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May 26, 2021

The Honorable Chuck Schumer
United States Senate
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The Honorable Kirsten Gillibrand
United States Senate
478 Russell Senate Office Building
Washington, DC 20510

The Honorable Ed Markey
United States Senate
255 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Gary Peters
United States Senate
Hart Senate Office Building
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Washington, DC 20510

The Honorable Bernie Sanders
United States Senate
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Washington, D.C. 20510

The Honorable Debbie Stabenow
United States Senate
731 Hart Senate Office Building
Washington, D.C. 20510-2204

The Honorable Jamaal Bowman
U.S. House of Representatives
1605 Longworth House Office Building
Washington, DC 20515

The Honorable Mondaire Jones
U.S. House of Representatives
1017 Longworth House Office Building
Washington, DC 20515-3217

The Honorable Carolyn Maloney
U.S. House of Representatives
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Washington, DC 20515

The Honorable Sean Patrick Maloney
U.S. House of Representatives
464 Cannon House Office Building
Washington, DC 20515

Dear Senators and Representatives:

We are writing to follow up on our previous letter of April 27, 2021 (attached) again reiterating our call for closer Congressional oversight of the Nuclear Regulatory Commission (NRC) and for Congressional hearings on the pattern of lax NRC oversight of nuclear plant decommissioning and highly radioactive irradiated “spent” nuclear fuel (SNF) disposition.

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The NRC routinely grants industry requests for regulatory relief while ignoring and stonewalling requests from public interest groups and independent experts for enforcement of existing laws and regulations, often flouting its own regulations and procedures. This pattern even extends to stonewalling members of Congress's requests for hearings on license transfer of Indian Point to Holtec, and the NRC's failure to "fully adjudicate all pending petitions before issuing a determination on the Indian Point license transfer application" as Senators Schumer and Gillibrand and Representatives Nita Lowey, Eliot Engel and Sean Patrick Maloney rightly demanded in their joint letter to the NRC of November 16, 2020. Notwithstanding their letter, the NRC approved license transfer to Holtec without holding hearings or fully adjudicating requests for them.

Similar NRC stonewalling has occurred in license transfer procedures in other states and continues today. For example in Michigan, the same pattern that played out in Massachusetts and New York is playing out again now: state officials express concerns about Holtec acquiring their retiring nuclear plants and request hearings on license transfer, which the NRC ignores, even violating its own policies and missing its own deadlines to respond. Michigan Attorney General Dana Nessel has yet to receive a reply to her February 24 petition to the NRC moving for hearings on transferring to Holtec the licenses of the Palisades Nuclear Plant and Big Rock Point Independent Spent Fuel Storage Installation.

Massachusetts Attorney General Maura Healey sued the NRC for ignoring its hearing requests, but settled in return for modest concessions. New York's Attorney General Letitia James also sued the NRC for the same reason, supported by an amicus brief signed by AGs from 11 other states. New York's PSC asserted its jurisdiction over approving license transfer, again settling in exchange for limited concessions. Those deals were struck between parties of very unequal negotiating positions, but the modest gains that resulted do not solve or for the most part even address key problems the NRC has chosen to ignore. These problems persist and are growing increasingly dangerous as more nuclear plants close and decommissioning proceeds. Filling the regulatory vacuum, intensifying Congressional oversight of the NRC, and holding Congressional hearings on recent NRC decisions are therefore more urgent than ever.

On May 19 the New York Public Service Commission (PSC) approved Indian Point license transfer to Holtec, pursuant to a Joint Proposal it negotiated with Entergy, Holtec, local officials, the Public Utility Law Project of New York and the environmental group Riverkeeper. But that does not mean that the regulatory failures and the problems with Indian Point license transfer to Holtec were resolved. On the contrary, they were largely papered over, making it more likely similar problems will be dealt with similarly (i.e. superficially or not at all) in other states. In fact, the PSC agreement has established a harmful precedent, already getting invoked in other states, as a kind of stopgap measure that represents the best states can hope to do, while normalizing lax NRC oversight and more or less forcing state acquiescence.

