SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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ROBERT P. ASTORINO, individually, and in his capacity as WESTCHESTER COUNTY EXECUTIVE,

Petitioner/Plaintiff,

-against-

GOVERNOR ANDREW M. CUOMO in his official capacity, THE STATE OF NEW YORK, OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF NEW YORK, LISA M. BURIANEK in her official capacity, NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, BASIL SEGGOS in his official capacity, NEW YORK STATE DEPARTMENT OF HEALTH, HOWARD A. ZUCKER in his official capacity, NEW YORK STATE DEPARTMENT OF STATE, ROSSANA ROSADA in her official capacity, NEW YORK STATE DEPARTMENT OF PUBLIC SERVICE, GREGG C. SAYRE in his official capacity, RIVERKEEPER, INC., ENTERGY NUCLEAR INDIAN POINT 2, LLC, ENTERGY NUCLEAR INDIAN POINT 3, LLC, and ENTERGY NUCLEAR OPERATIONS, INC.,

Respondents/Defendants.

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VERIFIED PETITION/COMPLAINT

Index No. /17

Petitioner/Plaintiff, Robert P. Astorino, individually, and in his capacity as Westchester County Executive, by his attorneys, Collier, Halpern, Newberg & Nolletti, LLP, alleges as and for his Verified Petition/Complaint as follows:

INTRODUCTION AND NATURE OF THE PROCEEDING

1. Petitioner/Plaintiff brings this combined hybrid proceeding/action pursuant to Article 78 and Section 3001 of the New York Civil Practice Law and Rules ("CPLR") to annul and declare void a sudden January 9, 2017 agreement between Respondents/Defendants[1] (the

[1] Respondents/Defendants are the Governor and State of New York, the Office of the Attorney General, the state departments of Environmental Conservation, Health, State, and Public Service,

"Agreement") to rapidly decommission the Indian Point nuclear power plant, permanently cease operations and abandon spent radioactive fuel rods at the facility, without the legally-mandated analysis of the environmental, economic and social impacts on the County of Westchester and its residents pursuant to the New York State Environmental Quality Review Act ("SEQRA"). A copy of the Agreement is annexed hereto and marked as Exhibit 1.

2. Indian Point generates approximately 2,000 megawatts ("MW") of carbon-emission-free electricity or 25 percent of the electricity used by the nine million people of Westchester County and New York City. The Indian Point nuclear power plant facility is one of the largest employers in Westchester, contributing to approximately 3,500 jobs within the County. The plant makes over $30 million in payments in lieu of taxes ("PILOT") to local communities and generates over one billion dollars in economic activity.

3. Entergy (the operator of Indian Point), for decades, has publicly expressed its intent to continue the operation of Indian Point, and was pursuing the necessary approvals to continue to operate the facility. On January 9, 2017, in a complete reversal, the Respondents/Defendants secretly and suddenly agreed to permanently cease power generation operations at Indian Point, in contravention of state environmental law.

4. SEQRA and its implementing regulations mandate that the Respondents/Defendants properly analyze, before executing any Agreement to close Indian Point, the clear and devastating environmental, economic and social impacts that the plant closure will have on the County of Westchester and its residents -- an analysis the Respondents/Defendants failed to perform.

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and the officers who signed the Agreement on behalf of these state agencies (collectively, the "NYS Respondents/Defendants"); Entergy Nuclear Indian Point 2, LLC, Entergy Nuclear Indian Point 3, LLC, and Entergy Nuclear Operations, Inc. (collectively, "Entergy"); and Riverkeeper, Inc. ("Riverkeeper").

5. Instead, Respondents/Defendants committed to the plant closure without properly examining, among other things: (a) whether sufficient energy sources will be available to replace the electricity lost; (b) whether replacement power will be generated by carbon-fueled, emissions-producing facilities; (c) the long-term fate of the radioactive, spent nuclear fuel that will be abandoned on site; (d) the consequences and impact that the plant's closure will have on the environment; (e) the potential billion-dollar shortfall in the decommissioning trust fund; (f) the employment, property tax and other economic impacts; and (g) the anticipated increases in electric bills, and whether those increases will have a disparate impact on minorities, low-income citizens, senior citizens, and others on fixed incomes.

6. Respondents/Defendants' failure to conduct a SEQRA review is particularly egregious when the enormity of closing a nuclear power plant is compared to the garden-variety actions that also require an Environmental Impact Statement ("EIS"), e.g., the transfer of land, the building of a middle school and the building of a gas station.

7. The NYS Respondents/Defendants, by failing to comply with SEQRA, failed to perform a duty enjoined upon them by law; proceeded without or in excess of their jurisdiction and authority; violated lawful procedure; and their actions, or lack thereof, were arbitrary and capricious and an abuse of their discretion.

8. Petitioner/Plaintiff therefore requests:

(i) a judgment pursuant to Article 78 of the CPLR annulling and declaring the Agreement, and any enforcement of such Agreement, void; and directing Respondents/Defendants to submit any future plan to close Indian Point to a full SEQRA review; and

(ii) a declaratory judgment against Respondents/Defendants: (a) declaring that the Agreement and closure of Indian Point was subject to SEQRA, requiring a significant impact determination, classification of the Agreement and closure of Indian Point as a Type I or Unlisted Action, the preparation of an EIS and a period for public notice and comment and a public hearing; (b) declaring that Respondents/Defendants executed the Agreement in violation of the applicable provisions of SEQRA and the SEQRA Regulations; (c) annulling and declaring the Agreement, and any enforcement of such Agreement, void; and (d) directing Respondents/Defendants to submit any future plan to close Indian Point to a full SEQRA review.

THE PARTIES

PETITIONER/PLAINTIFF

9. Petitioner/Plaintiff Robert P. Astorino is the duly elected Westchester County Executive, with an actual place for the transaction of business located at 148 Martine Avenue, White Plains, New York 10601. Mr. Astorino is a resident of and owns real property in the Town of Mount Pleasant, County of Westchester. As a property owner, Mr. Astorino is an electricity consumer, ratepayer and taxpayer. Mr. Astorino's residence is approximately 14 miles from the Indian Point facility. Mr. Astorino's residence is located within the ingestion pathway emergency planning zone of a nuclear incident at Indian Point.

