

## **AMENDED SCHEDULE A**

### **Rule 45 Subpoena for the Production of Data and Documents to Third Party**

#### **The Nuclear Regulatory Commission**

#### **DEFINITIONS**

The definitions and rules of construction set forth in Federal Rule of Civil Procedure 34 and Local Civil Rule 26 are hereby incorporated and apply to these Requests. These definitions apply throughout these Requests without regard to capitalization. Defendants reserve the right to serve additional requests for production of documents.

1. “Action” means *United States of America v. EnergySolutions, Inc. et al.*, Civil Action No. 1:16-cv-01056-GMS, which Plaintiff commenced on November 16, 2016.

2. “Complaint” means the Complaint filed on November 16, 2016 in the above-captioned Action.

3. “Defendants” means *EnergySolutions, Inc.*, *Rockwell Holdco, Inc.*, *Andrews County Holdings, Inc.*, and *Waste Control Specialists LLC*.

4. “ES” means *EnergySolutions, Inc.*

5. “WCS” means *Waste Control Specialists LLC*.

6. The terms “DOJ,” or “Plaintiff” means the United States Department of Justice and all attorneys general, employees, agents, attorneys, representatives, and all other persons acting or purporting to act or that have acted or purported to have acted on behalf of any of the foregoing.

7. The terms “You,” “Your,” or “NRC” means the Nuclear Regulatory Commission and all employees, agents, representatives and all other persons acting, purporting to act, have acted, or purported to have acted on behalf of any of the foregoing.

8. The term “LLRW” shall mean low-level radioactive waste, which consists of Class A, Class B, and Class C waste.

9. The term “Class A waste” refers to low-level radioactive waste as defined at 10 C.F.R. § 61.55.

10. The term “Class B/C waste” refers to low-level radioactive waste as defined at 10 C.F.R. § 61.55.

11. The term “exempt waste” refers to radioactive waste that is exempted, through any of the multiple regulatory frameworks (or exemptions provided for therein), from rules and regulations governing the transportation of and disposal of low-level radioactive waste.

12. The term “Barnwell facility” shall mean the disposal facility in Barnwell, South Carolina operated by ES and owned by the State of South Carolina that accepts and disposes of low-level radioactive waste from the Atlantic Compact.

13. The terms “blend” and “blending” refers to the mixing of various types of low-level radioactive waste in order to produce waste that is suitable for disposal at a Class A facility.

14. The term “decommissioning” shall mean to remove a facility or site safely from service and reduce residual radioactivity to a level that permits (1) release of the property for unrestricted use and termination of the license; or (2) release of the property under restricted conditions and termination of the license as defined in 10 C.F.R. § 50.2.

15. The term “decommissioning LLRW” shall mean LLRW and exempt waste identified for removal from a generator’s facility as part of decommissioning.

16. The term “document” is defined in accordance with Rule 34 of the Federal Rules of Civil Procedure, and includes all Electronically Stored Information and written, recorded, or graphic material of every kind, prepared by any person, that is in Your possession, custody, or

control, including writings, drawing, graphs, charts, photographs, sound recordings, images, and other data or data compilations. The term “document” includes the complete original document (or a copy thereof if the original is not available), all drafts, whether or not they resulted in a final document, and all copies that differ in any respect from the original, including any notation, underlining, marking, or information not on the original. The term “document” also includes metadata and files, information, or data created or stored in software-as-a-service or cloud computing. Documents covered by these Requests include but are not limited to the following: letters; memoranda; presentations; reports; contracts and other agreements; studies; plans; entries in notebooks, calendars and diaries; minutes, records, and transcripts of conferences, meetings, telephone calls, voicemails, or other communications; publications and unpublished speeches or articles; typed and handwritten notes; electronic mail; electronic messaging including text messages and instant messages; facsimiles (including the header showing the receipt date and time); tabulations; statements, ledgers, and other records of financial matters or commercial transactions; diagrams, graphs, charts, blueprints, and other drawings; technical plans and specifications; advertising, product labels, and packaging materials; photographs, photocopies, slides, microfilm, microfiche, and other copies or reproductions; film, audio, and video tapes; tape, disk; and computer printouts.

17. The term “generator” refers to any private or government entity that generates or has generated LLRW in the operation of its business.

18. The term “in-house” shall mean at a generator’s facility.

19. The term “investigation” shall mean the DOJ’s investigation of the proposed acquisition of Harold C. Simmons Family Trust No. 2 by Energy Capital Partners II, LP.

pursuant to Section 7 of the Clayton Act, 15 U.S.C. §18 and Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1, 2.

