UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of	)	
	)	Docket No. 72-1050
WASTE CONTROL SPECIALISTS LLC	)	
	)	
(Consolidated Interim Storage Facility)	)	March 23, 2017

WASTE CONTROL SPECIALISTS LLC'S ANSWER OPPOSING SUSTAINABLE ENERGY AND ECONOMIC DEVELOPMENT COALITION'S REQUEST FOR AN EXTENSION OF TIME AND PROPOSING APPROVAL OF ALTERNATE BRIEFING SCHEDULE

I. INTRODUCTION

Sustainable Energy and Economic Development Coalition ("SEED") submitted a letter to the Secretary of the Commission dated March 7, 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 C.F.R. Part 72 for a proposed Consolidated Interim Storage Facility ("CISF").[2]

Pursuant to 10 C.F.R. § 2.323(c), WCS submits this Answer opposing SEED's Request because it fails to provide the good cause required by 10 C.F.R. § 2.307. SEED's Request is similar to a March 9, 2017 extension request filed by Nuclear Information and Resource Service ("NIRS"),[3] which WCS and the U.S. Nuclear Regulatory Commission ("NRC") staff opposed on

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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").

2 Although the Request is dated March 7, 2017, SEED did not serve the Request on WCS. The Office of the Secretary provided a copy of the Request to WCS on March 21, 2017.

3 *See* Letter from Diane D'Arrigo, *et. al* to Annette L. Vietti Cook, Secretary of the Commission, "Docket No. 72-1050; NRC-2016-02321" (Mar. 9, 2017).

March 17, 2017 and March 20, 2017, respectively.[4] As explained in its answer to NIRS's extension request, WCS proposes a more limited extension of 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").

II. SEED'S REQUEST FAILS TO ESTABLISH GOOD CAUSE

Hearing requests in this proceeding currently are due on March 31, 2017.[5] SEED's Request seeks extension of this deadline "by 120 days, or until July 31, 2017."[6] SEED claims that it needs this extension because the Application is allegedly complex, changing, and the March 31, 2017 deadline to submit a hearing request would "rush the hearing process."[7]

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."[8] As demonstrated below, no such circumstances are present here, and SEED has failed to demonstrate good cause justifying any extension.

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4 *See* 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 (Mar. 17, 2017); NRC Staff's Response to the Nuclear Information and Resource Service's Motion for an Extension of Time to Request a Hearing (Mar. 20, 2017).

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

6 Request at 4. The first page of the Request erroneously calculates the requested extension as imposing a deadline of "July 1, 2017." WCS presumes that is merely a typographical error.

7 *Id.* at 3.

8 *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).

First, SEED asserts that it needs more time to review the Application because it is "unprecedented and raises a significant number of novel and complex issues."[9] The complexity of the Application is immaterial to whether good cause exists for such a lengthy extension. This 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—it has been publicly available for over 10 months. Although SEED opines on the purported novelty and complexity of certain issues, it provides no basis or explanation for its bare assertion that it needs more time to examine these topics.[10] Accordingly, such claims cannot establish "good cause" for a 120-day extension.

Second, WCS's Application is not "changing significantly" as claimed by SEED.[11] WCS submitted Revision 0 of its CISF Application to the NRC on April 28, 2016.[12] 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.[13] WCS submitted these responses between July and December 2016, the latest response submitted approximately three months ago. WCS submitted Revision 1

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9 Request at 1. Some of the topics raised by SEED are not even at issue in this proceeding. *E.g.*, approval for shipment of spent nuclear fuel from the originating commercial nuclear reactors to the CISF. Furthermore, SEED incorrectly states that the federal government will own the CISF. As indicated in the Application, WCS will own and operate the CISF and expects to receive funding for construction and operation through a contract with the Department of Energy to store spent nuclear fuel. *See* Waste Control Specialists LLC, Application for a License for a Consolidated Interim Spent Fuel Storage Facility at 1-5 (Apr. 28, 2016) (ML16133A100).

10 Notably, SEED fails to explain its need for additional time to raise a contention that the Nuclear Waste Policy Act ("NWPA") does not authorize the Application—an issue it already raised with the assistance of counsel nearly six months ago. Request at 2.