While the PSC Joint Proposal did mitigate some of the financial assurance problems with Holtec acquiring Indian Point, it left many of the substantive problems with Holtec's record of poor performance and malfeasance, its lack of qualifications to do the job, and the dangers of its decommissioning plans either partly or wholly unaddressed.

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For example, the agreement only partially addressed Holtec's lack of financial assurance. Holtec sought and received from the NRC an exemption that would allow it to pay itself out of the decommissioning trust fund (DTF) for "spent" nuclear fuel (SNF) management, even though this is not normally a permitted use of the DTF. Thanks to this exemption, Holtec will be well paid with ratepayer money for SNF management. Turning around and suing DOE to recover SNF management costs would in effect pay Holtec twice, at public expense, for the same services – a windfall estimated at \$600 million. Requiring Holtec to put half that money back into the DTF, and letting it keep half, is an improvement over letting it keep it all. It reduces (though does not eliminate) the danger that Holtec will deplete the DTF before decommissioning is finished and use its LLC subsidiary structure to walk away from the project, leaving the state and the surrounding communities with the costs and the risks. But it is a half-measure in terms of ensuring ratepayer and taxpayer money is used to protect the public interest as opposed to enriching Holtec. To uphold ratepayer and taxpayer interests, Holtec should have been required to put *all* DOE money it recovers for SNF management back into the DTF.

The PSC agreement also leaves critically important site issues unresolved. For example, it permits Holtec to conduct its own self-interested site assessment of Indian Point's contamination instead of requiring assessment by an independent third party. It allows for token emergency preparedness funding that only lasts for two years. It calls for only the most perfunctory radiation monitoring. And it proposes wholly inadequate measures to mitigate risks from the Algonquin natural gas pipeline which traverses the site.

Vital public health and safety issues are ignored entirely by the PSC agreement, including egregious problems with Holtec's "spent" fuel handling plans and dry storage systems, and its preliminary Post Shutdown Decommissioning Activities Report (PSDAR), in which it indicated that it would only superficially remediate contaminated soils, that it would do nothing to remediate radiological contamination known for many years to be [leaking from the fuel pools](#) into the groundwater and the Hudson (perhaps the worst such contamination in the country), and that it envisioned shipping Indian Point's radioactive waste, including high-level waste, down the Hudson River by barge. These issues are explained in more detail in the attached comments Clearwater filed with the PSC.

Regarding Holtec's fitness to hold Indian Point's licenses, we have previously warned Congress and New York State officials of the bribery and fraud convictions against Holtec and its decommissioning partner SNC-Lavalin, the ongoing criminal investigation into Holtec's conduct in New Jersey, and other red flags that should disqualify from being entrusted with decommissioning Indian Point and storing its highly radioactive irradiated "spent" fuel.

Attached is a detailed investigative report recently published in *Fortune* magazine that describes the many unresolved dilemmas with decommissioning, and digs into Holtec's troubling record. The article describes Holtec's pattern of malfeasance including getting barred and fined by the Tennessee Valley Authority, lying to New Jersey officials, and bribery and corruption convictions against SNC-Lavalin, which courted the Qaddafi regime to win contracts in Libya. We submitted documentation of this information to the NRC and the PSC in formal comments well before license transfer approval, and asked the PSC to make the *Fortune* article part of the record of its

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proceedings on the license transfer decision. But despite this evidence, which has now also been reported in major media, the NRC and New York State both approved license transfer and asserted Holtec is qualified to be the licensee.

We recognize that lax NRC oversight of decommissioning companies puts states in a bind, and that even if they assert their authority over decommissioning, the scope of that authority has limits. States are therefore ill-equipped to confront the NRC and compensate for its lax oversight and enforcement, and have to obtain whatever concessions they can, however inadequate. This is another reason why more robust Congressional oversight of the NRC is essential.

According to the principle of federal preemption, safeguarding the public and the environment from radiological dangers in decommissioning is not states' job; it's the NRC's job. Yet as we and leading experts keep pointing out, the NRC is not doing it. Frank von Hippel, former assistant director for national security in the White House Office of Science and Technology, recently [wrote](#), "Over the past two decades, the NRC has been captured by the nuclear power companies it is supposed to regulate. The process of capture and resulting erosion of regulation has been driven in part by the increasingly poor economics of nuclear energy as companies struggle to avoid large costs due to additional safety measures. However, the path has been laid to a potential disaster."

