

**HONORABLE BOARD OF LEGISLATORS
THE COUNTY OF WESTCHESTER**

Your Committee is in receipt of a communication from the County Executive wherein he requests that your Honorable Board adopt a Local Law that, if adopted by your Honorable Board, would authorize the County of Westchester (the "County") to amend an agreement (the "PILOT Agreement") that the County entered into with Entergy Nuclear Indian Point 2, LLC and Entergy Nuclear Indian Point 3, LLC (collectively, "Entergy"). Your Committee has been advised that the Agreement provided that Entergy, as owner of the Facility (as defined below), was to make payments in lieu of taxes ("PILOT") in accordance with the provisions of section 485 of the New York Real Property Tax Law ("Section 485"), for the period from January 1, 2015 through December 31, 2024.

Your Committee has been advised that Local Law 2-2016 authorized the County to enter into the PILOT Agreement, which exempted the Facility from real property taxes, special *ad valorem* levies and special assessments, pursuant to Section 485, imposed by the County and any County improvement district within the County, for the period from January 1, 2015 through December 31, 2024 (the "Exemption").

Your Committee has been advised that the Facility was defined in Local Law 2-2016 as being comprised of the various tax parcels containing the following: (1) Indian Point 2 Nuclear Generating Station, a nuclear-powered electric generating facility having a nameplate rated capacity of 1,032 megawatts ("MW") located in the Town of Cortlandt (the "Town"), including associated property and equipment and the permanently inactive Indian Point 1 generating

facility; (2) the Indian Point 3 Nuclear Generating Station, a nuclear-powered electric generating facility having a nameplate rated capacity of 1,051 MW located in the Town, including associated property and equipment; (3) the Generation Support Building; and (4) the Independent Spent Fuel Storage Facility; and all as the Facility is more fully described in the PILOT Agreement.

Your Committee has been advised that, due to the shutdown of the Indian Point 2 Nuclear Generating Station earlier this year, and the expected shutdown of the Indian Point 3 Nuclear Generating Station next year, a need arose for the County, and for the other municipal entities with taxing jurisdiction concerning the Facility, to examine their respective agreements for payments in lieu of taxes.

Your Committee has been advised that, as a result of that review, the County has determined that the most prudent course of action is to amend the PILOT Agreement, in the manner specified in the draft amendment attached to the proposed Local Law (the "Proposed Amendment").

Your Committee has been advised that Local Law 2-2016 specified that the Exemption was contingent upon the execution of the PILOT Agreement described within that local law. Your Committee has been advised that, as the Proposed Amendment will modify the PILOT Agreement, the proposed Local Law provides a clarification by specifying that the Exemption will remain authorized for as long as the PILOT Agreement, as modified by the Proposed Amendment, remains in effect.

Your Committee has been advised that the proposed Local Law also provides that the Clerk of the Board shall make all filings concerning the Exemption and the Proposed Amendment to the PILOT Agreement that are required by Section 485.

Your Committee has been advised that, currently, Section 485 only allows for an exemption from taxation for nuclear powered electric generating facilities that generate electricity using nuclear power for sale to the public. Your Committee has been advised that legislation has already been approved by the State Assembly and the State Senate that would amend Section 485 to allow such an exemption from taxation to also be provided to a facility that formerly generated electricity using nuclear power for sale to the public (a "Former Facility"). Your Committee has been advised that the legislation has not yet been signed by the Governor. Your Committee has been advised that, accordingly, under the proposed local law, the authority to enter into the Proposed Amendment is contingent upon the Governor's signing of the legislation amending Section 485 to allow for an exemption to be provided to a Former Facility.

Your Committee has been advised that, under Section 209.141(4) of the Laws of Westchester County, every local law shall be presented in writing and introduced at a meeting of your Honorable Board. Your Committee has been advised that your Honorable Board shall thereupon fix a day for a public hearing thereon before it, not less than five days thereafter, and direct the Clerk of the Board to cause notice of the time and place of such hearing to be published forthwith at least once in one or more newspapers selected by the Clerk of the Board

for that purpose and published in the County. Therefore, transmitted herewith for your review and approval is a Resolution that will set the time and date for the required public hearing.

