UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Commission

In the Matter of	)	Docket Nos. 110-05896 (Import)
	)	110-05897 (Export)
ENERGY*SOLUTIONS*	)	
	)	
(Radioactive Waste Import/Export Licenses)	)	January 26, 2011

ENERGY*SOLUTIONS*' ANSWER OPPOSING OAK RIDGE RESERVATION LOCAL OVERSIGHT COMMITTEE'S REQUEST FOR HEARING

I. INTRODUCTION

Pursuant to 10 CFR 110.83, Energy*Solutions* hereby files this timely Answer to the "Comments and Request for Hearing on Energy*Solutions* Import/Export License Application, Docket No. 11005896" dated December 14, 2010 ("Hearing Request").[1] The Hearing Request responds to the U.S. Nuclear Regulatory Commission ("NRC" or "Commission") public notices of the receipt of applications to import[2] and export[3] radioactive waste, both published in the *Federal Register* on November 30, 2010. The Citizens' Advisory Panel of the Oak Ridge Reservation Local Oversight Committee ("ORRLOC" or "Petitioner") requests a hearing so that "citizens in the area [of the Energy*Solutions* facility] have the opportunity to have their questions answered and raise any concerns in a public forum."[4] The Commission should deny the Hearing

[1] Although the Hearing Request was dated December 14, 2010, it was sent by U.S. Mail only to the NRC Office of the Secretary ("SECY"). SECY then served the Hearing Request on Energy*Solutions* via the Electronic Information Exchange on December 27, 2010. Energy*Solutions* is therefore filing this timely Answer within 30 days of service of the Hearing Request. *See* 10 CFR 110.83(a).

[2] Request for a License To Import Radioactive Waste, 75 Fed. Reg. 74,107 (Nov. 30, 2010).

[3] Request for a License To Export Radioactive Waste, 75 Fed. Reg. 74,104 (Nov. 30, 2010).

[4] Hearing Request.

Request because: (1) contrary to 10 CFR 110.89(b), the Hearing Request was not served on all parties, (2) contrary to 10 CFR 110.84(b), ORRLOC fails to establish an interest that may be affected; and (3) contrary to 10 CFR 110.84(a), ORRLOC fails to show that a hearing would be in the public interest or that it can assist the Commission in making its required determinations.

The public health and safety require the United States to have commercially viable disposal companies such as Energy*Solutions* that can safely and responsibly manage the transportation, recycling, processing, and disposal of low-level radioactive waste ("LLRW") and other nuclear material. There is a global marketplace for nuclear services, including waste processing services, and the viability of U.S. commercial disposal companies is significantly enhanced by participation in this global market. In addition, the LLRW to be imported under the above-captioned license application is nuclear medicine-related waste, collected by Eckert & Ziegler Nuclitec ("EZN") from hospitals, research facilities, and other technical facilities in Germany.[5] As explained in Energy*Solutions*' Response to Petitioners' Waiver Request, the effective management of such LLRW is important to global public health.[6] Significant delay in the issuance of routine import and export licenses for medical-research waste could establish a climate of regulatory uncertainty that could ultimately restrict worldwide access to the benefits of developments in nuclear medicine and be detrimental to the viability of the commercial LLRW disposal industry in this country.

II. BACKGROUND

On November 3, 2010, the NRC received Energy*Solutions'* application for a license to import up to 1,000 tons of LLRW into the United States from Germany under the provisions of

---

5 *See* Letter from Philip Gianutsos, Duratek, to Scott Moore, NRC, "Combined Applications for the Export/Import of Radioactive Material" at 1 (Aug. 27, 2010) (import application cover letter), *available at* ADAMS Accession No. ML103090582 (appended to Application for Specific License to Import Radioactive Material (to Germany), Lic. No. IW029 (Aug. 27, 2010) ("Import Application")).

6 January 10, 2011 ("Waiver Response").

10 CFR Part 110. The LLRW is to be imported for the purpose of volume reduction through incineration at the Energy*Solutions* Bear Creek Facility in Oak Ridge, Tennessee (the "Bear Creek Facility"). Energy*Solutions* also filed a companion application[7] for a license to export up to 1,000 tons[8] of LLRW from the United States to Germany. The hearth ash generated from the incinerated LLRW will be collected in appropriate packages and, along with any non-incinerable and non-conforming waste, will be exported back to Germany.

