

March 23, 2017

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of)
)
) Docket No. 72-1050
Waste Control Specialists LLC)
Consolidated Interim Spent Fuel Storage)
Facility Project)

NRC STAFF'S RESPONSE TO THE SUSTAINABLE ENERGY AND ECONOMIC
DEVELOPMENT COALITION'S LETTER REQUESTING AN EXTENSION OF TIME TO
REQUEST A HEARING

INTRODUCTION

Pursuant to 10 CFR § 2.323, the Nuclear Regulatory Commission Staff ("Staff") hereby responds to the Sustainable Energy and Economic Development Coalition's (SEED) letter requesting an extension of time to request a hearing in this proceeding. As discussed below, the Staff has no objection to a 60 day extension of time.

BACKGROUND

By letter dated April 28, 2016, Waste Control Specialists LLC (WCS) tendered a specific license application ("the application") under 10 CFR Part 72 requesting authorization to construct and operate a consolidated interim storage facility for spent nuclear fuel and reactor related greater than class C low level radioactive waste in Andrews County, Texas. On June 22, 2016, the Staff sent WCS a letter stating that several Requests for Supplemental

Information (RSIs) would need to be resolved before the application was acceptable for docketing.¹ After several supplements to the application, on January 26, 2017, the Staff determined the application was acceptable for docketing.² On January 30, 2017, the Notice of Docketing and Opportunity to Request a Hearing and Petition for Leave to Intervene (“the Notice”) on the application was published in the *Federal Register*.³

The Notice provided 60 days for filing petitions to intervene, in accordance with 10 CFR § 2.309. In a motion dated March 2, 2017, which was served through the Electronic Information Exchange (EIE) on March 3, 2017, the Sierra Club requested a 120 day extension request for filing a petition to intervene and request a hearing. Subsequently, the Sierra Club withdrew its motion and submitted a joint motion with WCS seeking a 60 day extension of time, which the Staff did not oppose. Similarly, in a letter dated March 9, 2017, which was served through the EIE on March 10, 2017, the Nuclear Information and Resource Service (NIRS), on behalf of itself and 19 other organizations, sought an extension of 120 days to file petitions to intervene.⁴

In a letter dated March 7, 2017, which was not served through the EIE or otherwise on the Staff, SEED sought an extension of 120 days to file petitions to intervene (“SEED Letter”).

¹ See Letter from Mark Lombard to Scott Kirk, “Acceptance review of specific license application requesting authorization to construct and operate a consolidated interim storage facility for spent nuclear fuel- supplemental information needed” (June 22, 2016) (Adams Accession No. ML16175A305).

² See Letter from Mark Lombard to Michael Ford, “License application to construct and operate a consolidated interim storage facility for spent nuclear fuel in Andrews County, Texas- accepted for review” (January 26, 2017) (Adams Accession No. ML7018A168).

³ See 82 Fed. Reg. 8773 (Jan. 30, 2017).

⁴ The NRC staff responded to that letter on March 20, 2017. See “NRC Staff’s Response to the Nuclear Information and Resource Service’s Motion for an Extension of Time to Request a Hearing.”

The Staff received this letter on March 21, 2017, when it was distributed via email by the Office of The Secretary.

DISCUSSION

The Staff received the applicant's revision to its license application, which was dated March 16, 2017, on March 17, 2017. The Staff has not yet had the opportunity to determine the extent of the revisions. In light of the timing of this revision in the middle of the intervention period, the Staff does not object to a 60 day extension of the intervention period, to May 31, 2017.

The Staff does, however, object to an extension of 120 days. The basic framework for NRC licensing proceedings is that contentions are filed and admitted based on the application, not on any subsequent Staff review.⁵ SEED asserts that the NRC has not yet begun its review of the application, but the NRC has in fact begun its review. SEED also states that the Staff will be issuing Requests for Additional Information (RAIs) to the applicant, that the applicable deadlines for the applicant to respond may be several months in the future, and that therefore "it would be wasteful of SEED Coalition's limited time and resources to require us to prepare contentions now." SEED Letter at 3. Issuing RAIs is a normal part of the Staff review process, and the mere fact that the Staff will seek additional information from an applicant does not justify the request for extension.⁶

⁵ See, e.g., *Shieldalloy Metallurgical Corp.* (License Amendment Request for Decommissioning of the Newfield, New Jersey Facility), CLI-07-20, 65 NRC 499, 501 (2007) ("Prompt identification [of contentions] maintains the proceeding's primary focus on adequacy of the application at issue.").

⁶ See, e.g., *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, & 3), CLI-99-11, 49 NRC 328, 338-39 (1999) (declining to allow petitioners to 'reschedule' the proceeding until after completion of the RAI

In the instant case, SEED is asking that the time frame for intervention be extended by 120 days. The application was filed April 28, 2016. As noted above, in light of the March 17 submission of certain revisions to the application, the NRC Staff does not object to extending the time frame for intervention for 60 days, to May 31, 2017. With an extension to May 31, 2017, the application will have been available for review by SEED and its experts for more than a year before petitions to intervene are due, and they will have had a substantial amount of time to examine any revisions in the March 17 submission. The revision to the application was submitted on a CD. The Staff is currently processing the application into ADAMS and performing a SUNSI review. The Staff anticipates that Revision 1 will be publicly available by March 31, 2017.

As part of its justification for an extension of time, SEED also states that it needs time to determine whether to seek access to proprietary information in the application. SEED Letter at 2. The Staff has determined that an “Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information for Contention Preparation”, which the Commission has used to define a process for potential petitioners to seek access to proprietary information in connection with hearing requests, was inadvertently omitted from the Notice in this proceeding. Accordingly, the Staff respectfully requests that the Commission issue an Order imposing those access procedures for this proceeding and/or authorize issuance of a correction to the Notice for that purpose. In any event, the omission of that Order from the Notice has no effect on SEED’s ability to examine and develop contentions

process, and noting that petitioners are not precluded from raising contentions “if genuinely new and material safety or environmental issues later emerge from RAIs or other NRC Staff documents”).

on all public portions of the application and accordingly does not justify a generalized extension of the intervention deadline. Thus, SEED has not justified why it needs a 120 day extension, and thus the Staff is opposed to a 120 day extension.

CONCLUSION

For the reasons described above, the Staff opposes the 120 day requested extension, but does not object to a shorter extension of 60 days.

Respectfully submitted,

/signed (electronically) by/
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Dated at Rockville, MD
this 23rd day of March 2017

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CERTIFICATE OF SERVICE

I hereby certify that the NRC STAFF'S RESPONSE TO THE SUSTAINABLE ENERGY AND ECONOMIC DEVELOPMENT COALITION'S LETTER REQUESTING AN EXTENSION OF TIME TO REQUEST A HEARING has been filed through the E-Filing system this 23rd day of March, 2017. Additionally, a copy of the filing was sent to the SEED coalition via email at "Karendhadden@gmail.com."

/Signed (electronically) by/

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Dated at Rockville, MD
this 23rd day of March, 2017