Your Committee has been advised that, under subsection 4 of Section 485, before an agreement for payments in lieu of taxes can be executed by a taxing district, the taxing district must hold a public hearing on the proposed agreement. Therefore, transmitted herewith for your review and approval is a Resolution that will set the time and date for the required public hearing.

The Planning Department has advised that with respect to the State Environmental Quality Review Act, this does not constitute an action as defined in section 617.2(b) of 6 NYCRR Part 617. As such, no environmental review is required. Your Committee concurs with the Planning Department's conclusion.

Your Committee has been advised that the adoption of the proposed Local Law requires an affirmative vote of a majority of the voting members of your Honorable Board.

After due consideration, your Committee recommends adoption of the proposed Local

Law.

Dated: December 4th, 2020
White Plains, New York

Advised by
Benjamin Boyfman

Advised by
K. J. Swartz
Benjamin Boyfman

Advised by
Benjamin Boyfman

Budget &
Appropriations

Legislation

Planning, Economic
Development &
Energy

COMMITTEE ON

Dated: December 4, 2020
 White Plains, New York


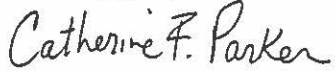

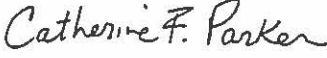



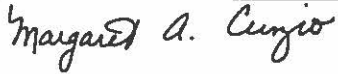
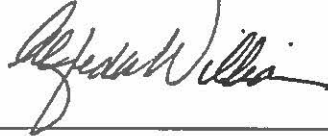







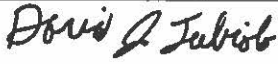


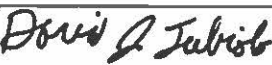

The following members attended the meeting remotely, as per Governor Cuomo's Executive Order 202.1 and approved this item out of Committee with an affirmative vote. Their electronic signature was authorized and is below.

COMMITTEES ON

LEGISLATION

B & A

PED&E

FISCAL IMPACT STATEMENT

SUBJECT: Indian Point PILOT Amend

NO FISCAL IMPACT PROJECTED

OPERATING BUDGET IMPACT

To Be Completed by Submitting Department and Reviewed by Budget

SECTION A - FUND

GENERAL FUND

AIRPORT FUND

SPECIAL DISTRICTS FUND

SECTION B - EXPENSES AND REVENUES

Total Current Year Expense \$ -

Total Current Year Revenue \$ -

Source of Funds (check one): Current Appropriations Transfer of Existing Appropriations

Additional Appropriations

Other (explain)

Identify Accounts: _____

Potential Related Operating Budget Expenses: Annual Amount \$ -

Describe: _____

Potential Related Operating Budget Revenues: Annual Amount \$ -

Describe: _____

Anticipated Savings to County and/or Impact on Department Operations:

Current Year: _____

Next Four Years: _____

Prepared by: Gideon Grande

Title: Deputy Director

Department: Budget

Date: November 13, 2020

Reviewed By: 

Budget Director

Date: 11/13/20

TO: Brian Miller, Assistant County Attorney
Department of Law

FROM: David S. Kvinge, AICP, RLA, CFM
Director of Environmental Planning



DATE: November 12, 2020

SUBJECT: **STATE ENVIRONMENTAL QUALITY REVIEW FOR INDIAN POINT
PILOT AGREEMENT AMENDMENT**

PROJECT/ACTION: Amendment of an agreement with Entergy Nuclear Indian Point 2, LLC and Entergy Nuclear Indian Point 3, LLC for payments in lieu of taxes (PILOT) for properties located in the Town of Cortlandt and covered by tax parcel numbers SBL #43.10-2-1, SBL #43.14-2-1, SBL #43.10-2-2 and SBL #43.10-2-3. The term of the existing agreement is from January 1, 2015 through December 31, 2024. The amendment would make several modifications to the existing PILOT agreement, including its term and payment provisions, based upon the effects of the shutdown of one, and anticipated shut down of a second, nuclear-powered electric generating facility, and the pending transfer and sale of the assets and liabilities of the entire facility. The proposed amendment is contingent upon an amendment of section 485 of the New York Real Property Tax Law by the State of New York to allow such tax exemption to be provided to a facility that formerly generated electricity using nuclear power for sale to the public.

