



To: Hon. Michelle L. Phillips
Acting Secretary to the Commission
New York State Public Service Commission
Empire State Plaza, Agency Building 3
Albany, NY 12223-1350

From: Hudson River Sloop Clearwater, Inc.
724 Wolcott Avenue
Beacon, NY 12508

Re: 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

Date: February 25, 2021

When the Nuclear Regulatory Commission (NRC) summarily approved the transfer of Indian Point's licenses to a subsidiary of Holtec International for decommissioning, it did so without addressing the concerns and objections of citizens' groups and officials including New York State Governor Andrew Cuomo, New York's Congressional delegation, and NYS Attorney General Letitia James. Clearwater shares their concerns and strongly opposes Holtec taking over Indian Point on the grounds it is untransparent, untrustworthy, and unqualified to be the licensee.

On January 22, Attorney General James filed a petition of review in federal court of the recent NRC actions including approval of license transfer from Entergy to Holtec, denial of New York's petition to intervene in the license transfer, and granting Holtec exemptions from certain federal regulations on the permissible uses of the Indian Point decommissioning trust fund.

It is striking that the NRC has rubber-stamped Holtec's requests while stonewalling New York's objections and concerns to such a degree that the State must seek remedy in federal court. It makes it especially welcome that the NYS Public Service Commission (PSC) is providing a chance for public comment on Indian Point license transfer through these proceedings.

However, these proceedings are framed by Entergy and Holtec's subsidiary Nuclear Asset Management LLC as an affirmation of license transfer to Holtec, with public comment assumed to be a kind of plebiscite. The Petitioners seek a declaratory ruling disclaiming any PSC jurisdiction over license transfer, or a PSC decision to abstain from using its jurisdiction, or if it chooses to use it, that it simply approves license transfer.

These requests from the Petitioners are all further attempts to stonewall the objections and serious concerns that New York State, the New York Congressional delegation, citizens groups and stakeholders have raised regarding license transfer to Holtec. They are the opposite of what needs to happen in this

matter. Not only should the PSC not disclaim its jurisdiction over license transfer, it has a duty to affirm and assert its jurisdiction, and use it to reject Holtec as unqualified to hold Indian Point's licenses.

Comprehensive Decommissioning International, LLC (CDI), the company that proposes to decommission Indian Point, is a joint venture of Holtec International and its partner company SNC-Lavalin. Holtec and SNC-Lavalin's track record includes repeated bribery and fraud convictions, and being barred by the Tennessee Valley Authority and the World Bank. Holtec is currently under [criminal investigation](#) for lying to state officials in New Jersey.

The attached Addendum documents Holtec's track record of malfeasance in detail. This record alone makes Holtec an unacceptable candidate for acquiring Indian Point. But there are many other compelling reasons why Holtec must not be entrusted with the existential task of owning and decommissioning Indian Point.

Holtec touts its expertise in decommissioning nuclear power plants when in fact it is learning on the job as it acquires them. What experience and track record it does have, for example at the Oyster Creek nuclear plant in New Jersey it recently acquired and is decommissioning, or at the plants where it is contracted to handle spent nuclear fuel (SNF), does not inspire confidence – on the contrary. It should be noted that decommissioning and spent fuel management are separate propositions requiring different skill sets, though the NRC recently has blurred the line between the two.

Holtec's "fast decommissioning" business model involves leveraging Indian Point's \$2.3 billion ratepayer-financed decommissioning trust fund (DTF) while cutting costs and corners in decommissioning procedures to maximize its profits. Holtec has sought and obtained from the NRC a raft of exemptions from safety requirements and other NRC regulations to facilitate fast decommissioning. These include significantly raising the allowable level of workers' exposure to radiation.

At Oyster Creek Holtec hired unskilled workers for safety-critical tasks like pipe fitting and excluded trained union workers in order to save money. It also attempted to enlarge a spent fuel storage pad beyond what had been previously approved without seeking a building permit. When Lacey Township objected, Holtec sued it to evade local permitting authority (the suit was recently settled).

At the San Onofre Nuclear Generating Station (SONGS) in California, Holtec had a serious near-miss accident where it very nearly dropped a spent fuel canister being transferred to dry cask storage. That could have resulted in a severe radiological release. The incident was kept quiet, and only came to light thanks to a whistleblower. When the SONGS Citizen Engagement Panel raised concerns about Holtec's performance and posed questions about its side businesses, it drew a vitriolic response from Holtec CEO Kris Singh. Indian Point cannot afford a licensee that denigrates and dismisses public concerns and input.