The same applies to decommissioning and highly radioactive irradiated "spent" nuclear fuel (SNF) disposition. Holtec and the NRC are pushing to license its consolidated interim storage facility (CISF) in New Mexico, which would trigger thousands of shipments of SNF through 75% of Congressional districts. The attached comments Clearwater filed with the NRC discuss in detail the many unsolved dilemmas and dangers of this scheme, which are simply being ignored as it advances, including risks of transport accidents, roads, rails and bridges that can't take the 180+-metric tonne weight of loaded canisters, and serious problems with the canisters themselves.

For example, the welded canisters Holtec will use at Indian Point and are in use at other have no active cooling, but rely on passive convection cooling when stored vertically, which they lose when they are laid down horizontally for shipping, making them prone to overheating. The Nuclear Waste Technical Review Board [recommended](#) a minimum of a decade to develop new cask and canister designs for SNF and high-level waste storage and transportation. Yet Holtec is pushing ahead with licensing its proposed New Mexico CISF, which expects to start accepting SNF shipments as early as 2023.

The CISF business model violates federal law. CISF economics are predicated on the idea that DOE will take title to highly radioactive irradiated "spent" nuclear fuel as it leaves the reactor site, thus relieving the decommissioning companies of their liability for it. But this is specifically prohibited by the Nuclear Waste Policy Act, unless and until a geologic repository is open and operating. Advancing the NRC licensing procedure despite this, anticipating a change to the law that hasn't happened yet, is itself illegal.

At a 2018 NRC Atomic Safety Licensing Board proceeding on licensing Holtec's CISF, Holtec admitted that the CISF violates the Nuclear Waste Policy Act. But the ASLB asserted that the project could move forward anyway, on the theory that Congress would take action and change the law.

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The ASLB therefore dismissed all 50 contentions of the intervenors opposing the project, including Sierra Club, Beyond Nuclear, Fasken Oil & Gas, Alliance for Environmental Strategies, and others. Not a single contention of opponents of the project was allowed, but that doesn't mean they didn't have merit. Beyond Nuclear was joined by Sierra Club, Don't Waste Michigan, Fasken and others in filing a federal lawsuit, now pending at the U.S. Court of Appeals for the District of Columbia Circuit, arguing the CISF is illegal.

As former NRC Chair Gregory Jaczko [points out](#), CISFs are "interim" in name only, and should be viewed as *de facto* permanent storage sites. Yet the permitting and planning processes treat them as temporary installations. CISF host communities are ill-equipped and ill-prepared to manage their risks over the long term. "Transporting material of this nature requires both well-maintained infrastructure and highly specialized emergency response equipment and personnel that can respond to an incident at the facility or on transit routes," wrote New Mexico Governor Michelle Lujan Grisham in a letter to the NRC and DOE. "The state of New Mexico cannot be expected to support these activities."

Holtec's proposed CISF violates basic principles of environmental justice and consent-based siting, since the indigenous communities and communities of color located nearby do not consent. In addition to Governor Lujan Grisham, the All Pueblo Council of Governors, and many other New Mexico state and municipal officials, oppose the project.

Their communities are already overburdened by impacts from the nuclear industry over the past 75 years, including uranium mining and milling and nuclear weapons testing. Community members have yet to be compensated for these impacts under the Radiation Exposure Compensation Act (RECA). The CISF project also threatens significant Native American cultural sites in New Mexico. The highly radioactive irradiated "spent" nuclear fuel (SNF) being shipped to New Mexico will come predominantly from wealthier reactor communities around the country. Forcing lower-income, more impacted, predominantly indigenous and LatinX communities to accept SNF from those reactor communities would make them complicit in violating environmental justice and consent principles.