With respect to the State Environmental Quality Review Act and its implementing regulations 6 NYCRR Part 617, the Planning Department recommends that no further environmental review is required because the project/action:

- DOES NOT MEET THE DEFINITION OF AN "ACTION" AS DEFINED UNDER SECTION 617.2(b)**
- MAY BE CLASSIFIED AS TYPE II PURSUANT TO SECTION 617.5(c)():**

COMMENTS: None

DSK/cnm

cc: John Nonna, County Attorney
Andrew Ferris, Chief of Staff
Paula Friedman, Assistant to the County Executive
Tami Altschiller, Assistant Chief Deputy County Attorney
Norma Drummond, Commissioner
Claudia Maxwell, Associate Environmental Planner

LOCAL LAW NO. _____ - 2020

A LOCAL LAW authorizing the County of Westchester to amend an agreement with Entergy Nuclear Indian Point 2, LLC and Entergy Nuclear Indian Point 3, LLC for payments in lieu of taxes, in accordance with the provisions of section 485 of the New York Real Property Tax Law, for properties located in the Town of Cortlandt that comprise the Facility defined in Local Law 2-2016.

BE IT ENACTED by the County Board of the County of Westchester as follows:

Section 1. The County of Westchester (the “County”) is hereby authorized to amend an agreement with Entergy Nuclear Indian Point 2, LLC and Entergy Nuclear Indian Point 3, LLC (collectively, “Entergy”), pursuant to which Entergy, as owner of the Facility, as that term was defined in Local Law 2-2016, was to make payments in lieu of taxes (“PILOT”) in accordance with the provisions of section 485 of the New York Real Property Tax Law (“Section 485”), for the period from January 1, 2015 through December 31, 2024, (the “PILOT Agreement”) by amending the PILOT Agreement in the manner specified in the draft amendment attached hereto (the “Proposed Amendment”).

§ 2. The exemption from real property taxation authorized by Local Law 2-2016 (the “Exemption”), which was specified in Local Law 2-2016 as being contingent upon the execution of the PILOT Agreement described within that local law, shall remain authorized for as long as the PILOT Agreement, as modified by the Proposed Amendment, remains in effect.

§ 3. The authority to enter into the Proposed Amendment shall be contingent upon the State of New York amending Section 485 to allow for an exemption from taxation, such as the Exemption, to be provided to a facility that formerly generated electricity using nuclear power for sale to the public.

§ 4. The Clerk of the Board shall make all filings concerning the Exemption and the Proposed Amendment to the PILOT Agreement that are required by Section 485.

§ 5. The County Executive, or his duly authorized designee, is hereby authorized and empowered to take such actions and to execute and deliver such documents as may be necessary and appropriate to accomplish the purposes hereof.

§ 6. This Local Law shall take effect immediately.

FIRST AMENDMENT TO PILOT AGREEMENT

Pursuant to the Payment in Lieu of Taxes Agreement for the Indian Point Energy Center, dated January 1, 2015 (“PILOT Agreement”), this first Amendment to the PILOT Agreement (“Amendment”) is made as of _____, 2020, by and between the COUNTY OF WESTCHESTER, a body corporate and politic existing under the laws of the State of New York (the “County”) and 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 (collectively, the “Company”) (the County and Company are referred to herein as the “Parties”).