Holtec is a closely held private company. It has not demonstrated financial assurance, i.e. that it has the financial depth needed to take on Indian Point decommissioning. It has offered no proof of substantial capitalization. It is secretive about its finances, for example operating [shell companies](#) in Bermuda whose officers included Holtec's CEO Kris Singh's family members, a fact which came to light only because of information leaked to journalists.

Holtec's business model relies on leveraging other people's money, i.e., ratepayers' and taxpayers' money, for its own profit, without bringing any of its own to decommissioning work. It sought and obtained from the NRC an exemption from the prohibition on using the decommissioning trust fund for purposes other than decommissioning per se, which means it can reimburse itself for spent fuel handling out of the DTF. In Indian Point's case, this could seriously deplete funding for actual decommissioning activities such as dismantling the plant and comprehensively cleaning up radioactive contamination at the site. As a matter of course, Holtec -- like other decommissioning companies -- will also sue the

Department of Energy to recover spent fuel management costs, since no geologic repository such as Yucca Mountain has materialized. In effect, it will use the DTF and DOE money to get paid for spent fuel management twice, amounting to hundreds of millions of dollars. But unlike other decommissioning companies, Holtec will keep the federal money as profit instead of putting it back into the DTF. This was affirmed at a 2020 NRC public meeting on Holtec license transfer.

The Holtec / SNC-Lavalin joint venture uses a complex subsidiary structure to shield it from liability. If license transfer is approved, Holtec Decommissioning International (HDI), a Holtec subsidiary, would be Indian Point's licensed operator. Another Holtec subsidiary, Nuclear Asset Management Company (NAMCO), would be the licensed owner. HDI's subsidiary, Comprehensive Decommissioning International, LLC (CDI), would be the general decommissioning contractor.

Since it proposes to bring none of the parent companies' capital to Indian Point decommissioning work, but only to leverage public money, and since it will tap the ratepayer-financed DTF for spent fuel management, transferring Indian Point's licenses to Holtec's subsidiary poses a clear fiscal danger to the State. If it depletes the decommissioning fund and if the costs of remediating this extensively contaminated and highly complex site prove higher than Holtec estimates, the subsidiary could declare bankruptcy, leave the work half done and walk away without incurring any liability to the parent companies. In that case, New Yorkers -- the State and municipalities, ratepayers and taxpayers -- would be left to bear the costs and risks. In fact, the subsidiary structure seems to envision this very possibility.

In its Post Shutdown Decommissioning Activities Report (PSDAR) filed with the NRC (prematurely, before the NRC approved license transfer), Holtec gave stakeholders more reasons to worry that it may leave decommissioning work undone or badly done, and leave the region and the State to cope with unacceptable risks and costs.

For example, the PSDAR indicated that Holtec plans to complete transfer of Indian Point's spent fuel from the fuel pools to dry storage by mid-2024. Depending on when it starts, that means Holtec intends to compress the process into three years or less -- a reckless timeline. [Five years](#) is the industry standard to allow ordinary, low-burnup spent fuel to cool (thermally and in terms of radiation) sufficiently to be moved. [About 60%](#) of Indian Point's spent fuel inventory is high-burnup fuel, which is much more radioactive than ordinary spent fuel, and requires at least seven years or more before moving (some experts say much longer). Compressing the process to three years or less may cut costs, but would also put workers and residents in jeopardy, as Holtec did at SONGS.

In the PSDAR Holtec also indicated it would do nothing to remediate the [extensive radioactive contamination](#) leaking from the plant into the groundwater and the Hudson River, including the lethal isotope strontium-90. It said it would remove above-ground structures only to a nominal depth of 3 feet. But contamination at the site almost certainly goes much deeper. Depending on the source, radiological contamination [may not affect only surface soils](#), but also subsurface soils and groundwater. Groundwater contamination at Indian Point is documented. There's an urgent need for independent, thorough site characterization at Indian Point, without which it isn't possible to know how much work will be needed to remediate the site or what it might cost, and without which Holtec's representations about the timing and scope of its work aren't reliable or credible. Judging from Holtec's PSDAR, New York State should consider itself on notice that it will likely be left with the impacts and costs of unremediated contamination at the site.