Energy*Solutions* applied for the import and export licenses to support a routine commercial transaction. The company provides LLRW services to the commercial nuclear sector and many other nuclear users, including hospitals, research facilities, the Tennessee Valley Authority, and the U.S. Departments of Energy and Defense. Energy*Solutions* is authorized to possess radioactive material in accordance with a Tennessee license held by its subsidiary, Duratek Services, Inc. ("Duratek"). The radionuclides in the LLRW will not exceed the possession limits in Duratek's Tennessee licenses[9] over the duration of the proposed licenses. Thus, the German material to be imported under the proposed import license would be, from a public health and safety perspective, indistinguishable from the domestic and international LLRW that Energy*Solutions* routinely receives, processes, and dispositions at its facilities.[10] However, the German material will be processed in a dedicated campaign so that the hearth ash generated can be segregated from the hearth ash generated through processing of domestic

---

7 Application for Specific License to Export Radioactive Material (to Germany), Lic. No. XW018 (Aug. 27, 2010), *available at* ADAMS Accession No. ML103090595 ("Export Application").

8 Because of the nature of incineration operations, Energy*Solutions* is not able to estimate the quantities, volume, and activities of the materials that will need to be exported. Because it will be a fraction of the imported amount, the material to export will not exceed 1,000 tons.

9 *See* Import Application at 7 (*citing* Tennessee licenses R-73008 and R-73016).

10 The NRC recognized this principle in its recent Part 110 rulemaking, in which the NRC eliminated some of the differences between the licensing requirements for export and import and the domestic licensing requirements for possession of LLRW. *See* Final Rule, Export and Import of Nuclear Equipment and Material; Updates and Clarifications, 75 Fed. Reg. 44,072, 44,073 (July 28, 2010) ("2010 Final Rule").

material at the Bear Creek Facility. This remaining hearth ash material from the dedicated campaign will be returned to Germany for disposal in Germany.

III. LEGAL STANDARDS

A. Standards for Hearings on Export and Import Licenses

1. *Hearing Request or Intervention Petition.*

To request a hearing in an import or export licensing proceeding under 10 CFR 110.82:

(b) Hearing requests and intervention petitions must:

(1) State the name, address and telephone number of the requestor or petitioner;
(2) Set forth the issues sought to be raised;
(3) Explain why a hearing or an intervention would be in the public interest and how a hearing or intervention would assist the Commission in making the determinations required by § 110.45.
(4) Specify, when a person asserts that his interest may be affected, both the facts pertaining to his interest and how it may be affected with particular reference to the factors in §110.84.[11]

2. *Commission Action on a Hearing Request or Intervention Petition.*

Under "the Nuclear Non-Proliferation Act of 1978 (NNPA), Congress gave the Commission discretion to hold public hearings [on export and import license applications], or not, 'as the Commission deems appropriate.'"[12] 10 CFR 110.84 lists the factors that the Commission will consider in determining whether to grant a hearing request. For the instant petition, the relevant factors are:

(a) In an export licensing proceeding, or in an import licensing proceeding in which a hearing request or intervention petition does not assert or establish an interest which may be affected, the Commission will consider:

(1) Whether a hearing would be in the public interest; and
(2) Whether a hearing would assist the Commission in making the statutory determinations required by the Atomic Energy Act.

---

[11] 10 CFR 110.82(b).

[12] *U.S. Dep't of Energy* (Plutonium Export License), CLI-04-17, 59 NRC 357, 366 (2004) ("*Plutonium Export*").

(b) If a hearing request or intervention petition asserts an interest which may be affected, the Commission will consider:

(1) The nature of the alleged interest;
(2) How that interest relates to issuance or denial; and
(3) The possible effect of any order on that interest, including whether the relief requested is within the Commission's authority, and, if so, whether granting relief would redress the alleged injury.

. . . .

(d) Before granting or denying a hearing request or intervention petition, the Commission will review the Executive Branch's views on the license application and may request further information from the petitioner, requester, the Commission staff, the Executive Branch or others.

. . . .

