

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE COMMISSION

In the Matter of)	
)	
UNITECH SERVICES GROUP, INC.)	Docket Nos. 11006248 & 11006249
)	
(Import & Export of Low-Level Waste))	March 22, 2017
)	

**UNITECH ANSWER TO EXTENSION REQUEST LETTER
FILED BY THE NUCLEAR INFORMATION AND RESOURCE SERVICE AND
DON'T WASTE MICHIGAN DATED MARCH 13, 2017**

I. INTRODUCTION

Pursuant to 10 C.F.R. § 110.109(b), UniTech Services Group, Inc. (“UniTech”) files this answer to the request, dated March 13, 2017, submitted by the Nuclear Information and Resource Service and Don’t Waste Michigan (“Requesters”) to the U.S. Nuclear Regulatory Commission (“NRC”) seeking “an extension . . . on the deadline to request a hearing and to intervene” in the above-captioned proceedings (“Request”).¹ UniTech opposes the Request because it fails to comply with NRC hearing procedures and because Requesters have not addressed, much less demonstrated, good cause for an extension of the hearing opportunity. Moreover, the Part 110 review process is intentionally designed to “expeditiously process” import and export applications “to the maximum extent feasible.”² Extending the hearing request and intervention deadline would impose undue delay and burden on the applicant, contrary to the spirit of Part 110.

¹ Email from Diane D’Arrigo, Nuclear Information and Resource Service, to Andrea Jones, Hearing Docket, Annette Vietti-Cook, and NRCExecSec Resource, “Dockets NRC-2017-0055 and NRC-2017-0054” (Mar. 13, 2017).

² 110 C.F.R. § 110.40(a).

II. BACKGROUND

On October 20, 2016, as supplemented on December 20, 2016, UniTech filed applications with the NRC seeking specific licenses authorizing the import and export of low-level waste (“Applications”).³ On February 16, 2017, pursuant to 10 C.F.R. § 110.70, the NRC published in the *Federal Register* notices of receipt of the Applications (“Notices”).⁴ The Notices explained the following: (1) written comments could be submitted within 30 days of publication of the Notices, and (2) requests for hearings or petitions for leave to intervene could be filed within 30 days of publication of the Notices.⁵ These deadlines are consistent with the NRC regulations at 10 C.F.R. §§ 110.81(b) and 110.82(c), thus providing further notice to the Requesters of the deadlines. On March 13, 2017, Requesters submitted written comments via the *regulations.gov* website on the dockets for each of the Applications.⁶

Also on March 13, 2017, Requesters sent the Request—which is identical to those written comments—to four email addresses at the NRC.⁷ The Request seeks “an electronic docket, more technical and geographical information, [and] an extension on the comment period and on the

³ UniTech Services Group, Inc., Application for NRC Import License (Oct. 20, 2016) (ML17024A278); UniTech Services Group, Inc., Application for NRC Export License (Oct. 20, 2016) (ML17024A270).

⁴ See Request To Amend a License To Import Radioactive Waste, 82 Fed. Reg. 10,918 (Feb. 16, 2017); Request for a License To Export Radioactive Waste, 82 Fed. Reg. 10,919 (Feb. 16, 2017). The NRC subsequently published corrections to typographical errors in these notices. See Request for a License To Import Radioactive Waste, 82 Fed. Reg. 12,640 (Mar. 6, 2017) (noting the application was for a license, not a license amendment); Request for a License To Export Radioactive Waste, 82 Fed. Reg. 12,641 (Mar. 6, 2017) (noting the correct ADAMS Accession number for the application). Although not raised by Requesters, neither of these typographical errors renders the corresponding original notice legally deficient. Indeed, the original notices were clear enough to alert the Requesters that their interests were potentially affected (as evidenced by their filing of the Request), and allowed the Requesters to review related underlying documents (which they even criticize in the Request). See, e.g., *Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), CLI-04-28, 60 NRC 412, 415 (2004) (finding notice was adequate, and re-notice was not necessary, under similar circumstances).

⁵ See Notices.

⁶ D. D’Arrigo, NIRS, and M. Keegan, Don’t Waste MI, Public Submission, Docket NRC-2017-0054 (Mar. 13, 2017) (ML17075A136); D. D’Arrigo, NIRS, and M. Keegan, Don’t Waste MI, Public Submission, Docket NRC-2017-0055 (Mar. 13, 2017) (ML17075A131).

⁷ These four email addresses were as follows: Annette.Viitti-Cook@nrc.gov, NRCExecSec@nrc.gov, andrea.jones2@nrc.gov, and hearingdocket@nrc.gov.

deadline to request a hearing and to intervene.”⁸ On March 15, 2017, the NRC Staff forwarded the Request to UniTech via email.⁹ Consistent with the Notices and the NRC regulations, hearing requests and petitions for leave to intervene in this proceeding were due on March 20, 2017.