10. Mr. Astorino, as County Executive, is charged with, inter alia, the duty to: (a) "see that the county...departments faithfully perform their duties;" and (b) "see that the laws of the state, pertaining to the affairs and government of the county...are executed and enforced within the county." LAWS OF WESTCHESTER COUNTY § 110.11(5) and (6). Mr. Astorino, in his capacity as County Executive, testified on the proposed decommissioning of Indian Point before the New York State Senate Committee on Investigations and Government Operations on March

2, 2017. As of the filing of this Verified Petition/Complaint, Respondents/Defendants have not addressed the concerns raised in Mr. Astorino's testimony which are a matter of vital public interest. A copy of Mr. Astorino's testimony is annexed hereto and marked as Exhibit 2.

11. The County of Westchester owns two parks located within close proximity to the Indian Point facility, namely the 1,500-acre Blue Mountain Reservation and the 200-acre George's Island Park located on the Hudson River. The Westchester County Department of Parks, Recreation and Conservation has the duty to operate and maintain these parks. The parks are located within approximately two miles of the Indian Point facility and within the evacuation planning zone of a nuclear incident at Indian Point. Mr. Astorino has visited both parks and has navigated the Hudson River in his individual and official capacities. Petitioner/Plaintiff has sustained an injury-in-fact which is within the zone of interests protected by SEQRA; is different from that suffered by the public at large; and owns property that is located in close proximity to the site of the challenged action.

RESPONDENTS/DEFENDANTS

12. Respondent/Defendant Andrew M. Cuomo is the Governor of the State of New York and signed the Agreement on behalf of the State of New York. The State Constitution requires that the Governor ensure that the laws of the state are "faithfully executed." Governor Cuomo's office for the transaction of business is located at the New York State Capitol Building, Albany, New York 12224. Governor Cuomo is sued herein in his official capacity.

13. Respondent/Defendant the State of New York is a party to the Agreement and has an office for the transaction of business located at the New York State Capitol Building, Albany, New York 12224.

14. Respondent/Defendant the Office of the Attorney General of the State of New York ("OAG"), pursuant to Executive Law § 60, is the head of the New York State Department of Law and represents "the legal rights of the citizens of New York, its organizations and its natural resources." The OAG is a party to the Agreement and has an office for the transaction of business located at the New York State Capitol Building, Albany, New York 12224.

15. Respondent/Defendant Lisa M. Burianek is an Assistant Attorney General for the State of New York and signed the Agreement on behalf of OAG. Assistant Attorney General Burianek's principal office for the transaction of business is located at the New York State Capitol Building, Albany, New York 12224. Assistant Attorney General Burianek is sued herein in her official capacity.

16. Respondent/Defendant the New York State Department of Environmental Conservation ("DEC") is a department of the State of New York "designed to protect and enhance the environment," and whose mission is to "fulfill the functions and regulations established by Title 6 of New York Codes, Rules and Regulations (6 NYCRR)." The DEC is a party to the Agreement and has an office for the transaction of business located at 625 Broadway, Albany, New York 12233.

17. Respondent/Defendant Basil Seggos is the DEC Commissioner and signed the Agreement on behalf of DEC. Commissioner Seggos's office for the transaction of business is located at 625 Broadway, Albany, New York 12233. Commissioner Seggos is sued herein in his official capacity.

18. Respondent/Defendant the New York State Department of Health ("DOH") is a department of the State of New York whose mission is to "protect, improve and promote the health, productivity and well being of all New Yorkers." The DOH is a party to the Agreement

and has an office for the transaction of business located at the Corning Tower, Empire State Plaza, Albany, New York 12237.

19. Respondent/Defendant Howard A. Zucker is the DOH Commissioner and signed the Agreement on behalf of DOH. Commissioner Zucker's office for the transaction of business is located at the Corning Tower, Empire State Plaza, Albany, New York 12237. Commissioner Zucker is sued herein in his official capacity.

20. Respondent/Defendant the New York State Department of State ("DOS") is the oldest department of the State of New York and whose mission is to "protect[] the interest of New York State consumers." The DOS is a party to the Agreement and has an office for the transaction of business located at One Commerce Plaza, 99 Washington Ave, Albany, New York 12231-0001.

21. Respondent/Defendant Rossana Rosada is the New York Secretary of State and signed the Agreement on behalf of DOS. Secretary Rosada's office for the transaction of business is located at One Commerce Plaza, 99 Washington Ave, Albany, New York 12231-0001. Secretary Rosada is sued herein in her official capacity.

22. Respondent/Defendant the New York State Department of Public Service ("DPS") is a department of the State of New York whose mission is "to ensure access to safe, reliable utility service at just and reasonable rates." The DPS is a party to the Agreement and has an office for the transaction of business located at Empire State Plaza, Agency Building 3, Albany, New York 12223-1350.

23. Respondent/Defendant Gregg C. Sayre[2] is the Interim Chief Executive Officer of DPS. Interim CEO Sayre's office for the transaction of business is located at Empire State Plaza, Agency Building 3, Albany, New York 12223-1350. Chair Sayre is sued herein in his official capacity.

24. Respondent/Defendant Riverkeeper, Inc. ("Riverkeeper") is a 501(c)(3) domestic not-for-profit corporation organized and existing pursuant to the laws of the State of New York with its principal place for the transaction of business located at 20 Secor Road, Ossining, New York.

25. Respondent/Defendant Entergy Nuclear Indian Point 2, LLC ("ENIP2") is a foreign limited liability company organized and existing pursuant to the laws of the State of Delaware with its principal place for the transaction of business located at Indian Point Energy Center, 450 Broadway, GSB, Buchanan, New York 10511-0249. ENIP2 owns Indian Point Unit 2, as well as the now-inoperative Unit 1.

26. Respondent/Defendant Entergy Nuclear Indian Point 3, LLC ("ENIP3") is a foreign limited liability company organized and existing pursuant to the laws of the State of Delaware with its principal place for the transaction of business located at Indian Point Energy Center, 450 Broadway, GSB, Buchanan, New York 10511-0249. ENIP3 owns Indian Point Unit 3.