Holtec's PSDAR also notes it may elect to ship "large components" of the plant down the Hudson by barge -- a [very dangerous proposition](#) with which Holtec cannot be trusted. It's unclear whether these "components" would include highly radioactive spent fuel, but experts have told us Holtec's language does not rule it out, and in fact in 2002 DOE proposed transporting Indian Point's spent fuel by barge

down the Hudson to Yucca Mountain. That's a strong indication that barge transportation of Indian Point's spent fuel may be in the works. But transporting spent fuel and other radioactive waste, whether by barge, truck or rail, is fraught with unsolved safety and practical problems, and entails serious risks of radiological release to the public. Holtec lacks the qualifications (e.g. expertise, demonstrated respect for laws and regulations, willingness to work with stakeholders, transparency and trustworthiness) to make and execute responsible decisions about transportation vs. onsite storage of radioactive waste.

In addition to leveraging public money, Holtec's business model revolves around an aggressive "vertical integration" approach which links its decommissioning business to other side businesses, including a consolidated interim storage facility (CISF) for spent nuclear fuel it is trying to license in New Mexico, and building small modular reactors (SMRs). Both of these side businesses stand to influence its activities at Indian Point.

Holtec hopes to be well paid by the federal government to store spent fuel in New Mexico, and expects to have its CISF facility licensed as soon as 2023. It therefore has a strong financial incentive to expedite transfer of Indian Point's spent fuel to dry storage, despite the safety risks involved in accelerating the process to three years or less, and then to transport it across the country, despite the lack of safe transport casks, inadequate road and rail infrastructure and other unsolved transportation dilemmas.

The NRC is currently being sued in federal court for forging ahead with permitting Holtec's CISF in New Mexico. The facility is predicated on the idea that DOE will take title to spent nuclear fuel as it leaves the reactor site, thus relieving Holtec of its liability for it. But this is specifically prohibited by the Nuclear Waste Policy Act unless and until a geologic repository is up and running. Holtec's plans for CISF therefore violate federal law. The lawsuit against the NRC argues that advancing the NRC licensing procedure despite this, in anticipation of the law changing, is itself illegal. Holtec's CISF also violates the principles of environmental justice and consent-based siting, since New Mexico's indigenous communities and communities of color are already overburdened by impacts from the nuclear industry, and do not consent. They and Governor Lujan Grisham oppose the project. Holtec's plan to ship Indian Point's spent fuel to its CISF in New Mexico also violates these basic principles.

Holtec has a manufacturing facility in Camden, New Jersey where it plans to build small modular reactors (SMRs), giving it access to federal R&D funding. Holtec insists its SMRs will be "walk-away safe." But in fact, SMRs are small light water reactors (LWRs) which are inherently no safer than other LWRs -- in fact they more dangerous since the designs are unproven. They raise many unresolved questions about cooling, containment, and spent fuel management. Some SMR designs run on re-enriched spent fuel, which is another potential linkage between Holtec's various lines of business. A high-assay low enriched uranium plant is planned near Holtec's CISF facility, raising fears it may intend to re-enrich spent fuel from Indian Point and other plants for use in its SMRs -- a dirty and risky proposition.

If Holtec goes the re-enrichment route, there is an associated risk it could also reprocess spent fuel to extract plutonium-239 for use in nuclear weapons. Reprocessing is the dirtiest part of the nuclear fuel cycle. It poses proliferation risks and in Holtec's case it would in effect re-close the nuclear fuel cycle, breaching the essential separation between civilian reactors and the weapons industry. In 2017 Sam Cobb, mayor of Hobbs, New Mexico where Holtec's CISF site is located, [admitted](#) reprocessing is part of the plan for the facility. "We believe if we have an interim storage site, we will be the center for future nuclear fuel reprocessing," he said.

Holtec's SMR design is not yet approved by the NRC, and it has not yet applied to build an SMR. But that doesn't mean the possibility is only theoretical or remote. Until recently, Holtec told journalists its SMRs were intended for foreign markets such as Ukraine, and that it saw no market for them in the U.S. But that changed after it acquired the closed Oyster Creek nuclear plant in New Jersey for

decommissioning. In January 2021 Holtec [announced](#) its intention to install an SMR at Oyster Creek. This is cause for concern that Holtec may have a similar agenda at Indian Point, which is adjacent to large transmission lines to the New York City electricity market. Re-nuclearizing reactor sites that have been closed is inimical to the job of a licensee in the decommissioning phase. If Holtec envisions the possibility of profiting from future SMR installations at Oyster Creek, Indian Point, or other closed nuclear plants it acquires, it directly conflicts with the mission of remediating these sites to a safe standard for non-nuclear uses.

Holtec is trying to leverage various pools of public money to fund its various linked business. But with these overlapping lines of business come conflicts of interest, high potential for self-dealing, and heightened risk that Holtec will make decisions prioritizing its profits over public health and safety.