(g) After consideration of the factors covered by paragraphs (a) through (f), the Commission will issue a notice or order granting or denying a hearing request or intervention petition. Upon the affirmative vote of two Commissioners a hearing will be ordered. A notice granting a hearing will be published in the FEDERAL REGISTER and will specify whether the hearing will be oral or consist of written comments. A denial notice will set forth the reasons for denial.[13]

Under Section 110.84, the Commission has "traditionally applied the judicial concepts of standing to determine whether a potential intervenor has an 'interest [that] may be affected' within the meaning of section 189a of the AEA."[14] Section (B), below, explains in detail the judicial standing concepts as they apply to this proceeding under Section 110.84(b). Importantly, even if a petitioner shows standing, there is no statutory or regulatory requirement for the Commission to hold a hearing. Instead, hearings are a matter of Commission discretion and are held only when they will assist the NRC in making its statutory determinations.[15]

---

[13] 10 CFR 110.84.

[14] *Plutonium Export*, CLI-04-17, 59 NRC at 363.

[15] *See id*. at 366-67 & n.14.

3. *Issuance or Denial of Licenses*

The Commission will issue an export license if, after soliciting and receiving the views of the Executive Branch regarding the proposed export, it finds that the applicable criteria in Section 110.42 are met.[16] The Commission will issue an import license if it finds that (1) the proposed import will not be inimical to the common defense and security; (2) it will not constitute an unreasonable risk to the public health and safety; (3) National Environmental Policy Act of 1969, as amended ("NEPA") requirements are met; and (4) an appropriate facility has agreed to accept the waste for management and disposal.[17]

B. Standing

1. *In General*

As noted above, in evaluating whether a petitioner has an interest that might be affected under 10 CFR 110.84, the Commission has applied judicial concepts of standing.[18] In general, to demonstrate standing, a petitioner must show: (1) an actual or threatened, concrete and particularized injury that is (2) fairly traceable to the challenged action and (3) likely to be redressed by a favorable decision.[19] These three criteria are commonly referred to as injury-in-fact, causation, and redressability, respectively.

First, a petitioner's injury-in-fact showing "requires more than an injury to a cognizable interest. It requires that the party seeking [to participate] be himself among the injured."[20] The

---

16 *See* 10 CFR 110.45(a).

17 *See* 10 CFR 110.45(b). Notably, the proposed import here involves management of material at a U.S. facility, but ultimate disposal of the remaining hearth ash material at a German facility.

18 *See Plutonium Export*, CLI-04-17, 59 NRC at 363.

19 *See Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), CLI-96-1, 43 NRC 1, 6 (1996). *See also Calvert Cliffs 3 Nuclear Project, LLC* (Combined License Application for Calvert Cliffs, Unit 3), CLI-09-20, slip op. at 4 (Oct. 13, 2009) (restating the standing requirements).

20 *Sierra Club v. Morton*, 405 U.S. 727, 734-35 (1972).

injury must be "concrete and particularized," not "conjectural" or "hypothetical."[21] Additionally, the alleged injury-in-fact must lie within "the zone of interests" protected by the statutes governing the proceeding.[22] Second, a petitioner must establish that the injuries alleged are fairly traceable to the proposed action—in this case, the issuance of the import and export licenses to Energy*Solutions*. Although a petitioner is not required to show that the injury flows directly from the challenged action, it must nonetheless show that the "chain of causation is plausible."[23] Finally, each petitioner is required to show that "its actual or threatened injuries can be cured by some action of the tribunal."[24] In other words, "it must be likely, as opposed to merely speculative that the injury will be redressed by a favorable decision."[25]

2. *No Proximity Presumption Applies*

No proximity presumption applies to this proceeding. Under NRC case law, a petitioner may, in some instances, be presumed to have fulfilled the judicial standards for standing based on his or her geographic proximity to a facility or source of radioactivity.[26] The Commission has held that working or living within a 50-mile radius of a nuclear power reactor is generally sufficient to invoke the proximity presumption in proceedings involving the issuance of a commercial reactor operating license.[27] In other proceedings, however, including export and import proceedings such as this one, the Commission has held that there is no proximity

---

21 *Sequoyah Fuels Corp*. (Gore, Okla. Site), CLI-94-12, 40 NRC 64, 72 (1994) (citations omitted).

22 *Quivira Mining Co.* (Ambrosia Lake Facility, Grants, N.M.), CLI-98-11, 48 NRC 1, 5 (1998), *aff'd sub nom. Envirocare of Utah, Inc. v. NRC*, 194 F.3d 72 (D.C. Cir. 1999).