27. Respondent/Defendant Entergy Nuclear Operations, Inc. ("ENOI") is a foreign limited liability company organized and existing pursuant to the laws of the State of Delaware with its principal place for the transaction of business located at Indian Point Energy Center, 450 Broadway, GSB, Buchanan, NY 10511-0249. ENOI operates both Indian Point Units 2 and 3

[2] Gregg C. Sayre has been substituted for Audrey Zibelman, who no longer works for the Department of Public Service.

under licenses issued by the Nuclear Regulatory Commission ("NRC"). ENOI has held these licenses since 2000, when they were transferred to Entergy from Consolidated Edison and the New York State Power Authority, respectively. The current operating licenses for Indian Point Units 2 and 3 were set to expire at midnight on September 28, 2013, and December 12, 2015, respectively, and are allowed to continue to operate under the existing licenses until the Nuclear Regulatory Commission makes a final determination on their license renewal application.

28. Respondents/Defendants are separately and/or collectively bodies and/or officers under Article 78 of the CPLR.

JURISDICTION AND VENUE

29. The Westchester County Supreme Court has jurisdiction over this hybrid action/proceeding pursuant to CPLR §§ 7804(b), 506(b) and 503.

30. Venue is proper in Westchester County pursuant to CPLR § 506(b) because Westchester is the county in which Respondents/Defendants "refused to perform the duty specifically enjoined upon [them] by law," as well as the county "where the material events . . . took place."

STATUTORY AND REGULATORY FRAMEWORK

SEQRA OVERVIEW AND PURPOSE

31. SEQRA, as codified in Article 8 of the New York State Environmental Conservation Law ("NYECL") §§ 8-0101 et seq. and 6 NYCRR Part 617, prohibits state agencies from undertaking actions without a determination as to whether the proposed action is likely to have a significant adverse impact on the environment, "taking into account social and economic factors" (NYECL § 8-0113). SEQRA specifies, at NYECL § 8-0103(7), that it was enacted to ensure that "the protections and enhancement of the environment, human, and

community resources shall be given appropriate weight with social and economic considerations in public policy." SEQRA's requirements are mandatory, require strict compliance with the provisions of the statute (6 NYCRR § 617.3(a)) and that no agency involved in an action may undertake, fund or approve the action until it has complied with the provisions of SEQRA.

32. Agency actions are broadly defined by SEQRA to include, pursuant to NYECL § 8-0105(4), "activities supported in whole or in part through contracts" and, pursuant to 6 NYCRR § 617.2(b)(1), "activities that may affect the environment by changing the use, appearance or condition of any natural resource or structure."

33. While SEQRA acknowledges that "[a]ctions commonly consist of a set of activities or steps" (6 NYCRR § 617.3(g)), it nevertheless requires that "[t]he entire set of activities or steps must be considered the action," and states unequivocally that "[c]onsidering only a part or segment of an action is contrary to the intent of SEQRA." An example of improper segmentation is excluding certain activities from the definition of a project for purposes of minimizing its environmentally harmful consequence, thus making it appear more "palatable" to the community.

PUBLIC NOTICE AND COMMENT REQUIREMENTS

34. SEQRA's stated purpose under 6 NYCRR § 617.1(c) and NYECL § 8-0109(2) is "to incorporate the consideration of environmental factors into the existing planning, review and decision-making processes of state, regional and local government agencies at the earliest possible time." The determination of whether an action has a significant environmental impact must be made before the agency acts. SEQRA requires that environmental impact statements ("EIS") "be accessible to members of . . . the public prior to action on the proposal in question."

35. Agencies, pursuant to 6 NYCRR § 617.9(a)(3), must file their initial draft EIS

("DEIS") and publish notice, for purposes of eliciting public comment. Agencies must then, pursuant to 6 NYCRR § 617.9(a)(5) and (6), file and publish notice of the final EIS ("FEIS") -- taking into account any such comments -- within 60 days of filing of the draft EIS.

36. A supplemental EIS may be required by 6 NYCRR § 617.9(a)(7)(i) in the event of: "(a) changes proposed for the project; (b) newly discovered information; or (c) a change in circumstances related to the project." A supplemental EIS, pursuant to 6 NYCRR § 617.9(a)(7)(iii), is "subject to the full procedures of this Part [617]."

37. Once an EIS is finalized, pursuant to 6 NYCRR § 617.11(a), the agency "shall afford . . . the public a reasonable time period (not less than 10 calendar days) in which to consider the FEIS before issuing its written findings statement." Only after this period has elapsed may the agency issue its final decision on the proposed action, which must certify, pursuant to 6 NYCRR § 617.11(d)(5), that "consistent with social, economic, and other essential considerations from among the reasonable alternatives available," the action "avoids or minimizes adverse environmental impacts to the maximum extent practicable. . . ."

SIGNIFICANT IMPACT DETERMINATION

38. Pursuant to 6 NYCRR §§ 617.1(c), "SEQRA requires that all agencies determine whether the actions they directly undertake, fund or approve may have a significant impact on the environment." If an agency determines that a proposed action may in fact have a significant adverse impact, it must then "prepare or request an environmental impact statement" (6 NYCRR § 617.1(c)). Pursuant to 6 NYCRR § 617.7(a)(2), an EIS is required, unless an agency "determine[s] either that there will be no adverse environmental impacts or that the identified adverse environmental impacts will not be significant." In other words, once the determination is made that a proposed action may have a significant adverse impact on the environment, an EIS

is required.

39. 6 NYCRR § 617.7(c)(1) sets forth a non-exhaustive list of criteria to be considered in determining whether a proposed action "may have a significant adverse impact on the environment." These criteria include:

> (i) a substantial adverse change in existing air quality;
> * * *
> (vi) a major change in the use of either the quantity or type of energy;
> (vii) the creation of a hazard to human health;
> (viii) a substantial change in the use, or intensity of use, of land . . . or in its capacity to support existing uses;
> * * *
> (x) the creation of a material demand for other actions that would result in one of the above consequences.

