

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**