

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE COMMISSION

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In the Matter of)	
WASTE CONTROL SPECIALISTS LLC)	Docket No. 72-1050
(Consolidated Interim Storage Facility))	March 17, 2017

**WASTE CONTROL SPECIALISTS LLC’S ANSWER OPPOSING
NUCLEAR INFORMATION AND RESOURCE SERVICE’S LETTER REQUESTING
AN EXTENSION OF TIME AND PROPOSING APPROVAL OF ALTERNATE
BRIEFING SCHEDULE**

I. INTRODUCTION

Nuclear Information and Resource Services, et al. (collectively, “NIRS”) submitted a letter to the Secretary of the Commission dated March 9, 2017 (“Request”), requesting a 120-day extension beyond the 60-days previously provided (180 days total)¹ for persons to submit a hearing request related to Waste Control Specialists LLC’s (“WCS”) pending Application for a license pursuant to 10 CFR Part 72 for a proposed Consolidated Interim Storage Facility (“CISF”).

Pursuant to 10 C.F.R. § 2.323(c), WCS submits this Answer opposing NIRS’s Request because it fails to provide the good cause required by 10 C.F.R. § 2.307 for such a lengthy extension. Nonetheless, in the interest of the judicial economy resulting from an orderly briefing schedule, WCS would support a more limited extension of NIRS’s time to file hearing requests, subject to the same schedule terms set forth in WCS’s and Sierra Club’s unopposed Joint Motion for Revised Schedule Related to Hearing Requests, dated March 13, 2017 (“Joint Motion”).

¹ See License Application; Docketing and Opportunity to Request a Hearing and to Petition for Leave to Intervene, 82 Fed. Reg. 8773 (Jan. 30, 2017) (“Notice of Hearing Opportunity”).

Separately, NIRS also requested a 90-day extension to the March 13, 2017 deadline to comment on the scope of the associated Environmental Impact Statement (“EIS”).² This Answer does not address NIRS’s request to extend the EIS scoping comment period because it falls outside the scope of this adjudicatory proceeding and the Nuclear Regulatory Commission (“NRC”) staff already has provided an extension to the EIS scoping comment period in response to such requests.³

II. THE REQUEST FAILS TO ESTABLISH GOOD CAUSE FOR AN EXTENSION

Hearing requests in this proceeding currently are due on March 31, 2017.⁴ The Request seeks extension of this deadline to July 29, 2017.⁵ NIRS claims that it needs this extension because the Application “will trigger the largest [spent nuclear fuel] transport campaign . . . in history,” creates a potential for the CISF to become a reprocessing facility, and is “changing significantly.”⁶

NRC regulations, 10 C.F.R. § 2.307(a), allow extensions only upon demonstration of “good cause.” The Commission has explained that “good cause,” in the context of adjudicatory filings, requires a showing of “unavoidable and extreme circumstances.”⁷ As demonstrated

² Request at 1.

³ The NRC staff has subsequently re-opened the scoping period and indicated that it will continue to accept comments until April 28, 2017, and comments received after that date will be considered “if it is practical to do so.” See Environmental Impact Statement; Extension of Scoping Comment Period; Additional Public Scoping Comment Meeting, 82 Fed. Reg. 14,039 (Mar. 16, 2017). As with the request addressed in this Answer, NIRS has not identified any reason justifying any longer extension.

⁴ Notice of Hearing Opportunity, 82 Fed. Reg. at 8773.

⁵ Request at 1. The request incorrectly seeks “an extension of 120 days beyond the March 31, 2017 deadline . . . until July 1, 2017.” *Id.* July 29, 2017 is 120 days beyond the March 31, 2017 deadline.

⁶ *See id.* at 1-2.

⁷ *See Balt. Gas & Elec. Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 & 2), CLI-98-25, 48 NRC 325, 342 (1998) (holding that “construction of ‘good cause’ to require a showing of ‘unavoidable and extreme circumstances’ constitutes a reasonable means of avoiding undue delay”); *see also Hydro Res., Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 87210), CLI-99-1, 49 NRC 1, 3 n.2 (1999) (“We caution all parties in this case, however, to pay heed to the guidance in our policy statement that ordinarily only ‘unavoidable and extreme circumstances’ provide sufficient cause to extend filing deadlines”); Statement of Policy on Conduct of Adjudicatory Proceedings, CLI-98-12, 48 NRC 18, 21 (1998).

below, no such circumstances are present here, and NIRS does not have good cause for its extension request.