WITNESSETH:

WHEREAS, on or about January 1, 2015 the County and the Company entered into a certain “Payment in Lieu of Taxes Agreement for the Indian Point Energy Center” pursuant to Real Property Tax Law (“RPTL”) Section 485, Local Law Intro No. 8976-2016 and County Board of Acquisition and Contract Resolution dated April 7, 2016 (“PILOT Agreement”) with respect 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 Agreement. 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 Agreement;

WHEREAS, the Company entered into similar payment in lieu of tax agreements with the Hendrick Hudson School District (“District”), Village of Buchanan (“Village”), and Town of Cortlandt (“Town”) (the Town, District, Village and County are collectively referred to herein as the “Tax Jurisdictions”);

WHEREAS, on April 15, 2019, the Company entered into a Membership Interest Purchase and Sale Agreement with Nuclear Asset Management Company, LLC and its parent Holtec International (collectively referred to as “Holtec”), whereby Holtec will acquire all of the assets and liabilities (including the spent fuel, decommissioning liabilities and decommissioning trusts) associated with the Facility after IP2 and IP3 permanently cease operations (“IPEC Sale”);

WHEREAS, IP2 is scheduled to be permanently shut down on or before April 30, 2020 and IP3 is scheduled to be permanently shut down on or before April 30, 2021;

WHEREAS, to facilitate the IPEC Sale, the Company will, prior to the closing of the IPEC Sale, transfer Facility assets and liabilities to Indian Point 1 & 2, LLC (“IP1&2, LLC”) and Indian Point 3, LLC (“IP3, LLC”) respectively (“IPEC Restructuring”);

WHEREAS, in connection with the scheduled permanent shutdown of the Facility the Company and the Tax Jurisdictions have had discussions regarding the amendment of certain provisions of the respective PILOT agreements into which they entered;

WHEREAS, the County and the Company now desire to enter into this Amendment as herein provided;

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants hereinafter contained, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Amendment to Section 2.2 of the PILOT Agreement.

Section 2.2 of the PILOT Agreement is amended by replacing the first sentence with the following language:

The County represents and warrants that the County Local Law and the County Resolution remain in full force and effect and have not been modified, rescinded, or revoked as of the date hereto and that all actions on the part of the County necessary or appropriate for the effectiveness of the County Local Law and the County Resolution and the execution and delivery of this Agreement and the First Amendment to the PILOT Agreement have occurred and been satisfied.

2. Amendment to Section 3.1 of the PILOT Agreement.

The Term of the PILOT Agreement as set forth in Section 3.1 is amended such that the PILOT Agreement will be effective on January 1, 2015 and continue through December 31, 2022 and will cover the Tax Years set forth in the schedule below:

Tax Year	Roll Year	County Fiscal Year
2015	2014	2015
2016	2015	2016
2017	2016	2017
2018	2017	2018
2019	2018	2019
2020	2019	2020
2021	2020	2021
2022	2021	2022

3. **Amendment to Section 3.4 of the PILOT Agreement.**

Section 3.4(a) of the PILOT Agreement is amended by replacing the original language with the following:

PILOT Payment Amounts. The Company shall make a payment in lieu of taxes for the Facility in each Tax Year during the term in the amount of \$3,995,660 (“PILOT Payment”), as such amount shall be increased by the Payment Adjustment Factor (defined below) except that the payments due for Tax Year (s) 2020, 2021 and 2022 will be fixed payments as set forth below:

Tax Year	Roll Year	County Fiscal Year	Due Date for PILOT payment	Amount of Payment to County
2020	2019	2020	April 30, 2020	\$4,293,479
2021	2020	2021	April 30, 2021	\$3,831,930
2022	2021	2022	April 30, 2022	\$2,791,834

Section 3.4(c) of the PILOT Agreement is amended by adding the following language as the final sentence to this provision:

The Payment Adjustment Factor will not apply to the payments due for fiscal years 2020, 2021 and 2022.

Section 3.4(d) of the PILOT Agreement is amended by substituting the following table for the one in the original PILOT Agreement:

Tax Year	Roll Year	Town Fiscal Year	Due Date for PILOT payment
2015	2014	2015	April 30, 2015
2016	2015	2016	April 30, 2016
2017	2016	2017	April 30, 2017
2018	2017	2018	April 30, 2018
2019	2018	2019	April 30, 2019
2020	2019	2020	April 30, 2020
2021	2020	2021	April 30, 2021
2022	2021	2022	April 30, 2022

4. Amendment to Section 3.5 of the PILOT Agreement.

Section 3.5 of the PILOT Agreement is amended by adding the following language as the final sentence to this provision:

The portion of the PILOT Payment (including Town and Fire District shares) attributed to the ISFSI portion of tax parcel number SBL #43.10-2-3 shall be \$69,420 for the 2020 Tax Year, \$70,809 for the 2021 Tax Year and \$72,225 for the 2022 Tax Year.