Pursuant to 6 NYCRR § 617.7(c)(2), an agency "must consider reasonably related long-term, short-term, direct, indirect and cumulative impacts" as part of this analysis, and pursuant to 6 NYCRR § 617.7(g)(2), "any long-range plan of which the action under consideration us a part."

REQUIRED EIS CONTENT

40. The mandated content, as set forth in 6 NYCRR § 617.7(g)(2), for an EIS includes, inter alia, analysis of "reasonably related short-term and long-term impacts, cumulative impacts and other associated environmental impacts," and "impacts of the proposed action on the use and conservation of energy."

41. Pursuant to 6 NYCRR § 617.9(b)(5)(iii)(e), for actions involving an electric generating facility, the EIS must include "a demonstration that the facility will satisfy electric generating capacity needs or other electric systems needs in a manner reasonably consistent with the most recent state energy plan."

42. Pursuant to 6 NYCRR § 617.9(b)(6), actions involving "reasonably foreseeable catastrophic impacts to the environment," such as the "siting of a hazardous waste treatment

facility," the EIS must "assess the likelihood of occurrence, even if the probability of occurrence is low, and the consequences of the potential impact, using theoretical approaches or research methods generally accepted in the scientific community."

FACTS

INDIAN POINT AND WESTCHESTER COUNTY

43. The Indian Point facility consists of two operating nuclear powered steam generating stations located on the Hudson River in Buchanan, an incorporated village in the Town of Cortlandt. Cortlandt lies wholly within Westchester County, in the lower Hudson River Valley region of New York State.

44. Indian Point has a generating capacity of approximately 2000 MW of electricity per day or approximately 25% of the combined demand of Westchester and New York City and 10% of the demand of New York State. Over the last decade, Indian Point has maintained a capacity factor of greater than 93%, meaning that it has provided electricity for 93% of the 8760 hours in a calendar year, which is consistently higher than the nuclear industry average and other forms of generation. This reliability helps offset the severe price volatility of other energy sources (e.g. natural gas) and the intermittency of renewable electricity sources (e.g. solar and wind).

45. Indian Point is a primary power source for all of the residential, commercial, industrial, and governmental consumers in Westchester, including the County itself. Electricity from Indian Point is bid into the markets of the New York Independent System Operator ("NYISO"). The electricity is purchased by utilities, including Consolidated Edison Company of New York, Inc. ("ConEdison"), New York State Electric and Gas Company, Inc. ("NYSEG"), New York Power Authority ("NYPA"), and other Load Serving Entities for their end-use

commodity customers. The electricity is delivered over the facilities of ConEdison and NYSEG in Westchester. In 2016, Westchester paid NYPA over $27 million in electricity bills for its facilities, including County office buildings, the County airport, and the County correctional facility. About 50% of the charges were for the commodity portion of the bill, and the remainder was a pass-through for ConEdison delivery charges. The commodity charges are adjusted for market conditions -- prices typically go up if demand increases or supply decreases.

46. The energy procurement and efficiency consulting firm Energy Watch has conducted a study of projected regional energy costs since the Agreement was announced and estimates that the Indian Point closure will cause a 1 to 1.5 cent/kWh increase in the price of electricity for regional retail customers. The New York City Department of Environmental Protection conducted a similar study and concluded that Indian Point's closing "will increase the cost to New York's consumers under every feasible scenario." Westchester's own estimates are that Indian Point's decommissioning will increase its electricity bill by 3–5%. Westchester is accordingly concerned that its citizens will experience dramatically increased rates, and in particular that the increased rates may have a disparate negative impact on certain populations in Westchester County, including minorities, low-income citizens, senior citizens, and others on fixed incomes. Respondents/Defendants examined none of these serious impacts, even though Respondent/Defendant Riverkeeper's own study acknowledges that decommissioning Indian Point will result in an energy rate increase.

47. Indian Point is one of the largest employers in Westchester, directly providing nearly 1,000 full-time jobs and contributing to another approximately 2,800 jobs within the County. A June 2015 report by the Nuclear Energy Institute found that Indian Point generates $1.6 billion in annual economic output for New York State, mostly in Westchester and the

surrounding counties. Entergy itself states that the economic impact of Indian Point on the surrounding communities "exceeds $240 million every year."

48. The Town of Cortlandt, the Village of Buchanan, and the Hendrick Hudson School District (all of which are located wholly within Westchester) collectively received over $30 million in PILOT payments from Entergy in exchange for hosting the Indian Point facility in 2016. These payments constitute approximately one-third of the Hendrick Hudson School District budget, and roughly half of Buchanan's tax revenue. The decommissioning of Indian Point will result in the loss of approximately $72 million in revenue for Westchester, Cortlandt, Buchanan and the Hendrick Hudson School District that would otherwise be received under the current PILOT agreement in 2021–24.

49. As a steam-powered nuclear facility, Indian Point does not produce carbon emissions in generating electricity. Unlike New York's gas- or oil-powered plants, which emit 30 million tons of carbon dioxide each year, Indian Point prevents the release of 8.5 million metric tons of carbon dioxide each year. According to Respondent/Defendant Entergy, greenhouse gases like CO2 contribute to global warming, and furthermore, generating electricity with nuclear energy prevents the emission of pollutants like sulfur dioxide and nitrogen oxides. The director of energy and environmental programs for the Regional Plan Association has stated that "[t]here is currently not enough carbon-free energy in the pipeline to replace Indian Point."

50. Indian Point does generate radioactive spent nuclear fuel which, pursuant to the Agreement, will be transferred from on-site spent fuel pools into dry cask storage. The dry cask storage is also on-site, and the spent nuclear fuel within will remain radioactive and generate heat for many years. The NRC does not specify a maximum time for storing spent fuel in dry casks. It merely certifies casks for 20 years, with possible renewals of up to 40 years. The NRC states

that onsite emergency plans are required for dry cask storage, but that "due to the typically reduced staffs at a decommissioning facility, they may rely even more on offsite assistance for fire, security, medical or other emergencies."