First, NIRS asserts that the extension request is justified because the CISF will receive spent nuclear fuel from across the country, which involves “many novel and complex technical and legal issues” and it needs time to evaluate certain topics.⁸ However, approval for shipment of spent nuclear fuel from the originating commercial nuclear reactors to the CISF is not part of this Application. Regardless, the complexity of the Application is immaterial to whether good cause exists for such a lengthy extension. And even if cross-country shipment leads to a large number of interested stakeholders, as NIRS suggests, the Application is no more complex than other applications considered by the NRC that are subject to the 60-day deadline in 10 C.F.R. § 2.309(b) following publication of a notice of an opportunity to request a hearing. Moreover, WCS submitted the Application in April 2016 and it has been publicly available for almost 10 months. The claimed inconvenience and time commitment required to voluntarily coordinate challenges to an application is not the type of unavoidable or extreme circumstance that warrants NIRS’s extraordinary requested delay.⁹

Second, the alleged potential for reprocessing any fuel in the United States is wholly irrelevant and outside the scope of the CISF Application. The CISF will be licensed under 10 CFR Part 72, which only permits storage of spent nuclear fuel and radioactive waste. WCS is not seeking approval to engage in any reprocessing activities.

⁸ Request at 1-2.

⁹ See *Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), CLI-01-28, 54 NRC 393, 400 (2001) (noting that the cost and inconvenience of litigation is not relevant to consideration of a motion to suspend a proceeding); see also *Consolidated Edison Co. of NY* (Indian Point, Units 1 and 2), CLI-01-8, 53 NRC 225, 229-30 (2001) (“litigation invariably results in the parties’ loss of both time and money. We cannot postpone cases for many weeks or months simply because going forward will prove difficult for litigants or their lawyers.”).

Third, contrary to NIRS's assertion, WCS's Application is not "changing significantly." WCS submitted Revision 0 of its CISF Application to the NRC on April 28, 2016.¹⁰ As identified in the *Federal Register* notice providing the opportunity to request a hearing, WCS has responded to a number of NRC requests for supplemental information ("RSI"), providing detailed mark-ups of changes to the Application.¹¹ WCS submitted these responses between July and December 2016, the latest response submitted almost three months ago. WCS submitted Revision 1 of the Application earlier this week to incorporate those changes identified in the RSI responses, provide supplemental information, and make editorial and consistency changes. In the Joint Motion, WCS agreed to double the time to submit a hearing request to account for the release of Revision 1, even though WCS had already identified most of these changes through prior, publically available RSI responses. The Joint Motion obviates any claim that more time is needed premised on changes in Revision 1.

Finally, even if NIRS had demonstrated a single basis for good cause warranting an extension, NIRS was required to make "a sincere effort to contact other parties in the proceeding and resolve the issue(s) raised in the motion" pursuant to 10 C.F.R. § 2.323(b). We are aware of no such effort by NIRS. Section 2.323(b) mandates that a "motion must be rejected" if this is not done.

III. ALTERNATIVE EXTENSION PROPOSAL

Even though NIRS has failed the good cause standard for an extension, WCS would agree to the same extension as set forth in the Joint Motion. This approach will result in judicial economy because any hearing requests would encompass all changes in Revision 1, and WCS and the NRC staff will be able to respond to all requests at the same time, which may allow for

¹⁰ See Waste Control Specialists LLC, Consolidated Interim Storage Facility System Safety Analysis Report, Rev. 0 (Apr. 28, 2016) (ML16182A051).

¹¹ Notice of Hearing Opportunity, 82 Fed. Reg. at 8,776.

consolidation of answers to similar issues. In the Joint Motion, which the NRC staff does not oppose, WCS and Sierra Club jointly proposed the following alternative schedule:

- Deadline for all hearing requests from any petitioner on the CISF Application – May 31, 2017
- Deadline for all answers to hearing requests submitted on or before the May 31, 2017 deadline – July 14, 2017
- Deadline for replies to answers for all hearing requests submitted on or before the May 31, 2017 deadline – July 21, 2017

IV. CONCLUSION

For the reasons discussed above, NIRS has not identified good cause for a 120-day extension. Nonetheless, WCS proposes the alternative schedule detailed above as described in the unopposed Joint Motion by WCS and Sierra Club.

Respectfully submitted,

Executed in Accord with 10 C.F.R. § 2.304(d)

Timothy P. Matthews

Stephen J. Burdick

Morgan, Lewis & Bockius LLP

1111 Pennsylvania Avenue, N.W.

Washington, D.C. 20004

Phone: 202-739-5059

E-mail: timothy.matthews@morganlewis.com

E-mail: stephen.burdick@morganlewis.com

Counsel for Waste Control Specialists LLC

Dated in Washington, D.C.
this 17th day of March 2017

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CERTIFICATE OF SERVICE

I hereby certify that, on this date, a copy of “Waste Control Specialists LLC’s Answer Opposing Nuclear Information and Resource Service’s Letter Requesting an Extension of Time and Proposing Approval of Alternate Briefing Schedule” was filed through the E-Filing system.

Signed (electronically) by Stephen J. Burdick
Stephen J. Burdick
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Phone: 202-739-5059
Fax: 202-739-3001
E-mail: stephen.burdick@morganlewis.com

Counsel for Waste Control Specialists LLC

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