It's Holtec's dry storage system manufacturing business that is of most immediate concern for Indian Point. Holtec uses its own flawed and gouged dry storage spent fuel canisters, whose design Holtec changed in safety-significant ways without seeking NRC permission. The NRC fined Holtec for the unauthorized change, but let it stand. This is part of a pattern. Since 2001 Holtec committed [multiple violations](#) of NRC quality assurance procedures, which are meant to insure its canisters met safety standards. The violations [included](#) Holtec changing designs in ways that did not follow NRC procedures, revising quality assurance procedures on its own without NRC approval, and taking ineffective corrective actions. Dr. Ross Landsman, NRC dry cask inspector for the Midwest regional office, wrote [a damning memo](#) to his superiors expressing full support for a whistleblower's quality assurance allegations against Holtec's storage/transport casks.

In 2015 Holtec's CEO Kris Singh [admitted](#) that if Holtec canisters fail or leak due to stress corrosion cracking, he thought it wouldn't be possible to repair them. In 2020, as Holtec acquired shuttered nuclear plants, Singh backtracked, saying that his remarks were taken out of context and that he now believes failing or leaking Holtec canisters might be repaired using emerging robotic technology. But that's an argument in the alternative to Holtec's long-standing contention, which the NRC has accepted: regardless of whether or not leaking canisters could be repaired, Holtec simply asserts that its canisters in any case cannot and will not leak or fail, so back-up systems to repackage them in the event of failure, such as a hot cell, aren't needed. Yet Holtec's half-inch thick steel canisters are subject to stress corrosion cracking, and the possibility of canister failure is far from remote. Similar steel components at nuclear plants failed in 11 to 33 years at ambient temperatures (68 degrees F), while the steel walls of canisters get much hotter (750 degrees F), meaning that cracks could develop much faster. Since there is no technology for inspecting the canisters internally for cracks, there is no way to know whether or when cracks will develop. But the inverse is also true: there is no way to know or assert that they won't, and there is ample reason to be concerned they will.

We believe Holtec's dry storage system is deeply flawed and inadequate to keep Indian Point's spent fuel safe. At the same time, there are clearly better systems available in the nuclear industry. Why wouldn't we require using the best available technologies at a plant whose spent fuel inventory contains roughly triple the radioactivity of Fukushima and is located 25 miles from New York City, with some 20 million people living within a 50-mile radius?

The "federal preemption" argument, i.e. that the NRC has sole jurisdiction over radiological safety issues and therefore the State has no role in such issues, is not a sufficient reason for the PSC to acquiesce in transferring Indian Point's licenses to Holtec, especially when there is an appropriate legal/regulatory basis for the PSC to assert its jurisdiction over license transfer.

The PSC has authority to oversee and intervene in decommissioning activities and outcomes at nuclear power plants. The State also has a duty to protect New York's jurisdictional interests on behalf of New

Yorkers. Although the NRC has jurisdiction over radiological safety issues, states have jurisdiction over other impacts from decommissioning, including impacts on the economy, surface water, future energy policy, future land use, tourism and recreation, and other impacts. New York also has authority over hazardous material and toxic chemical contamination which applies to nuclear sites.

Ultimately, there is no hard and fast line of separation between these issues and radiological safety issues. Since the competence of the licensee regarding radiological safety also affects New York's economy, finances, energy policy, water, land use, etc., the PSC should not ignore it. In fact, the PSC has the right and the duty to consider Holtec's competence now, before Holtec becomes the licensee, takes ownership of Indian Point's \$2.3 billion trust fund, and starts making decommissioning decisions the State may come to regret. Beyond that, transferring Indian Point's licenses to Holtec would pose threats to New York's finances, economy, water, and other areas where the State has clear jurisdiction.

The fact the NRC has refused to consider New York's objections and concerns about Holtec is all the more reason for the PSC to exercise its authority over license transfer. And when, as in this case, the proposed licensee is a bad actor which the NRC has enabled rather than restrained, asserting PSC authority over license transfer is not only possible, but imperative. The State has a perfect right and a compelling obligation to prevent a corporate bad actor such as Holtec from taking over Indian Point.

Decommissioning Indian Point is much too sensitive, difficult, and dangerous a matter, impacting many millions of people as well as the Hudson River, to be entrusted to a licensee which is unqualified, untrustworthy and under investigation. New York can and must do better. The PSC should therefore deny the Petitioners' request, affirm its jurisdiction over license transfer, and use it to reject Holtec as Indian Point's licensee.

Respectfully submitted,



Stephen P. Stanne
President and Acting Executive Director