23 *Sequoyah Fuels*, CLI-94-12, 40 NRC at 75.

24 *Sequoyah Fuels Corp*. (Gore, Okla. Site Decommissioning), CLI-01-2, 53 NRC 9, 14 (2001).

25 *Sequoyah Fuels*, CLI-94-l2, 40 NRC at 76 (*quoting Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992) (internal quotations omitted)).

26 *See Calvert Cliffs*, CLI-09-20, slip op. at 4-5, 8 (recognizing proximity presumption in nuclear reactor proceedings).

27 *See id*.

presumption "[a]bsent situations involving such obvious potential for offsite consequences" as with the construction and operation of a reactor.[28] Instead, the Commission "determine[s] on a *case-by-case basis* whether the proximity presumption should apply, considering the 'obvious potential for offsite [radiological] consequences,' or lack thereof, from the application at issue, and specifically 'taking into account the nature of the proposed action and the significance of the radioactive source.'"[29]

Furthermore, the smaller the risk of offsite consequences, the closer the petitioner must reside to be realistically threatened.[30] For example, a Board held that a distance of 43 miles from a spent fuel pool facility, coupled with generalized claims of injury from radiation, was insufficient to establish standing in a spent fuel pool license amendment case.[31] In so ruling, the Board stated that "we note that we know of no scenario under which the radiation attributable to the fuel pool could affect a residence 43 miles distant from the fuel pool; and petitioner has not informed us of any such scenario."[32]

---

28 *Plutonium Export*, CLI-04-17, 59 NRC at 364 (*quoting Fla. Power & Light Co*. (St. Lucie Nuclear Power Plant, Units 1 & 2), CLI-89-21, 30 NRC 325, 329-30 (1989)).

29 *Consumers Energy Co.* (Big Rock Point Indep. Spent Fuel Storage Installation), CLI-07-19, 65 NRC 423, 426 (2007) (emphasis added) (*quoting Exelon Generating Co., LLC* (Peach Bottom Atomic Power Station, Units 2 & 3), CLI-05-26, 62 NRC 577, 580-81 (2005)). *See also Ga. Inst. of Tech*. (Ga. Tech Research Reactor, Atlanta, Ga.), CLI-95-12, 42 NRC 111, 116-17 (1995) (analyzing standing as case-by-case determination based on nature of the action and significance of the radioactive source); *Sequoyah Fuels*, CLI-94-12, 40 NRC at 75 n.22 (determination of how proximate petitioner must live or have frequent contacts to a radioactive source depends on the danger posed by the source).

30 *See*, *e.g.*, *Pac. Gas & Elec. Co.* (Diablo Canyon Power Plant Indep. Spent Fuel Storage Installation), LBP-02-23, 56 NRC 413, 427-28, 432, *recons. denied*, LBP-02-25, 56 NRC 467, 474-76 (2002) (in a proceeding for a license to construct and operate an ISFSI at an operating reactor, granting standing to petitioners who lived within 17 miles of the facility, but denying standing to a petitioner who lived 20 miles from the facility); *Tenn. Valley Auth.* (Sequoyah Nuclear Plant, Units 1 & 2; Watts Bar Nuclear Plant, Unit 1), LBP-02-14, 56 NRC 15, 25 (2002) (allowing for the proximity presumption to apply to an organization's members who lived within 17 miles of the Sequoyah and Watts Bar reactors at which "TVA propose[d] to add tens of millions of curies of highly combustible radioactive hydrogen gas" to the reactors' core inventory).

31 *Boston Edison Co*. (Pilgrim Nuclear Power Station), LBP-85-24, 22 NRC 97, 98-99, *aff'd on other grounds*, ALAB-816, 22 NRC 461 (1985).

32 *Id*. at 99.