THE AGREEMENT

51. On January 9, 2017, the State of New York, the OAG, the DEC, the DOH, the DOS, the DPS, Riverkeeper, ENIP2, ENIP3 and ENOI entered into the "Indian Point Agreement" (the Agreement), which Agreement was announced and became effective by its terms on that date, and provides, in relevant part, as follows:

> a. [Indian Point Unit 2] shall permanently cease operations no later than April 30, 2020, and [Indian Point Unit 3] shall permanently cease operations no later than April 30, 2021 (collectively the two dates with such extensions a are provided for in this Agreement, are referred to as the "Retirement Dates")....

See, Exhibit 1, ¶ 1(a).

52. The Agreement further provides that by February 8, 2017, Entergy is required to notify the NRC of its intent to permanently cease operation of Indian Point, which is dependent upon successful implementation of the other terms of the Agreement, including issuance of the State Pollutant Discharge Elimination System ("SPDES") permit and a Water Quality Certificate ("WQC"). See, Exhibit 1, ¶ 2.

53. The NYS Respondents/Defendants, pursuant to the Agreement, will discontinue, and shall not initiate, any investigation involving or against Entergy for any condition that the NYS Respondents/Defendants knew or reasonably should know about as of the effective date of the Agreement. See, Exhibit 1, ¶ 3.

54. The Coastal Zone Management Act ("CZMA") consistency-certification dispute was also resolved pursuant to the terms of the Agreement. Essentially, Entergy withdrew its

previously-filed certification, which NYSDOS had objected to, and filed a new one that NYSDOS had pre-approved in the form of Exhibit D to the Agreement. See, Exhibit 1, ¶ 4.

55. The AG and Riverkeeper also agreed to withdraw, without prejudice, certain contentions they had filed with the NRC's Atomic Safety & Licensing Board, dealing with Indian Point reactor vessel intervals and metal fatigue. See, Exhibit 1, ¶ 5.

56. With respect to the DEC proceedings before the panel of Administrative Law Judges, the DEC agreed to issue a final WQC and final SPDES permit in the form attached to the Agreement as Exhibits I and J, with an accompanying Biological Fact Sheet, Supplemental Final Environmental Impact Statement ("SFEIS") and SEQRA Findings in the form attached to the Agreement as Exhibit K. See, Exhibit 1, ¶ 6. Importantly, the Agreement concedes that the DEC had not completed the SEQRA process before the effective date of the Agreement. See, Exhibit 1, ¶ 6(d)(iv) ("NYSDEC . . . shall secure . . . a remand to NYSDEC Staff directing it to issue the Indian Point Final WQC and the Indian Point Final SPDES Permit, and to complete the SEQRA process.").

57. The DEC also agreed to publish the final WQC, final SPDES permit, Biological Fact Sheet, SFEIS and SEQRA Findings for public notice and comment by February 7, 2017 -- approximately one month after the Agreement's effective date, notwithstanding SEQRA's clear requirement for a complete SEQRA review in advance of actions that might significantly impact the environment. See, Exhibit 1, ¶ 6(d)(iv).

58. Therefore, despite the fact that the abrupt decommissioning of a nuclear power plant (and storage of radioactive spent nuclear fuel) clearly has the potential to significantly impact the environment, the DEC concededly failed to conduct a complete SEQRA analysis of this impact and take the requisite "hard look" before executing the Agreement.

59. Despite the fact that the DEC acknowledged that it was obligated to complete the SEQRA process, in the draft SEQRA Findings attached to the Agreement, the DEC stated:

> While Department Staff's ultimate issuance of a SPDES permit on substantially the same terms as the prior permit renders this matter comparable to a "Type II" action, under the unique circumstances of this permit application Department Staff nonetheless has elected to publicly notice and submit supplemental SEQR findings to support issuance of the SPDES permit and supplement the FEIS. Supplemental information is limited to that required to supplement the FEIS.

See, Exhibit 1, at p. 144.

60. However, the SFEIS and SEQRA Findings merely address whether to "renew the [SPDES] permit and issue a [WQC]" for Indian Point, allowing it to "continue to withdraw water from the Hudson River for use as cooling water." See, Exhibit 1, at p. 115, 117. In other words, the SFEIS and SEQRA Findings attached to the Agreement did not address the action at bar -- the permanent decommissioning of Indian Point.

61. The Agreement also provides that "Entergy will transfer a minimum of 4 casks (total) with a capacity of 32 bundles each of [Indian Point Unit 2] and [Indian Point Unit 3] spent fuel to dry storage per year, and will transfer a total of 24 such casks by the end of 2021." See, Exhibit 1, Schedule 1 at p. 1. However, the half-hearted SFEIS and SEQRA Findings attached to the Agreement do not address the long-term fate of the radioactive spent nuclear fuel, or any contingency plans for events such as natural disasters that might affect the integrity of the storage.

62. The Agreement further provides that "Entergy shall . . . obtain authority to begin . . . Radiological Decommissioning within 120 days after it has made a reasonable determination that the funds in the nuclear decommissioning trust are adequate to complete Radiological Decommissioning . . . ." See, Exhibit 1, Schedule 1 at p. 3. The Agreement and its attachments

do not specify what an "adequate" level of funding might be, nor does it contain an estimate of when this level might be reached. This absence is glaring given that the trust fund is at least one billion dollars short of "adequate," according to Respondents/Defendants themselves. Specifically, Entergy estimates that it will take approximately $1.1 billion to fully decommission just one of the two Indian Point reactors, but the current balance in the trust fund is only $724 million.

63. The Agreement and accompanying SFEIS and SEQRA Findings are utterly silent on such environmental issues as whether Indian Point's energy output will be replaced by carbon-emitting plants, the reliability of the replacement generation, the future of the Indian Point site following decommissioning, and the long-term impact of the Agreement's plan with respect to spent nuclear fuel storage. They are equally silent regarding the economic and social impacts of decommissioning.

64. With respect to loss of jobs and tax revenue, the SEQRA Findings attached to the Agreement merely conclude, without explanation, that:

> [i]ncreased property values after the Retirement Dates are expected to offset, in part, taxation and PILOT payment reductions at the Retirement Dates. Employment reductions after the Retirement Dates will occur, but are phased and spread throughout the region.