III. THE REQUEST FAILS TO COMPLY WITH NRC HEARING PROCEDURES AND FAILS TO ESTABLISH GOOD CAUSE FOR AN EXTENSION

The NRC’s hearing procedures for import and export licensing “are generally contained in 10 C.F.R. Part 110, Subparts H, I, and J.”¹⁰ More specifically, “Motions and requests” are covered by 10 C.F.R. § 110.109, and the Secretary is authorized to rule on procedural requests per 10 C.F.R. § 110.88. As relevant here, 10 C.F.R. § 110.109(a) requires that written motions and requests be addressed to the presiding officer, filed with the Secretary, and served on other participants; and 10 C.F.R. § 110.89 requires that documents be filed by delivery, mail, or the NRC’s E-Filing system. The February 16, 2017 Notices similarly addressed electronic filing.

Contrary to these procedural requirements, the Request was not addressed to the presiding officer—here, the Commission. Requesters also failed to serve the Request on UniTech, contrary to 10 C.F.R. § 110.109(a), and still have not properly served the Request. Finally, the Request was sent to the Secretary by email; but, the Part 110 regulations do not provide for filing or service by email. Thus, Requesters also failed to comply with the requirements of 10 C.F.R. § 110.89. Accordingly, the Request should be rejected for failure to comply with NRC hearing procedures.¹¹

⁸ See Request at 1.

⁹ Email from Andrea Jones, NRC, to Glenn E. Roberts, UniTech, “FW: Dockets NRC-2017-0055 and NRC-2017-0054” (Mar. 15, 2017).

¹⁰ *Edlow Int’l Co.* (Export of 93.20% Enriched Uranium), CLI-17-03, 85 NRC __ n.8 (slip op. at 5) (2017).

¹¹ The Request fails to satisfy other procedural standards in Part 2 that are not explicitly covered in Part 110. For example, the Request is not signed, contrary to 10 C.F.R. § 2.304(d). Additionally, although e-mailed by Ms.

Furthermore, the Request substantively fails to demonstrate “good cause” for an extension. Although Part 110 does not specifically define a standard for requests seeking an extension of time, Part 2, which prescribes the NRC’s Rules of Practice and Procedure, defines a standard for extension requests in 10 C.F.R. § 2.307. Section 2.307 states that deadlines may only be extended for “good cause.” In the absence of a defined standard in Part 110 itself, the Secretary should be guided by the “good cause” standard in Part 2. More generally, the Commission “explicitly discourages extensions of deadlines absent extreme circumstances.”¹² The Commission also has explained that “good cause,” in the context of adjudicatory filings, requires a showing of “unavoidable and extreme circumstances.”¹³

Rather than address the good cause standard, Requesters simply allege they need “additional information . . . on which to base further analysis and decisions.”¹⁴ The Request poses a series of questions and seeks an extension of the hearing request and intervention deadline to an unspecified date “90 days AFTER [such] additional information is provided.”¹⁵ However, such statements and questions do not demonstrate “good cause” for an extension. Rather, they are more appropriately viewed as comments on the sufficiency of the application itself. Indeed, Requesters even submitted duplicate copies of the Request as comments on the *regulations.gov* dockets for the captioned proceedings. Otherwise, the Request fails to proffer

D’Arrigo, there is no indication that Don’t Waste Michigan has authorized Ms. D’Arrigo to submit the request on its behalf, and no notice of appearance was filed, contrary to 10 C.F.R. § 2.314(b). Furthermore, the document was not accompanied by a signed certificate of service, contrary to 10 C.F.R. § 2.305(c)(4).

¹² *Hydro Res., Inc.*, (Albuquerque, NM), 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”); *see also* Policy on Conduct Of Adjudicatory Proceedings; Policy Statement, 63 Fed. Reg. 41,872, 41,874 (Aug. 5, 1998).

¹³ *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”).

¹⁴ Request at 1.

¹⁵ *Id.*

any substantive basis for a finding that “good cause” exists—much less does it point to any “unavoidable and extreme circumstances”—that would justify extending the hearing request and intervention deadline. Accordingly, the Request should be denied.

IV. CONCLUSION

As the Requesters have failed to demonstrate “good cause” for an extension of the March 20, 2017 hearing request and intervention deadline, the Request should be denied.

Respectfully submitted,

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

Stephen J. Burdick, Esq.
Ryan K. Lighty, Esq.
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 UniTech Services Group, Inc.

Dated in Washington, D.C.
this 22nd day of March 2017

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE COMMISSION

In the Matter of)	
)	
UNITECH SERVICES GROUP, INC.)	Docket Nos. 11006248 & 11006249
)	
(Import & Export of Low-Level Waste))	
)	March 22, 2017

CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305, I certify that, on this date, a copy of the foregoing “UNITECH ANSWER TO EXTENSION REQUEST LETTER FILED BY THE NUCLEAR INFORMATION AND RESOURCE SERVICE AND DON’T WASTE MICHIGAN DATED MARCH 13, 2017” was served upon the Electronic Information Exchange (the NRC’s E-Filing System) in the above-captioned docket.

Signed (electronically) by Ryan K. Lighty

Ryan K. Lighty, Esq.
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Phone: (202) 739-5274
Fax: (202) 739-3001
E-mail: ryan.lighty@morganlewis.com

Counsel for UniTech Services Group, Inc.