3. *Standing of Organizations*

An organization that wishes to intervene in a proceeding may do so either in its own right (by demonstrating injury to its organizational interests), or in a representative capacity (by demonstrating harm to the interests of its members).[33] To intervene in a proceeding in its own right, an organization must allege—just as an individual petitioner must—that it will suffer an immediate or threatened injury to its organizational interests that can be fairly traced to the proposed action and be redressed by a favorable decision.[34] General environmental or public policy interests are insufficient to confer organizational standing.[35]

To invoke representational standing, an organization must: (1) show that at least one of its members has standing in his or her own right (*i.e.*, by demonstrating geographic proximity in cases where the presumption applies, or by demonstrating injury-in-fact within the zone of protected interests, causation, and redressability); (2) identify that member by name and address; and (3) show, "preferably by affidavit," that the organization is authorized by that member to request a hearing on behalf of the member.[36]

IV. ARGUMENT

The Hearing Request is deficient because: (A) ORRLOC failed to serve the Hearing Request on the applicant; (B) ORRLOC fails to establish an interest that may be affected; and (C) discretionary intervention would not assist the commission or be in the public interest.

---

[33] *Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), CLI-98-21, 48 NRC 185, 195 (1998) (*citing Ga. Tech*., CLI-95-12, 42 NRC at 115).

[34] *See Ga. Tech*, CLI-95-12, 42 NRC at 115.

[35] *See Sierra Club*, 405 U.S. at 730 & 741 (holding that a "special interest in the conservation and the sound maintenance of the national parks, game refuges, and forests of the country" is insufficient to provide organizational standing to a petitioner).

[36] *Consumers Energy Co.* (Palisades Nuclear Power Plant), CLI-07-18, 65 NRC 399, 408-10 (2007). *See also N. States Power Co.* (Monticello Nuclear Generating Plant, Prairie Island Nuclear Generating Plant, Units 1 & 2; Prairie Island Indep. Spent Fuel Storage Installation), CLI-00-14, 52 NRC 37, 47 (2000); *GPU Nuclear Inc*. (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 NRC 193, 202 (2000).

A. Petitioner Failed to Serve Notice of the Hearing to the Applicant.

As noted above, on November 30, 2010, the NRC published in the Federal Register public notices of receipt of applications for import and export licenses.[37] The Hearing Notices stated that "any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant . . . ."[38] The same requirement appears in 10 CFR 110.89(b).

Contrary to the explicit requirements of the Hearing Notices and the NRC's regulations, ORRLOC did not serve its Hearing Request on Energy*Solutions*. Instead, the Hearing Request was sent via letter to the Secretary of the Commission. Energy*Solutions* first learned of ORRLOC's Hearing Request on December 27, 2010 when the Office of the Secretary forwarded a copy of the request for hearing to Energy*Solutions*' counsel. ORRLOC's failure to serve Energy*Solutions* is sufficient reason to deny the Hearing Request in its entirety.[39]

B. Petitioner Fails to Establish An Interest That May Be Affected

ORRLOC fails to show how its interest may be affected, contrary to 10 CFR 110.82 and 110.84. To determine whether Petitioner's interest may be affected, the Commission will rely on judicial concepts of standing. Because ORRLOC is an "organization," it must either demonstrate that it has standing in its own right or that it has representational standing on behalf of its members. ORRLOC does not specify or explain whether it is claiming organizational or representational standing. Regardless of how the Hearing Request is analyzed, however, it fails to demonstrate ORRLOC's standing.

---

[37] Request for a License to Import Radioactive Waste, 75 Fed. Reg. at 74,107; Request for a License to Export Radioactive Waste, 75 Fed. Reg. at 74,104 (collectively "Hearing Notices").

[38] Hearing Notices, 75 Fed. Reg. at 74,104, 74,108.

[39] *See Nuclear Mgmt. Co., LLC* (Monticello Nuclear Generating Plant), LBP-05-31, 62 NRC 735, 743 n.13 (2005) ("failure properly to serve counsel for the other participants in the litigation may result in [a] pleading being stricken").

1. *Petitioner Fails to Establish Organizational Standing*

The Hearing Request does not articulate any specific organizational interests. The Hearing Request merely expresses Petitioner's concern that "incineration releases a number of contaminants to the air that are difficult or impossible to capture in filters," including "tritium and mercury," and "every country should have the capability of processing its own nuclear waste in order to avoid concentrating air releases in a few specific locations in the world, including Oak Ridge, Tennessee." As explained in Section III, above, this generalized interest is insufficient to demonstrate organizational standing.[40] Petitioner fails to show a risk or discrete injury beyond the general environmental interest associated with avoiding the addition of contaminants to the air and the policy interest furthered by forcing other countries to process their own waste.