Yet despite all this, this month, after receiving a [letter](#) from nuclear industry groups asking the Department of Energy (DOE) to break the "stalemate" on "nuclear waste storage, transportation, and disposal," Energy Secretary Granholm repeatedly indicated CISFs could be the solution to SNF disposition problems. In her May 19 testimony before the House Energy and Commerce Committee's Subcommittee on Energy, she spoke of establishing funding mechanisms for "interested communities" and "tribal governments" to "explore" the idea of CISFs.

But no amount of government funding can manufacture consent where none exists, or provide justice for communities disproportionately burdened by the nuclear industry and targeted for receiving "spent" fuel and radioactive waste from around the country. Similar high-handed, environmentally unjust tactics were used 25 years ago by the DOE's Office of Civilian Radioactive Waste Management, and the OCRWM's Office of the Nuclear Waste Negotiator, which the nuclear industry now [proposes](#) to resurrect, in an attempt to claim consent from indigenous communities for a geologic repository at Yucca Mountain. These tactics didn't work then, and won't now.

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We strongly agree with Secretary Granholm that Yucca is not the answer to our civilian nuclear waste dilemma. Among its many unsolvable problems is that it violates the sovereignty of the Western Shoshone nation. The land for the Yucca Mountain site, along with over 90% of Western Shoshone territory, is controlled by the U.S. government, in [direct violation](#) of the 1863 Treaty of Ruby Valley, ratified by the U.S. Senate in 1866, and later upheld by President Grant in 1869.

But while Yucca is not a solution, neither is imposing “interim” storage of the nation’s radioactive waste on low-income communities in violation of existing law, or imposing unqualified, unaccountable licensees and dangerous decommissioning approaches on states that object to them, without so much as a hearing to air their concerns. The common root of both problems is the NRC’s lax oversight and its continued failure to meaningfully regulate nuclear owners or respond to public concerns.

Decommissioning and SNF problems are complex and don’t have easy solutions, but lax oversight needlessly makes them more dangerous. Clearly any progress towards solutions requires that the NRC leave the path of regulatory capture and do its job. Literally thousands of petitions from public interest groups, independent experts, state officials and even Attorneys General exhorting the NRC to uphold its own regulations and procedures have been of little or no avail. It’s time for Congress to exercise its oversight authority to make the NRC live up to its mission and mandate.

The attached backgrounder summarizes the problems with Holtec’s SNF storage systems and fast decommissioning business model, the broad pattern of NRC decisions stonewalling public concerns while rubber-stamping licensee requests, and recommendations for achieving more evidence-based, accountable U.S. policy on nuclear energy. Its concluding recommendation is to:

“Call for reforms and exert closer Congressional oversight of the NRC. Oversight should include Congressional hearings inquiring into the NRC’s pattern of dismissing and denying virtually all public petitions for regulatory enforcement while granting virtually all industry requests for regulatory relief, license extension, etc. Congress should require NRC reforms that hold the Commission accountable for regulatory enforcement according to science, law, and regulation, following its own rules regarding transparency and furnishing documentation of the evidence basis for its decisions, and providing the public with meaningful ways to weigh in.”

In addition to our April 27 letter, on February 18, 2021, we wrote to Representative Mondaire Jones and cc’d several of you requesting that Rep. Jones work with the appropriate committees of Congress to request a hearing on license transfer and other decommissioning-related issues, and/or arrange a district hearing in New York’s 17th District, where Indian Point is located. With that letter we sent the attached materials on license transfer, which we had also previously sent to Governor Cuomo, Attorney General James and other New York State officials.

We believe these issues warrant Congressional hearings into the NRC’s handling of them soon, before more critical decisions on decommissioning and CISFs are locked in. Congressional committees with relevant jurisdiction include Senate Committee on Environment and Public Works,

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the Senate Subcommittee on Government Operations and Border Management, and the House Committee on Energy and Commerce, and the House Committee on Oversight and Reform. We urge their leaders and members to assert jurisdiction and call for hearings.

We'd welcome a chance to discuss this matter with you, and look forward to a dialogue. We will contact you soon to follow up.

Respectfully,

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Enclosures

cc:

The Honorable Pete Buttigieg, Secretary of Transportation
The Honorable Jennifer Granholm, Secretary of Energy
The Honorable Deb Haaland, Secretary of the Interior