5. Amendment to Section 3.10 of the PILOT Agreement.

Section 3.10 of the PILOT Agreement is amended by replacing the original language with the following:

At the expiration of the Term, the assessment, levy and collection of taxes related to the Facility shall be made pursuant to then current law.

6. Amendment to Section 3.13 of the PILOT Agreement.

Section 3.13 of the PILOT Agreement is amended by replacing the original language with the following:

Permanent Shut-down. Upon the permanent shut down of any of IP2 or IP3, neither the Company nor the County will terminate this Agreement. The Company shall make the PILOT payments due for fiscal years 2020, 2021 and 2022 consistent with section 3.4(a) of the PILOT Agreement and as set forth below:

Tax Year	Roll Year	County Fiscal Year	Due Date for PILOT payment	Amount of Payment to County
2020	2019	2020	April 30, 2020	\$4,293,479
2021	2020	2021	April 30, 2021	\$3,831,930
2022	2021	2022	April 30, 2022	\$2,791,834

7. Amendment to Section 3.15 of the PILOT Agreement.

Section 3.15 of the PILOT Agreement is amended by adding the following language to the end of the section:

The Parties agree that when and if the IPEC Sale is consummated (i) IP1&2, LLC and IP3, LLC shall solely be responsible for all of the obligations under this Agreement; and (ii) upon such consummation, Entergy Nuclear Indian Point 2, LLC and Entergy Nuclear Indian Point 3, LLC shall automatically be released and discharged from any and all liabilities arising under or related to this Agreement.

8. Amendment to Section 4.1 of the PILOT Agreement.

Section 4.1 of the PILOT Agreement is amended by replacing the original language with the following:

Status as a Nuclear Facility. This Agreement will not terminate if the Facility ceases to constitute a Nuclear Facility.

9. Amendment to Section 4.3 of the PILOT Agreement.

Section 4.3 of the PILOT Agreement is deleted.

10. Amendment to Section 4.5 of the PILOT Agreement.

Section 4.5 of the PILOT Agreement is amended by replacing the original language with the following:

Effect of Termination. This Agreement shall be administered on a Tax Year basis. No partial Tax Year taxes, levies or assessments shall be owed following termination for any reason notwithstanding the effect or potential effect of RPTL §§ 485 and 520. Upon the Town's movement of all Tax Parcels to Section 1 of the Town's assessment roll (for all County general and County special district tax purposes, including county Refuse Disposal District #1) a tax lien shall attach to the Tax Parcels for the next Tax Year. For that next Tax Year and Tax Years following, the assessment, levy, and collection of County taxes related to the Plant(s) to which termination applies shall be made pursuant to then current law. The Company shall have the right to challenge any assessments relating to such taxes payable on the Tax Parcels to which termination applies for Tax Years following such termination.

11. Amendment to Article V of the PILOT Agreement.

Article V of the PILOT Agreement is amended by replacing the original language with the following:

NOTICES

All notices, demands, requests, consents, or other communications provided for or permitted to be given pursuant to this Agreement shall be in writing and shall be mailed, communicated by electronic mail, or delivered to the Parties at the respective address set forth below:

If to the County:

County of Westchester
148 Martine Avenue
White Plains, New York 10601
Attn: County Executive
Telephone: (914) 995-2900

with a copy to:

County of Westchester
148 Martine Avenue
White Plains, New York 10601
Attn: County Attorney
Telephone: (914) 995-2690

with a copy to:

County of Westchester
148 Martine Avenue
White Plains, New York 10601
Attn: Budget Director
Telephone: (914) 995-2857

If to the Company:

Entergy Nuclear Indian Point 2, LLC
Entergy Nuclear Indian Point 3, LLC
c/o Entergy Services, Inc.
PO Box 61000
New Orleans, Louisiana 70161
Attn: Cory Gruntz,
Senior Tax Manager
Telephone: (504) 576-4325

with a copy to:

Mark R. McNamara, Esq.
Barclay Damon LLP
The Avant Building – Suite 1200
200 Delaware Avenue
Buffalo, New York 14202
Telephone: (716) 566-1536

All such notices, demands, requests, consents, or other communications shall be deemed to have been duly given when transmitted by electronic copy of personally delivered or, in the case of a mailed notice, upon receipt, in each case addressed as aforesaid. Either of the parties may from time to time change its address for notices by providing notice of such change to the other Party given in accordance with this Section.