Absent any identified organizational interest beyond a concern that incineration releases contaminants to the air, the Petitioner organization cannot demonstrate organizational standing.

2. *Petitioner Fails to Establish Representational Standing*

Even if we interpret the Hearing Request as requesting representational standing for ORRLOC on behalf of Mr. Norman A. Mulvenon, the Hearing Request still fails, because: (1) no individual—including Mr. Mulvenon—has clearly authorized ORRLOC to represent his or her interest in this proceeding; (2) ORRLOC cannot take advantage of the proximity presumption, either with respect to the facilities where the waste will be processed or disposed, or with respect to the transportation routes; and (3) the Hearing Request fails to show injury-in-fact, causation, and redressability for Mr. Mulvenon, or any other individual.

[40] *Plutonium Export*, CLI-04-17, 59 NRC at 363-64 (*quoting Sierra Club*, 405 U.S. at 739).

a. No Individual Has Authorized Petitioner to Seek a Hearing

The Hearing Request fails to show that ORRLOC is authorized to request a hearing on behalf of any individual. A prerequisite to any claim of representational standing is to identify by name at least one member who has standing in his own right and has authorized ORRLOC to represent his or her interest.[41] The Hearing Request fails to demonstrate representational standing, because no individual—including Mr. Mulvenon—has clearly authorized ORRLOC to represent his or her interests.

b. Petitioner Cannot Rely on the Proximity Presumption

Even if we assume, *arguendo*, that ORRLOC is authorized to represent Mr. Mulvenon, the Hearing Request also fails to show representational standing to the extent ORRLOC may seek to rely on a "proximity presumption." As explained above, in import or export licensing cases, this presumption can only be invoked with a showing of "an obvious potential for offsite consequences."[42] The distance at which the presumption applies "must be judged on a case-by-case basis, taking into account the nature of the proposed action and the significance of the radioactive source."[43] The Hearing Request does not allege that ORRLOC's members are within the area of any obvious potential for offsite consequences resulting from the proposed action. Indeed, the Hearing Request does not even specify how far *any* of ORRLOC's members live from Energy*Solutions*' Tennessee facilities.

Thus, ORRLOC cannot invoke the proximity presumption and must instead show standing under the judicial standing analysis.

---

41 *See Palisades*, CLI-07-18, 65 NRC at 409.

42 *Plutonium Export*, CLI-04-17, 59 NRC at 365 (*quoting Ga. Tech*, CLI-95-12, 42 NRC at 116-17).

43 *Id*.

c. Petitioner Fail the Judicial Standing Test

Under the traditional judicial standing test, Petitioner must show injury-in-fact within the zone of interest, causation, and redressability.[44] Under this analysis, even if we again assume, *arguendo*, that ORRLOC is authorized to represent Mr. Mulvenon, *and* even if we also assume that Mr. Mulvenon lives or works at the location identified on ORRLOC's letterhead, the Hearing Request still fails, because it does not explain how the alleged "contaminants" will reach the identified location, much less reach it in sufficient concentrations to cause harm to any individual.[45]

As a result, ORRLOC has failed to demonstrate standing. This failure cuts strongly against ORRLOC in the Commission's consideration of the relevant factors in 10 CFR 110.84.

B. Discretionary Intervention Would Not Assist The Commission Or Be In The Public Interest

In an import or export licensing proceeding where the Petitioner fails to assert or establish an interest which may be affected, the Commission will consider whether a hearing would be in the public interest, and whether a hearing would assist the Commission.[46]

Critically, ORRLOC does not claim that it has any specialized expertise or information on any of the topics listed below, nor does the Hearing Request provide any evidence suggesting that Petitioner could contribute in this fashion. Thus, if a hearing were to be held, it is unclear how any evidence presented by ORRLOC would assist the Commission in making its required findings.[47]

---

44 *See*, *e.g.*, *Quivira Mining*, CLI-98-11, 48 NRC at 6; *Lujan*, 504 U.S. at 560-62.

45 Hearing Request.

46 *See* 10 CFR 110.84(a).

