's actions at SONGS. “If it were not for him, we would not have been made aware that this situation had occurred. Since that time I focused my attention on learning more [about safety issues at SONGS] and what I've uncovered is, to be honest, astounding. ***I have come to realize that the most hazardous material on the face of the earth was in fact being handled like any other commercial waste product. I have found that basic safety requirements have been waived or contorted in favor of expediency and cost.***”²

Holtec puts profit over public health and safety: In New Jersey, [Clean Water Action confirms](#) that Holtec put costs ahead of safety by hiring [low-skilled, unqualified workers](#) who were not familiar with the plant at Oyster Creek, by stopping funding to local first responders who are responsible for implementing an emergency response plan, and by ignoring concerns of local officials. Holtec told officials at Oyster Creek that, if there was a problem with nuclear waste storage at Oyster Creek, it would take several days to bring an overpack to the site from Camden, rather than storing one onsite as a reasonably safe precaution. Nuclear waste canisters are very heavy and not easily transported. While it is questionable if an overpack would be adequately protective, the fact that Holtec is keeping the only equipment they have to address canister failure in Camden, days away, reflects their lack of concern for safety and community protection.

Holtec's plan for “vertical integration” includes:

² <https://www.c-span.org/video/?460643-1/nuclear-power-oversight>

- **Quick and Dirty Decommissioning**, cutting corners to keep costs down to maximize their profits by keeping any unspent funds in the ratepayer-financed Decommissioning Trust Fund.
- **Use of unsafe 1/2” to 5/8” thin-walled, sealed canisters** that cannot be opened if there is a leak or other problem. These canisters are prone to being scratched when lowered into the concrete storage silos; scratching can lead to accelerated corrosion and compromised containment. In Europe and elsewhere storage canisters are 12” - 18” thick with bolted lids that can be removed if there is a problem. They are also stored in hardened buildings.
- **Rushed DECON and premature removal of High Burnup Fuel** to dry storage: Recent use of High Burnup Fuel (HBF) to space out refueling complicates the timing for transfer from fuel pools to dry cask storage. Experts such as [Bob Alvarez](#), Senior Scholar at the Institute for Policy Studies, recommend that HBF needs to cool in the fuel pools for 7 to 10 years at minimum. Entergy has been slow to move the older regular fuel from severely overcrowded fuel pools to dry cask storage, but at the opposite extreme, Holtec plans to rush the fuel transfer of both regular and HBF in 1.5 to 2 years -- much sooner than is safe. Zirconium cladding holds fuel pellets in the rods that comprise the highly radioactive spent fuel assemblies stretches over time from heat and thins and can become weakened and prone to tearing.

Holtec’s plan for nuclear waste storage violates Federal law and the Principles of Environmental Justice: After decommissioning is complete, Holtec plans to use its own Consolidated Interim Storage (CIS) site to receive the nuclear waste stored at Indian Point. However, this is currently illegal under Federal law and the Nuclear Regulatory Commission is [currently being sued](#) for permitting Holtec to build their CIS facility in New Mexico. Without this facility, Holtec’s plan for Indian Point’s irradiated spent fuel is not feasible. New York could be left with Indian Point’s waste in limbo -- a situation in which it has nowhere to go and is not packaged or stored properly for long-term on-site storage. This poses an unacceptable risk for NY and is another reason that the PSC should deny the license transfer.

- **Holtec’s plan for Consolidated Interim Storage (CIS) in New Mexico is unsafe and unjust.** CIS violates the Nuclear Waste Policy Act, requires transporting thousands of tons of highly-radioactive nuclear waste across the country over roads and rail that were not built for this purpose, posing huge risk of radiation exposure to the communities through which thousands of tons of this dangerous cargo would be shipped.
- **Environmental Justice:** Beyond the dangers associated with onsite storage and transportation, there is the essential matter that Holtec’s plan to ship waste from all over the country to their own CIS facility in a First Nation and Latinx community in New Mexico. This would further burden these Environmental Justice communities, which have long been exposed to radiation from atomic weapons testing, the mining, milling and processing of nuclear fuel and now the storage of nuclear waste and it violates the principles of Environmental Justice and self-determination. See: [Leona Morgan, NISH, IP Regional Decom Forum. EJ Impacts of CIS.11.20.20.pdf](#),
- **CIS is not Consent-Based:** Disregarding the logistical hurdles of moving the irradiated spent fuel waste across the country, the communities that would receive the massive amounts of high-level radioactive waste, do not want it there. Both [New Mexico](#) and [Texas](#) oppose the construction of the Holtec facility, as do the Governors of both states, It behooves the NYS Public Service Commission to respect the wishes of these communities by rejecting Holtec’s license transfer application.

Transportation risks: After Decommissioning is complete, Holtec plans to ship these canisters filled with high-level nuclear waste in an overpack over roads and rail with bridges, overpasses and tunnels, and/or by barge through NY Harbor. The NRC has dismissed transportation accidents as “not credible,” but accidents can and do occur, including a [July 2019 train derailment in Elko, Nevada](#) and other accidents in the US and elsewhere: [Derailment stirs fears of bringing nuclear waste to Yucca Mountain](#); [Train carrying munitions derails in Northern Nevada — VIDEO](#) On July 18, 2001, [a freight train carrying hazardous \(non-nuclear\) materials derailed](#) and caught fire while passing through the Howard Street railroad tunnel in downtown Baltimore. See also [Truck carrying empty nuclear waste cask crashes | Local News | reformer.com](#) If fuel has been stored vertically and the zirconium cladding is stretched and thinned, it can become prone to losing its integrity and tearing when the fuel is shifted to a horizontal position for shipping. Radiation

released beyond the transport canister can affect the drivers and other transit workers. Repeated shipping through communities along the route increases the chances of accidents and radiation exposure. And there is the possibility of the multiplier effect that includes the dangers of severe weather events caused by climate change, seismic activity, and other unanticipated disruptions.