11 Request at 3.

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

13 Notice of Hearing Opportunity, 82 Fed. Reg. at 8776.

of the Application last week to consolidate those changes identified in the individual RSI responses, provide supplemental information, and make editorial and consistency changes.[14] Even though WCS had already identified most of these changes through prior, publically available RSI responses, it agreed to the Joint Motion with Sierra Club to add an additional 60 days to the 60 days earlier provided. The Joint Motion would obviate any claim that more time is needed premised on changes in Revision 1.

Third, SEED alleges that the NRC staff may provide WCS with Requests for Additional Information ("RAIs") in the future and that other information may change over time (*e.g.*, WCS ownership).[15] However, the basic framework for NRC licensing proceedings is that contentions are filed based on the application, not any subsequent staff review.[16] Furthermore, the mere fact that the staff issues an RAI does not indicate that an application is incomplete nor warrants suspension of the hearing.[17] Additionally, NRC regulations at 10 C.F.R. § 2.309(f)(2) require contentions to be based on information available to the petitioner at the time the petition is to be filed. Indeed, NRC regulations explicitly provide a process in 10 C.F.R. § 2.309(c) for late filings based on new and materially different information. Thus, evolving information or RAIs hardly establish "unavoidable and extreme circumstances" that would warrant SEED's requested 120-day extension.

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14 The Request incorrectly states that WCS planned to submit revisions to five chapters of the Application. Request at 3. Instead, as shown in the viewgraphs attachment to the Request (page 7), WCS planned to submit revisions to five chapters of the Safety Analysis Report. Regardless, WCS has now submitted those revisions to provide some supplemental information identified in RSI responses.

15 Request at 2-3.

16 *See Shieldalloy Metallurgical Corp.* (License Amendment Request for Decommissioning of the Newfield, New Jersey Facility), CLI-07-20, 65 NRC 499, 501 (2007).

Fourth, SEED claims additional time is needed "to consider whether they should intervene,"[18] to "contact" other potential intervenors,[19] to consult with experts on various topics,[20] and to "determine" whether access to proprietary information is necessary.[21] SEED's failure to timely coordinate with others or make decisions—regarding an Application publicly available for 10 months—cannot justify its proposed delay.[22] SEED makes no attempt to identify any "unavoidable and extreme circumstances" that have prevented it from accomplishing these tasks within the time provided. In fact, SEED has had actual knowledge of and opposed the Application since it was first submitted to the NRC, as shown by SEED's own press release about the Application on April 28, 2016, almost a year ago.[23] Accordingly, these naked delay tactics do not establish "good cause" for a 120-day extension.

Fifth, SEED asserts "that there is no good or fair reason to rush the hearing process" and claims "the issues raised . . . are too important to the safety and security of our nation not to do it right."[24] SEED fails to point to any specific reason why the 60-day timeframe to request a hearing is insufficient. Rather, SEED suggests that because the licensing process will take at least two years, a 120-day delay to the start of the hearing process is inconsequential, wholly

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18 Request at 3.

19 *Id*.

20 *Id.* at 2-3.

21 *Id*. at 2.

22 *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) ("[L]itigation 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.").

23 *See* Press Release, High-Level Radioactive Waste Is High-Risk (dated Apr. 28, 2016), *available at* http://nonuclearwasteaqui.org/downloads/PR_04_28_16.pdf.

24 Request at 3-4.

ignoring that early resolution of contested issues (not convenience of the litigants) is in the public interest.[25]

Finally, even if SEED had demonstrated a single basis for good cause warranting any extension, SEED 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 SEED. Section 2.323(b) mandates that a "motion must be rejected" if this is not done.

III. ALTERNATIVE EXTENSION PROPOSAL

Even though SEED has failed to satisfy the good cause standard for an extension, WCS proposes the Commission consider the Joint Motion and the benefit it would provide for SEED or others by giving them an additional 60 days. 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 timely requests at the same time, which may allow for 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

[25] *See Potomac Elec. Power Co.* (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-277, 1 NRC 539, 550-52 (1975).

IV. CONCLUSION

For the reasons discussed above, SEED 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)

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Dated in Washington, D.C.
this 23rd 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 Sustainable Energy and Economic Development Coalition's Request for an Extension of Time and Proposing Approval of Alternate Briefing Schedule" was filed through the E-Filing system.

Signed (electronically) by Stephen J. Burdick
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