See, Exhibit 1, at p. 148. There is no analysis or explanation of, for example, how much "increased property values" might offset lost payments, or how exactly "phasing" the "employment reductions" (e.g. Entergy's firing of its local workforce) would mitigate this economically devastating result. In any event, the conclusion that property values will increase is groundless speculation. Indeed, because plant closure will lead to the loss of thousands of local jobs, significantly decreased local business activity, increased energy costs, and a likely increase in property and special district taxes, local property values may very well decrease, not

increase.

65. With respect to the loss of power generation, the SEQRA Findings attached to the Agreement vaguely state that "potential impacts to reliability and capacity in the medium-to-long term are expected to be avoided or mitigated given responsive measures taken on the basis of planning on the part of the NYISO and the NYPSC." See, Exhibit 1, at p. 134. There is no explanation of these "responsive measures," and therefore no demonstration of how the closure of Indian Point "will satisfy electric generating capacity needs" as mandated by 6 NYCRR § 617.9(b)(5)(iii)(e). The SEQRA Findings attached to the Agreement further state that "Entergy's commitments in connection with the Retirement Dates include transition planning for the cessation of electric-generating operations." See, Exhibit 1, at p. 148. It does not, however, describe this "transition planning." Furthermore, to the extent that any alternate power generation would be provided by yet-to-be-built carbon-producing sources, the Agreement and its attachments are silent as to the effects of these sources on air quality.

66. Notably, Respondents/Defendants themselves have acknowledged the imperative of the aforementioned issue in the context of other nuclear plant closings. For example, on August 9, 2016, Governor Andrew Cuomo gave a speech regarding the possible closing of the FitzPatrick Nuclear Power Plant in Oswego, New York. Governor Cuomo warned that this closing would lead to, inter alia, lost jobs, energy price increases, and a "financial crisis for the entire region." Audrey Zibelman, who signed the Agreement on behalf of DPS, subsequently stated that "when you close a nuclear plant . . . you're going to get it replaced by fossil emissions." These statements are corroborated by real-life examples of the devastating impacts on host communities of nuclear power plant decommissioning.

67. On February 28, 2017, in an apparent admission that an EIS examining the

consequences of closing Indian Point should have been conducted, Respondent/Defendant Cuomo announced the appointment of a task force to address the closure of Indian Point. This task force's mandate is to "address employment and property tax impacts, develop new economic opportunities, evaluate site reuse options, [] identify work force retraining programs and opportunities. . . . monitor the closure [] and related decommissioning and site restoration issues, coordinate ongoing safety inspections and review reliability and environmental concerns, among other issues." Any recommendations the task force might make are irrelevant, however, insofar as the Agreement to close Indian Point has already been signed and implementation of said closure has already begun. Moreover, the task force's recommendations are not binding, the task force has no obligation to consider alternatives to closing Indian Point, and the public has no legal recourse to challenge the task force's recommendations.

AS AND FOR A FIRST CAUSE OF ACTION

68. Petitioner/Plaintiff repeats and realleges each and every allegation set forth in paragraphs "1" through "67" as if the same were more fully set forth at length herein.

69. The NYS Respondents/Defendants are state agencies under SEQRA and the implementing regulations promulgated thereunder at 6 NYCRR Part 617 (the "SEQRA Regulations").

70. The applicable sections, parts and provisions of SEQRA and SEQRA Regulations require that an agency, such as the NYS Respondents/Defendants, determine whether the action they are about to take is subject to SEQRA.

71. The Agreement being challenged herein falls within the applicable definition(s) of an "action" pursuant to the applicable sections, parts and provisions of SEQRA and the SEQRA Regulations.

72. The Respondents/Defendants' Agreement to permanently close Indian Point is clearly an "action" subject to SEQRA, as it "may affect the environment by changing the use, appearance or condition of any structure," i.e. the nuclear generating facilities themselves and the planned storage containers (6 NYCRR § 617(2)(b)(1)). The Agreement is an "action" because it constitutes an "agency planning and policy making activit[y] that may affect the environment and commit the agency to a definite course of future decisions," i.e. the decommissioning of Indian Point (6 NYCRR § 617(2)(b)(2)).

73. Pursuant to the applicable sections, parts and provisions of SEQRA and the SEQRA Regulations, the Respondents/Defendants were required to make a preliminary classification of what type of action was being undertaken before and prior to the execution of any Agreement to close and decommission the Indian Point facility.

74. A Type I Action carries with it the presumption that it is likely to have a significant adverse impact on the environment and may require an EIS (6 NYCRR § 617.4(a)(1)). An Unlisted Action may also have a significant adverse effect on the environment and require a full SEQRA review, including an EIS.

75. The Agreement and permanent closure of the Indian Point facility should have been classified by the Respondents/Defendants as a Type I Action and/or Unlisted Action and such failure to do so was a failure to properly comply with the requirements of SEQRA.

76. The NYS Respondents/Defendants were also subject to SEQRA's requirement that they determine whether the action at bar "may have a significant impact on the environment" (6 NYCRR § 617.1(c)). The NYS Respondents/Defendants were required to thoroughly analyze the relevant areas of environmental concern to determine the environmental significance of closing Indian Point, taking into account social and economic factors (NYECL §

8-0113), set forth their determination of significance in writing, complete with reasoned elaboration and reference to supporting documentation (6 NYCRR § 617.7(b)) and such failure to do so was a failure to properly comply with the requirements of SEQRA.

77. Respondents/Defendants failed to properly consider, pursuant to 6 NYCRR § 617.7(c)(1), whether closing Indian Point would "have a significant adverse impact on the environment," and should have unequivocally concluded that the closure of a nuclear power plant would create "a substantial adverse change in existing air quality" if the replacement power is generated by carbon-fueled, emissions-producing facilities (6 NYCRR § 617.7(c)(1)(i) and 6 NYCRR § 617.7(c)(1)(x)). Closure by definition involves "a major change in the use of either the quantity or type of energy" and "a substantial change in the use, or intensity of use, of land" (6 NYCRR § 617.7(c)(1)(vi) and 6 NYCRR § 617.7(c)(1)(viii)). Any action involving the movement and storage of nuclear waste clearly implicates "a hazard to human health."