20. The term “logistics” shall mean all services associated with the transportation of radioactive material, including but not limited to, obtaining required local and federal licenses and permits, loading and bracing shipments, conducting vehicle radiation surveys, ensuring required safety procedures are in place, and unloading and preparing LLRW for disposal.

21. The term “WCS Exempt Cell” means the Resource Conservation and Recovery Act hazardous waste facility operated by WCS in Andrews, Texas.

22. The term “operational LLRW” means LLRW and exempt waste generated through the ordinary operation of a generator’s facility.

23. The term “RCRA landfill” means any facility authorized under the Resource Conservation and Recovery ACT (RCRA) to dispose of nonhazardous solid waste.

24. The term “BSFR” means the State of Tennessee’s Bulk Survey for Release program, which allows for the disposal of materials with low levels of radioactive contamination in specified Class I landfills in Tennessee.

25. The term “off-site” means taking place away from a particular site or premises.

26. The term “on-site” means taking place at a particular site or premises.

27. The term “processing” means the treatment or handling of LLRW or exempt waste prior to disposal, including by characterization, categorization, segregation, dewatering, blending, and similar activities for the purpose of reducing the volume of the class of LLRW, reducing the class of LLRW, or preparing waste for shipment.

28. The term “Branch Technical Paper” refers to the guidance document titled “Concentration Averaging and Encapsulation Branch Technical Position, Revision 1” issued by the NRC in February, 2015.

29. The term “relating to” shall mean concerning, relating to, referring to, reflecting, describing, involving, evidencing, concerning or constituting.

30. The “Second Request” means the Request for Additional Information and Documentary Material Issued by the Department of Justice on February 4, 2016.

31. “Local Civil Rules” means the Local Civil Rules of the United States District Court for the District of Delaware.

32. To bring within the scope of these requests all documents that might otherwise be construed to be outside of their scope, the following rules of construction apply: (i) the masculine, feminine, or neuter pronoun shall not exclude other genders; (ii) the word “including” shall be read to mean “including without limitation”; (iii) the present tense shall be construed to include the past tense and vice versa; (iv) references to employees, officers, directors, or agents shall include both current and former employees, officers, directors, and agents; (v) the terms “and” and “or,” and “all,” “any,” and “each,” shall be construed in accordance with Local Civil Rule 26; and (vi) in accordance with Local Civil Rule 26, the use of the singular form of any word includes the plural and vice versa.

### **INSTRUCTIONS**

1. Unless otherwise specified by a particular request, the discovery sought relates to the period from 2006 through the present.

2. Documents requested are those in Your actual or constructive possession, custody, or control, including all representatives, attorneys, and other agents, including without

limitation consultants, accountants, lawyers, or any other persons retained, consulted by, or working on Your behalf or under Your direction, wherever they may be located.

3. If You produce documents as they are kept in the ordinary course of business, designate the sources and location of each responsive document, including the corporate entity and/or the person from which or whom it was obtained.

4. Produce all documents in complete, unredacted form, unless privileged. Submit documents as stored. Mark each page of each document with corporate, custodian identification and with consecutive Bates numbers. Provide a translation of non-English documents into English; submit the foreign language document, with the English translation.

5. For electronic document files, including without limitation, Microsoft Word, PowerPoint, Adobe or PDF, Microsoft Excel, and files from similar applications (“Electronically Stored Document Application Files”), production shall take the form of single-page TIFF images with cross-referenced image and load data files showing document breaks and formatted for Concordance and for loading into Opticon. Metadata shall be produced in accordance with the District of Delaware’s Default Standard for Discovery, Including Discovery of Electronically Stored Information and shall include without limitation:

- Application/Doc Type
- Beginning and Ending Bates Numbers
- Title
- Author
- Date Created
- Date Last Modified
- Date Last Printed

- Text of Document
- File Size
- File Extension
- File Path
- Control Number Begin/End
- Custodian

Excel and Access files shall be produced in native form. For all other file types, the party that propounded the discovery may request that a document be produced in native form if there is a reasonable good-faith basis for doing so, e.g., if the source file includes color or detailed images, is an odd size, includes animation, or otherwise did not print to TIFF in an accurate or clear manner.