47 *Cf. Plutonium Export*, 59 NRC at 368 ("Petitioners themselves acknowledge that they do not possess any specialized knowledge not already in the public record . . . .") (citation omitted). *See also Transnuclear, Inc.* (Export of 93.3% Enriched Uranium), CLI-00-16, 52 NRC 68, 72 (2000) ("[T]here is nothing in [the] petition

ORRLOC fails to show that a hearing on the issues it raises would be in the public interest, or that it would assist the Commission in making its required findings. Indeed, ORRLOC does not explicitly identify any specific issues to be addressed in the hearing it requests. Nevertheless, to the extent that there may be two issues ORRLOC seeks to raise that are discernable from the Hearing Request, below Energy*Solutions* explains why such issues do not warrant a hearing. Briefly, ORRLOC's apparent issues are fully addressed in the Import and Export License Applications to the extent required under NRC regulations. Any desire for additional information, beyond that required for the Commission's determination under 10 CFR 110.45, is irrelevant.

First, ORRLOC states that incineration releases a number of contaminants, "includ[ing] tritium and mercury," in the air but provides no further details.[48] The Hearing Request does not allege that the release will exceed any statutory limits nor does it suggest that the contaminants will be of the type and quantity that present a risk to the public health and safety or the environment. Moreover, as described in the Import Application, the radionuclides in the LLRW will at no time exceed the limits in Duratek's Tennessee licenses.[49] Incineration activities, of course, are regulated by the State of Tennessee and are required to be conducted within the criteria set forth in the Tennessee licenses.[50] ORRLOC identifies no regulatory requirement for Energy*Solutions* to provide additional information to the NRC on Duratek's compliance with those licenses. It also provides no information to suggest that surrounding populations are

---

indicating that [petitioner] possesses special knowledge or that it will present significant information not already available to and considered by the Commission.").

48 Hearing Request.

49 *See* Import Application at 7.

50 *See id*. at 8.

negatively impacted by operations the Tennessee facilities; nor is Energy*Solutions* aware of such evidence.

Second, ORRLOC asserts that "every country should have the capability of processing its own nuclear waste in order to avoid concentrating air releases in a few specific locations in the world, including Oak Ridge, Tennessee."[51] In other words, ORRLOC suggests that the NRC should adopt a new policy to prohibit importation of LLRW because other countries "should" have the capability of processing their own nuclear waste. The Commission, however, has adopted a different policy and its rules permit the importation of LLRW, subject to NRC regulation. This adjudication is not the proper forum to revisit this policy or the regulations in 10 CFR Part 110.

In the 1995 Final Rule promulgating the current basic regulations on import and export of radioactive waste, the Commission rejected comments that "urged the NRC to ban all imports and exports of radioactive waste" or to limit such movements to "extraordinary circumstances."[52] This was because "[i]nternational commerce in radioactive waste into and out of the United States, may be desirable from a policy perspective."[53] The Commission continued by citing certain "example[s]" of instances where "commerce involving radioactive waste may further important policy goals of the international community," including "waste shipments for international research."[54] The Commission's regulations, moreover, do not restrict all imports to such examples, nor do they require imports or exports to fulfill "important policy goals."[55] In addition, the Commission also has a long history of permitting the importation of LLRW for

---

51 Hearing Request.

52 Final Rule, Import and Export of Radioactive Waste, 60 Fed. Reg. 37,556, 37,557 (July 21, 1995).

53 *Id*.

54 *Id*.

55 *See* 10 CFR 110.45.

commercial purposes.[56] Indeed, the NRC recently completed an extensive rulemaking to update, clarify, and correct many aspects of its import and export regulations in 10 CFR Part 110.[57] The Commission could have adopted more stringent controls on the import and export of LLRW—as ORRLOC apparently desires—but chose not to. Instead, the Commission "simplifie[d] the regulatory framework"[58] and "align[ed]" its "export and import regulations with its domestic regulations . . . ."[59] Ultimately, ORRLOC questions and seeks to revise this policy, apparently hoping that the Commission will adopt a new policy prohibiting—or strictly limiting—commercial importation of LLRW, including waste generated through research activities, such as the waste proposed to be imported here. A hearing on ORRLOC's desired changes to NRC rules would not assist the Commission in making its required determinations under 10 CFR 110.45.