78. The Agreement will thus have a significant adverse impact on the environment and required the Respondents/Defendants to prepare an EIS analyzing the effects of the closure of Indian Point prior to signing and implementing the Agreement.

79. The Agreement was executed and adopted without a proper prior environmental review in violation of the applicable sections, parts and provisions of SEQRA and the SEQRA Regulations, and prior to and without the proper and lawful compliance with the applicable provisions of SEQRA and the SEQRA Regulations.

80. The Agreement was executed and made effective prior to the preparation of a proper DEIS, EIS, FEIS or SEQRA Findings and prior to public notice and comment and SEQRA hearings, in violation of the applicable sections, parts and provisions of SEQRA and the SEQRA Regulations and prior to and without the proper and lawful compliance with the

applicable provisions of SEQRA and the SEQRA Regulations.

81. The failure of the Respondents/Defendants to undertake a full environmental review as a predicate to the action taken in connection with the execution of the Agreement and without the proper and lawful compliance with the applicable provisions of SEQRA and the SEQRA Regulations, is and was in derogation of the applicable provisions of SEQRA and the SEQRA Regulations.

82. The execution of the Agreement prior to any DEIS, EIS, FEIS or necessary findings, and prior to and without the proper and lawful compliance with the applicable provisions of SEQRA and the SEQRA Regulations, was and is in derogation of the applicable provisions of SEQRA and the SEQRA Regulations.

83. The Agreement required a full environmental review and that said action otherwise comply with the applicable provisions of SEQRA and the SEQRA Regulations. The failure to undertake a prior environmental review, and to otherwise comply with the applicable provisions of SEQRA and the SEQRA Regulations is fatal to the Agreement rendering it null and void.

84. The action taken by Respondents/Defendants in executing the Agreement prior to engaging in a full SEQRA review, failure to make a significant impact determination, failure to classify the Agreement and closure of Indian Point as a Type I or Unlisted Action with significant adverse effects on the environment, failure to prepare an EIS and failure submit to public notice and comment constituted an error of law, a violation of duties lawfully entrusted upon the Respondents/Defendants and otherwise constitutes an abuse of discretion in that the action taken was arbitrary and capricious and in violation of lawful procedure and authority. Respondents/Defendants failed to take a "hard look," make any reasoned elaboration for the

determination and failed to comply with their obligations under SEQRA.

85. Accordingly, Petitioner/Plaintiff demands a judgment against the Respondents/Defendants which annuls and declares the Agreement, and any enforcement of such Agreement, void; and directs Respondents/Defendants to submit any future plan to close Indian Point to a full SEQRA review.

86. Petitioner/Plaintiff has no adequate remedy at law.

87. No prior application for the relief requested herein has been made.

AS AND FOR A SECOND CAUSE OF ACTION

88. Petitioner/Plaintiff repeats and realleges each and every allegation set forth in paragraphs "1" through "87" as if the same were more fully set forth at length herein.

89. The Agreement and permanent closure of the Indian Point facility should have been classified by the Respondents/Defendants as a Type I Action and/or Unlisted Action and determined to have a significant adverse effect on the environment and thereby required a full environmental review under SEQRA and the SEQRA Regulations prior to the execution of such Agreement.

90. The Agreement and permanent closure of the Indian Point facility should have been preceded by a thorough and complete environmental review under SEQRA and the SEQRA Regulations, including the opportunity for public notice and comment, a SEQRA hearing, and a thorough examination of the environmental, economic and social impacts of closing Indian Point.

91. The Respondents/Defendants' classification of the Agreement to close Indian Point as "comparable to a 'Type II' action" constituted an error of law, a violation of duties lawfully entrusted upon the Respondents/Defendants and otherwise constitutes an abuse of

discretion in that the action taken was arbitrary and capricious and in violation of lawful procedure.

92. The Respondents/Defendants' Agreement to close Indian Point prior to publishing the WQC, SPDES permit, Biological Fact Sheet, SFEIS and SEQRA Findings attached to the Agreement for public notice and comment and a SEQRA hearing constituted an error of law, a violation of duties lawfully entrusted upon the Respondents/Defendants and otherwise constitutes an abuse of discretion in that the action taken was arbitrary and capricious and in violation of lawful procedure.

93. The Respondents/Defendants decision to enter into the Agreement to close Indian Point by relying upon the WQC, SPDES permit, Biological Fact Sheet, SFEIS and SEQRA Findings that were attached to the Agreement and which failed to thoroughly examine the environmental, economic and social impacts of closing Indian Point constituted an error of law, a violation of duties lawfully entrusted upon the Respondents/Defendants and otherwise constitutes an abuse of discretion in that the action taken was arbitrary and capricious and in violation of lawful procedure.

94. Accordingly, Petitioner/Plaintiff demands a judgment against the Respondents/Defendants which annuls and declares the Agreement, and any enforcement of such Agreement, void; and directs Respondents/Defendants to submit any future plan to close Indian Point to a full SEQRA review.

95. Petitioner/Plaintiff has no adequate remedy at law.

96. No prior application for the relief requested herein has been made.

AS AND FOR A THIRD CAUSE OF ACTION

97. Petitioner/Plaintiff repeats and realleges each and every allegation set forth in

paragraphs "1" through "96" as if the same were more fully set forth at length herein.

98. Dividing the environmental review of an action in such a way that the various segments are addressed as though they were independent and unrelated activities contravenes SEQRA and its intent.

99. The Agreement provides that, inter alia, "NYSDEC immediately shall issue the Indian Point Final WQC and the Indian Point Final SPDES Permit" and commits the DEC to issue a final SPDES permit "substantially in the form attached hereto." See, Exhibit 1, ¶ 6.

100. The Agreement references an SFEIS and SEQR Findings that relate to the issuance of the SPDES permit and WQC and analyze clean water issues and technologies relating to Indian Point's continued operation, not the closure of Indian Point. Respondents/Defendants failed to thoroughly examine the environmental, economic and social impacts of closing Indian Point.