12. Assignment of the PILOT Agreement.

The Parties hereby acknowledge that, with regard to the IPEC Restructuring and the IPEC Sale, this Amendment shall satisfy any and all notice and consent requirements of Article VI of the PILOT Agreement. IP1&2, LLC and IP3, LLC are hereby formally added as parties to the PILOT Agreement and will assume the related obligations for any payments from the date of this Amendment forward.

13. Amendment to Article VII of the PILOT Agreement.

Article VII of the PILOT Agreement is amended by replacing the original language with the following:

**ARTICLE VII
LIMITED OBLIGATION OF THE PARTIES**

All obligations of the Parties or their successors or assigns contained in this Agreement shall be deemed to be the corporate obligations of the respective Parties, their successors or assigns and not obligations of any member, officer, agent, servant, employee, or Affiliate of the Parties or their successors or assigns. No recourse upon any obligation contained in this Agreement, or otherwise based on or in respect of this Agreement, shall be had against any past, present, or future member, officer, agent, servant, employee, or Affiliate of the Parties or their successors or assigns.

14. Amendment to Article VIII of the PILOT Agreement.

Section 8.8 of the PILOT Agreement is amended by replacing the original language with the following:

The County shall cause copies of this Agreement, and any amendments to this Agreement, to be filed with the Commissioner and with the Clerks of the County, Town, and Village within thirty (30) days after the execution hereof by the Parties.

Article VIII of the PILOT Agreement is amended by adding the following language:

Section 8.11: Negotiation of Successor Agreement to PILOT Agreement

In anticipation of the expiration of the PILOT Agreement on December 31, 2022, the Parties and Holtec will continue to negotiate the terms of a successor agreement with respect to a payment in lieu of tax agreement for the Facility. Company and/or Holtec shall have the right to challenge any assessment(s) for Tax Year 2022/Roll Year 2021 and 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 Tax Jurisdictions and likewise shall be entitled to protest before and be heard by the appropriate assessors or Board of Assessment Review or other relevant government agency, and shall be entitled to take any and all appropriate appeals or initiate any proceedings, including, without limitation, seeking judicial review of an assessment pursuant to article seven of the RPTL, to review the validity or amount of any

assessment. If this Section 8.11 is in conflict with, or inconsistent with, any provision in this Agreement, the provision contained in Section 8.11 shall govern and control. Holtec is an express third party beneficiary of this PILOT Agreement and shall be entitled to (x) exercise the rights and (y) enforce the terms set forth in this Section 8.11 individually or collectively in their sole and absolute discretion. In the event Holtec asserts a challenge to the assessment for Tax Year 2022/Roll Year 2021, the Company shall execute, acknowledge and deliver such further certificates, pleadings, documents, and instruments, and do all such other acts, as may be necessary, required, or appropriate for Holtec to prosecute such challenge, including without limitation, satisfying all conditions precedent and procedural requirements. For the avoidance of doubt, such acts may include the Company prosecuting the challenge, if requested by Holtec.

15. Execution of Counterparts.

This Amendment may be executed in several counterparts, each of which shall be an original and all of which together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the undersigned have caused this First Amendment to the PILOT Agreement to be executed as of the day and year first above written.

COUNTY OF WESTCHESTER

**ENERGY NUCLEAR INDIAN POINT 2, LLC
ENERGY NUCLEAR INDIAN POINT 3, LLC
INDIAN POINT 1&2, LLC
INDIAN POINT 3, LLC**

By: _____
**George Latimar
County Executive**

By: _____
**Cory Gruntz
Tax Officer**