Moreover, as explained in Energy*Solutions*' Waiver Response, this routine proposed import and export raises no unique policy issues. On the contrary, the Commission's current regulations reflect this nation's compelling policy and legal interests in the safe disposal of radioactive waste that is generated throughout the world. As noted above, the LLRW proposed to be imported is primarily nuclear medicine-related waste, from hospitals, research facilities, and other technical facilities. By facilitating the responsible management of waste, the United States is able to help support the use of nuclear medicine for the benefit of populations in other

---

[56] *E.g.*, Import License No. IW017 (Oct. 10, 2006), *available at* ADAMS Accession No. ML062860179 (authorizing importation of Class A LLRW from Canada for recycling and/or disposal and specifying that nonconforming material will be returned to Canada under an appropriate export license); Import License No. IW022 (Sept. 25, 2007), *available at* ADAMS Accession No. ML072750271 (authorizing importation of Class A LLRW from Canada for recycling and specifying that nonconforming material will be returned to Canada under an appropriate export license); Import License No. IW009 (Oct. 16, 2003), *available at* ADAMS Accession No. ML032960176 (authorizing importation of Class A LLRW from Germany for recycling and/or disposal, and specifying that certain byproducts will be returned to Germany under an appropriate export license).

[57] *See* 2010 Final Rule, 75 Fed. Reg. at 44,072.

[58] *Id*. at 44,073.

[59] *Id*. at 44,074.

countries. Significantly, U.S. citizens also benefit from the global marketplace, because the United States imports radio-pharmaceutical products that are produced by other countries. These other countries manage and dispose the spent nuclear fuel and other radiological hazards associated with the reactor operations necessary to produce such radio-pharmaceuticals, even though the benefits of the production flow to U.S. citizens.

In sum, a hearing on the issues ORRLOC appears to raise would not be in the public interest, nor would it assist the Commission in making the required statutory determinations on the license applications, contrary to 10 CFR 110.84(a).

V. CONCLUSION

For the foregoing reasons, the Commission should deny the Hearing Request in its entirety.

Respectfully submitted,

Signed (electronically) by Raphael P. Kuyler
John E. Matthews
Raphael P. Kuyler
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, N.W.
Washington, DC 20004
Phone: 202-739-5524
Email: jmatthews@morganlewis.com

Brett Hickman
Energy*Solution*s, Inc.
423 West 300 South
Suite 200
Salt Lake City, UT 84101
Phone: 801-244-8438
Email: bahickman@energysolutions.com

Counsel for Energy*Solutions*

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Commission

In the Matter of	)	Docket Nos. 110-05896 (Import)
	)	110-05897 (Export)
ENERGY*SOLUTIONS*	)	
	)	
(Radioactive Waste Import/Export Licenses)	)	January 26, 2011
	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing ENERGY*SOLUTIONS'* ANSWER OPPOSING OAK RIDGE RESERVATION LOCAL OVERSIGHT COMMITTEE'S REQUEST FOR HEARING has been served upon the following persons on January 26, 2011 through the Electronic Information Exchange ("EIE"). Participants who are not registered with EIE were served via e-mail and U.S. Mail in accordance with 10 CFR 110.89(c)(3) and are indicated with an asterisk.

U.S. Nuclear Regulatory Commission
Office of the Secretary of the Commission
Mail Stop O-16C1
Washington, DC 20555-0001

OCAAMAIL
E-mail: OCAAMAIL@nrc.gov

Hearing Docket
E-mail: hearingdocket@nrc.gov
Evangeline S. Ngbea
E-mail: evangeline.ngbea@nrc.gov

OGCMailCenter
Kristy Remsburg
E-mail: ogcmailcenter@nrc.gov

Diane D'Arrigo
E-mail: dianed@nirs.org

Kathleen Ferris, Co-Founder
Citizens to End Nuclear Dumping in Tennessee
E-mail: k.r.ferris@comcast.net

Franz Raetzer
E-mail: fraetzer@icx.net

Donald Safer
Tennessee Environmental Council
E-mail: dsafer@comast.net

James B. Steinberg*
Deputy Secretary of State
2201 C Street NW
Washington DC 20520
E-mail: updegrovell@state.gov

Norman A. Mulvenon*
Chair, LOC Citizens' Advisory Panel
102 Robertsville Rd., Suite B
Oak Ridge, TN 37830
E-mail: loc@icx.net

Respectfully submitted,

Signed (electronically) by Raphael P. Kuyler

Raphael P. Kuyler