Alternatives exist: Other companies have extensive experience with decommissioning and have been more responsive to community needs. For example, NorthStar/Orano and Energy Solutions are active decommissioning companies that have a better -- though not flawless -- track record and more experience than Holtec, whose primary experience is the manufacturing of inferior nuclear waste storage systems -- not nuclear decommissioning.

- **Orano/NorthStar/ADP:** Holtec's major competitor in the decommissioning industry is NorthStar/Orano, which decommissioned Vermont Yankee, and now has wider portfolio that includes the Crystal River plant in Florida. In 2017 NorthStar formed a new joint venture with AREVA Nuclear Materials: Accelerated Decommissioning Partners (ADP).
- **EnergySolutions** has substantial prior decommissioning experience, including the Zion Nuclear Power Station in Illinois, the La Crosse Boiling Water Reactor in Wisconsin (the largest decommissioning project in U.S. history), and the SEFOR Test Reactor in Arkansas. It is also partnering with the Omaha Public Power District to decommission the Fort Calhoun Nuclear Power Plant in Nebraska and is negotiating to acquire and fully decommission Three Mile Island 2 in Pennsylvania.

Science matters: The Nuclear Regulatory Commission repeatedly violates, by waivers and exemptions, the very regulations that Congress has put in place to protect public health and safety. The NRC is a captured agency that caters to the nuclear industry and does not provide adequate oversight -- a problem which Congress urgently needs to address. Nuclear engineer Paul Blanch has submitted two 2.206 Petitions to the Office of Inspector General documenting the NRC's repeated dismissal of concerns regarding potential canister corrosion and other potential accidents as simply "not credible." The NRC also refused to hold a hearing to address public concerns, although that was strongly urged by the NYS Congressional delegation, Governor Cuomo and many state, county and local elected officials.

See also: Former NRC Chairman Gregory Jaczko's Washington Post Op Ed: ***[I oversaw the U.S. nuclear power industry. Now I think it should be banned.](#)***

Over the past several years Clearwater has organized several successful Congressional briefings to educate members of Congress and their staffs, the staffs of relevant federal agencies, and the media on decommissioning issues. Another is planned for late March of this year. We have also convened several regional forums to educate elected officials and community members in the region surrounding Indian Point. There is much supporting evidence that Holtec is not a responsible decommissioning company in each of these:

- [Decommissioning Nuclear Power Plants: What Congress, Federal Agencies and Communities Need to Know](#) (2018)
- [Decommissioning: A New Era in the U.S. Nuclear Power Industry; a Critical Need for Congressional Oversight](#) (2019).
- [Fall 2019 Regional Nuclear Decommissioning Forum](#) (Oct 10, 2019). The forum featured independent scientists and advocates from five Northeast reactor communities
- [Fall 2020 Virtual Regional Decommissioning Forum](#) November 20, 2020
- [2020 Regional Nuclear Decommissioning Forum](#) November 25, 2020

Because of the NRC's lax oversight, the New York State PSC must set a strong precedent by exercising the jurisdiction it has with regard to nuclear waste storage and decommissioning. Indian Point is the first of the state's currently operating nuclear power plants to be closed and decommissioned. As New York navigates this process it is imperative that the PSC ensure that it is done in the best interests of the local community and the state. We need decommissioning to be done using best practices. Holtec's track record with

nuclear waste proves it does not care about public safety, lacks decommissioning experience and has a long-history of malfeasance, leaving New Yorkers at risk of being left with an unsafe and potentially unfinished job and an empty Decommissioning Trust Fund. New Yorkers deserve better than Holtec to undertake decommissioning the first of the state's four operating nuclear power plants.

Clearwater firmly believes that there is ample evidence that Holtec is not fit to hold the license to decommission Indian Point and should be disqualified from consideration. The NYS Public Service Commission should retain and utilize its jurisdiction to protect the communities surrounding Indian Point and New York State by rejecting the Energy/Holtec joint request and denying the application for the proposed License Transfer. We don't yet have the transcript to confirm, but I recall that Peekskill City Council members Kathie Talbot and Vanessa Agudelo and Westchester County Legislator Justin Smith, among others, agree.

Clearly there are two or more schools of thought about the proposed LTA. If the evidence presented in the comments offered in the required by the State Administrative Procedures Act (SAPA) public hearing comment is not sufficient to convince the Commission to take this action now, the PSC should at minimum take the time to honor the requests made by so many elected local, county and state elected officials including Town of Cortland Supervisor Linda Pugliese and Council member James Creighton, Westchester County Executive George Latimer, NYS Legislators Senator Pete Harckham and Assembly Member Sandy Galef and the Westchester County Legislature, to get answers to the numerous unanswered questions and concerns that have been raised and need to be carefully addressed. A good way to get at the truth of this critical matter would be to convene the NYS Decommissioning Oversight Board, which Governor Cuomo has assigned the PSC to assemble. This would bring together all the agencies with jurisdiction, with community members, scientists, labor representatives and other key stakeholders to undertake a fact-finding, solution-oriented inquiry that is most protective of the communities, rate and taxpayers and public health and safety.

Thank you for your consideration of these comments. Hudson River Sloop Clearwater's mission is to protect the ecology of the Hudson River and the well-being of everyone living in its watershed and beyond. It is in that spirit that we ask the NYS Public service commission to reject the request

Sincerely,



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