101. SEQRA provides that a public notice and comment period must precede any final agency action and that compliance with SEQRA must occur before the agency acts. The Agreement required the solicitation of public comment not on Indian Point's closure, but rather on the issuance of the SPDES permit and WQC. In so doing, the Agreement was crafted to deliberately deflect comments regarding the broader issues associated with the closure of Indian Point.

102. By committing to a predetermined course of action prior to the mandated public notice and comment period (e.g., by agreeing to issue the SFEIS, SEQRA Findings, SPDES permit and WQC and agreeing to close Indian Point), the Agreement bound Respondents/Defendants to pursue a definite course action, precluding meaningful consideration of other alternatives to the Agreement in violation of SEQRA. The Agreement preordained that

any comments objecting to the closure of Indian Point, or the issuance of the SPDES permit and WQC, would be disregarded in violation of SEQRA.

103. The actions of the Respondents/Defendants constitute textbook examples of improper segmentation, or environmental review of an action such that various activities or stages are addressed as though they were independent, unrelated activities, needing individual determinations of significance.

104. The Respondents/Defendants' failure to thoroughly examine the environmental, economic and social impacts of closing Indian Point amounts to an error of law, a violation of duties lawfully entrusted upon the Respondents/Defendants and otherwise constitutes an abuse of discretion in that the action taken was arbitrary and capricious and in violation of lawful procedure.

105. Accordingly, Petitioner/Plaintiff demands a judgment against the Respondents/Defendants which annuls and declares the Agreement, and any enforcement of such Agreement, void; and directs Respondents/Defendants to submit any future plan to close Indian Point to a full SEQRA review.

106. Petitioner/Plaintiff has no adequate remedy at law.

107. No prior application for the relief requested herein has been made.

AS AND FOR A FOURTH CAUSE OF ACTION

108. Petitioner/Plaintiff repeats and realleges each and every allegation set forth in paragraphs "1" through "107" as if the same were more fully set forth at length herein.

109. There exists an actual and justiciable controversy between Petitioner/Plaintiff and Respondents/Defendants concerning the proposed decommissioning of the Indian Point facility.

110. Respondents/Defendants' actions of executing the Agreement prior to a proper

full SEQRA review and preparation of an EIS; the failure to determine that the Agreement would have an adverse impact on the environment; the failure to analyze the impacts that the plant closure would have on the environment, economy and residents of Westchester County; the improper segmentation of the review process; the determination that the Agreement was comparable to a Type II Action; the failure to solicit public comment on the Agreement to permanently decommission Indian Point; the commitment to engage in a predetermined course of action; failing to take any "hard look"; failing to make any reasoned elaboration for their determination; and the failure to otherwise comply with SEQRA and the SEQRA Regulations concerning the execution of the Agreement, was all in violation of SEQRA and the SEQRA Regulations.

111. An actual justiciable controversy which is ripe for adjudication exists between the parties.

112. Petitioner/Plaintiff has no adequate remedy at law.

113. Petitioner/Plaintiff seeks a declaratory judgment against Respondents/Defendants: (a) declaring that the Agreement and closure of Indian Point was subject to SEQRA, requiring a significant impact determination, classification of the Agreement and closure of Indian Point as a Type I or Unlisted Action, the preparation of an EIS and a period for public notice and comment and a public hearing; (b) declaring that Respondents/Defendants executed the Agreement in violation of the applicable provisions of SEQRA and the SEQRA Regulations; (c) annulling and declaring the Agreement, and any enforcement of such Agreement, void; and (d) directing Respondents/Defendants to submit any future plan to close Indian Point to a full SEQRA review.

WHEREFORE, Petitioner/Plaintiff respectfully requests that a judgment be entered against Respondents/Defendants as follows:

(1) On the First Cause of Action, annulling and declaring the Agreement, and any enforcement of such Agreement, void; and directing Respondents/Defendants to submit any future plan to close Indian Point to a full SEQRA review;

(2) On the Second Cause of Action, annulling and declaring the Agreement, and any enforcement of such Agreement, void; and directing Respondents/Defendants to submit any future plan to close Indian Point to a full SEQRA review;

(3) On the Third Cause of Action, annulling and declaring the Agreement, and any enforcement of such Agreement, void; and directing Respondents/Defendants to submit any future plan to close Indian Point to a full SEQRA review;

(4) On the Fourth Cause of Action, a declaratory judgment against Respondents/Defendants: (a) declaring that the Agreement and closure of Indian Point was subject to SEQRA, requiring a significant impact determination, classification of the Agreement and closure of Indian Point as a Type I or Unlisted Action, the preparation of an EIS and a period for public notice and comment and a public hearing; (b) declaring that Respondents/Defendants executed the Agreement in violation of the applicable provisions of SEQRA and the SEQRA Regulations; (c) annulling and declaring the Agreement, and any enforcement of such Agreement, void; and (d) directing Respondents/Defendants to submit any future plan to close Indian Point to a full SEQRA review, together with such further and different relief as the Court may deem just and proper in the circumstances, and the costs and disbursements (including those enumerated in CPLR § 8601) of this combined proceeding/action.

Dated: White Plains, New York
May 9, 2017

COLLIER, HALPERN, NEWBERG & NOLLETTI, LLP
Attorneys for Petitioner/Plaintiff

By: _____

Philip M. Halpern
A Member of the Firm
One North Lexington Avenue
White Plains, New York 10601
(914) 684-6800

VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

ROBERT P. ASTORINO, being duly sworn, deposes and says:

I am an individual and the County Executive of the County of Westchester, the petitioner/plaintiff named herein. I am acquainted with the facts of this proceeding. The sources of my information are my own personal knowledge, the records and documents contained in the files of the County of Westchester and my discussions with County staff with knowledge and information regarding this matter.

I have read the attached petition/complaint and, based on the aforementioned sources of information, I believe the allegations set forth therein to be true, except as to those matters stated on information and belief, and as to those matters, I believe them to be true.

I make this verification pursuant to Civil Practice Law and Rules 3020.

Robert P. Astorino
ROBERT P. ASTORINO

Sworn to before me this
9th day of May, 2017

Notary Public
John A. Cerino
Notary Public, State of New York
No. 01CE6262825
Qualified in Westchester County
Commission Expires 5/29/20