In the event that any documents in this category are produced with redaction to remove privileged matter, the producing party may also withhold associated metadata, but only to the extent that withholding specific metadata is determined by the producing party in good faith to be necessary to preserve the claim of privilege.

6. Emails also should be produced as single-page TIFF files according to the same protocols outlined above, with respect to Electronically Stored Document Application Files, except that for email metadata shall be produced in accordance with the District of Delaware's Default Standard for Discovery, Including Discovery of Electronically Stored Information and shall include, without limitation:

- Beginning and Ending Bates Number
- Beginning and Ending Bates Ranges
- Date Sent in MM/DD/YY format

- Time Sent in 24 hour format
- Date Received
- Time Received
- Title/Subject
- To, From, CC, and BCC fields
- Attachment
- Text of Email
- Folder
- Custodian

Where an email has an attachment, each attachment should be produced immediately following the email to which it was attached.

In the event that any documents in this category are produced with redaction to remove privileged matter, the producing party may also withhold associated metadata, but only to the extent that withholding specific metadata is determined by the producing party in good faith to be necessary to preserve the claim of privilege.<sup>1</sup>

7. Each document requested herein is to be produced in its entirety with all attachments and enclosures regardless of whether you consider the attachments and enclosures to be relevant or responsive to these requests. If a document that is responsive to any request cannot be produced in full, it shall be produced to the extent possible with an explanation of why production of the remainder is not possible.

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<sup>1</sup> In the event that any part or portion of Paragraphs 6 and 7 differ from any Order entered by the Court in the above-captioned litigation regarding the preservation and production of Electronically Stored Information, the terms of that Order shall supersede.

8. Any objection to these discovery requests shall be made in writing and shall state with specificity all grounds for the objection.

9. If there are no documents responsive to a specific document request, please so state in writing.

### **DOCUMENTS REQUESTED**

#### **Request No. 1)**

All internal communications since 2011 between John Tappert, the Director of Decommissioning, Uranium Recovery, & Waste Programs, and any of Your employees or third-party regulatory agencies regarding the market for operational or decommissioning LLRW, specifically:

- A. The pricing of waste disposal services;
- B. The entities that offer waste disposal services;
- C. Generators disposing of waste pursuant to § 10 CFR 20.2002;
- D. WCS' exempt cell;
- E. Any potential new entries into the waste disposal market;
- F. The extent to which the cumulative amount of LLRW produced by generators has changed in the last ten years;
- G. The ability of generators to process waste on-site;
- H. The ability of generators to store waste on-site;
- I. The number of nuclear plants likely to be decommissioned in the next ten years;
- J. The cost of such decommissioning projects; and
- K. The likely bidders on such decommissioning projects.

**Request No. 2)**

Documents sufficient to show all requests made to the NRC for disposal authorization pursuant to § 10 CFR 20.2002 and the access number associated with each request, regardless of whether such authorization was granted or denied.

**Request No. 3)**

Communications, either internal or between You and any other government entity since 20101, regarding the process for obtaining authorization to dispose of low-level radioactive waste pursuant to § 10 CFR 20.2002, regarding specifically:

- A. The approval or rejection of such requests;
- B. The number of requests You or the government entity receives on an annual basis;
- C. The likelihood of such requests being approved in the future; or
- D. Any changes or potential future changes in the process for determining the approval of such requests.

**Request No. 4)**

All internal and non-public documents and communications related to applications and approvals for the type of exemption granted by the Texas Commission on Environmental Quality to WCS for their Subtitle C RCRA facility, specifically:

- A. Documents concerning the approval of WCS' exemption;
- B. Requests from other third-parties for similar exemptions;
- C. The willingness of state regulators or the NRC to approve or grant similar exemptions in the future; and

- D. The NRC's official or unofficial role in approving or accepting such exemptions.

**Request No. 5)**

Internal non-public documents and communications regarding the extent to which the amount of Class B and C waste that generators produce on an annual basis has changed since 2006, and how much of such waste is capable of being blended.

**Request No. 6)**

All non-public internal studies, documents and communications describing the current and future decommissioning LLRW market, specifically:

- A. Documents describing the number of power plants likely to be decommissioned in the near future;
- B. The estimated cost of such decommissioning projects; and
- C. Any anticipated or contemplated changes to the regulatory scheme governing decommissioning projects.

**Request No. 7)**

All internal non-public documents and communications concerning to ES' proposed acquisition of WCS.

**Request No. 8)**

All internal non-public documents and communications concerning the U.S. DOJ's investigation of ES.