

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

Kristine L. Svinicki, Chairman
Jeff Baran
Stephen G. Burns
Annie Caputo
David A. Wright

In the Matter of

DIVERSIFIED SCIENTIFIC SERVICES, INC.
(Export of Low-Level Waste)

Docket No. 11005323

License No. XW008/05

CLI-19-02

MEMORANDUM AND ORDER

I. INTRODUCTION

Nuclear Information and Resource Service, Tennessee Environmental Council, and Don't Waste Michigan (collectively, Petitioners) request leave to intervene on an export license application filed by Diversified Scientific Services, Inc.¹ Diversified Scientific Services seeks to amend its existing export license that authorizes the export of low-level radioactive waste to Canada. Petitioners seek a public hearing on Diversified Scientific Services' application. For the reasons discussed below, we deny Petitioners' request for a hearing, and we refer Petitioners' request to the Office of International Programs to consider as non-adjudicatory comments when addressing the pending licensing request.

¹ See *Amended Petition for Leave to Intervene and Request for Hearing of Petitioners Nuclear Information and Resource Service, Tennessee Environmental Council and Don't Waste Michigan* (June 14, 2018) (ADAMS accession no. ML18166A000) (Petition).

II. BACKGROUND

Since 2002, Diversified Scientific Services has possessed an NRC export license (XW008) that allows it to export low-level radioactive material to its customers in Canada.² In 2017, Diversified Scientific Services filed an application to amend the license.³ Specifically, Diversified Scientific Services sought the following amendments to XW008: (1) update the licensee's contact information; (2) extend the export license for five additional years; (3) change the final shipment date; (4) change the name of one point of origin entity; (5) include two ports of exit; (6) remove a reference to waste classification; and (7) remove certain shipping references. Shortly thereafter, the NRC provided notice in the *Federal Register* of that application.⁴ On August 10, 2017, the Petitioners filed a request for hearing and leave to intervene on the application.⁵

While that hearing request was pending, Diversified Scientific Services filed a revised application in February 2018 with the NRC to amend XW008.⁶ The revised application superseded the 2017 application, and it sought the following amendments to XW008: (1) change the licensee's contact information; (2) extend the export license for five additional years; (3) change the final shipment date; (4) change the name of one point of origin entity; (5) revise the quantity, description, and radioactivity levels of the materials authorized for export; and (6) include two ports of exit. Later that year, the NRC provided notice of Diversified Scientific

² Diversified Scientific Services possesses this material pursuant to an Agreement State radioactive material license issued by Tennessee. Radioactive Material License Number R-73014-H24 (ML18318A277).

³ Application for NRC Export, License No. XW008/05 (Mar. 24, 2017) (ML17089A176).

⁴ Diversified Scientific Service, Inc., 82 Fed. Reg. 32,014 (July 11, 2017).

⁵ *Request for Hearing and Leave to Intervene in DSSI Export Specific License Amendment/Renewal* (Aug. 10, 2017) (ML17222A835) (2017 Petition).

⁶ Application for NRC Export, License No. XW008/05 (Feb. 9, 2018) (ML18085A690).

Services' revised application in the *Federal Register*.⁷ Petitioners then filed the amended hearing request now before us.⁸

III. PETITIONERS' HEARING REQUEST

A. Requirements for Obtaining a Hearing on an Export License

In an export licensing proceeding, we will grant a hearing when we find that such a hearing will be in the public interest and will assist us in making the statutory determinations required by the Atomic Energy Act.⁹ A hearing request in an export case, therefore, must "explain why a hearing or an intervention would be in the public interest and how a hearing or intervention would assist the Commission in making the [required statutory] determinations."¹⁰ We consider these factors in deciding whether to grant or deny a hearing request.¹¹

Our regulations further provide that a hearing request must "specify, when a person asserts that his interest may be affected, both the facts pertaining to his interest and how it may be affected."¹² When determining whether a petitioner identifies an interest that may be affected, we consider the following:

- (1) The nature of the alleged interest;
- (2) How that interest relates to issuance or denial; and
- (3) The possible effect of any order on that interest, including whether the relief requested is within the Commission's authority, and, if so, whether granting relief would redress the alleged injury.¹³

⁷ Diversified Scientific Services, Inc., 83 Fed. Reg. 22,534 (May 15, 2018).

⁸ Petition.

⁹ *U.S. Department of Energy* (Export of 93.20% Enriched Uranium), CLI-16-15, 84 NRC 53, 56 (2016) (quoting 42 U.S.C. § 2155a).

¹⁰ 10 C.F.R. § 110.82(b)(3).

¹¹ *Id.* § 110.84(a).

¹² *Id.* § 110.82(b)(4).

¹³ *Id.* § 110.84(b).

Persons without an affected interest are not as likely as persons with an affected interest to contribute to our decisionmaking; they are also less likely to be able to show that a hearing would be in the public interest and would assist us in making the requisite statutory and regulatory determinations.¹⁴

We first consider Petitioners' assertion of an interest, and we then address whether Petitioners have shown that a hearing would be in the public interest and would assist us in making the required determinations.

B. Analysis of Petitioners' Hearing Request

In the declarations accompanying their 2017 Petition, Petitioners assert various harms that their individual members may suffer if this export license is granted, including the following: radioactive waste entering the watercourses near their homes, exposure to radiation during traffic jams as a result of being in close proximity to a cargo truck carrying licensed material, exposure to radiation as a result of sabotage or terrorist activity, the release of radioactive metals and other materials into landfills, and risks to the food chain resulting from the release of radioactive material.¹⁵ Petitioners imply that the nature of their interests is in avoiding each of these harms.

Although Petitioners arguably have articulated the nature of their interests, those interests do not bear a sufficient nexus to the proposed export of low-level waste to Canada to satisfy the other elements we consider when assessing whether an asserted interest may be affected by a proceeding. To show an interest that may be affected by *this* proceeding,

¹⁴ Cf. *U.S. Department of Energy* (Plutonium Export License), CLI-04-17, 59 NRC 357, 367 (2004).

¹⁵ See [Petitioners'] *Appendix of Membership Declarations in Support of Petition for Leave to Intervene Against Diversified Scientific Services, Inc. Specific Export License Amendments/Renewal and Request for Adjudicatory Hearing* (Aug. 10, 2017) (ML17222A833).

Petitioners must assert that the proposed *export* itself could cause them harm.¹⁶ Petitioners' asserted harms relate to activities that are separately authorized by domestic possession and transportation regulations—none of the asserted harms derive directly and specifically from exports that might be made if the application before us is granted. An export license authorizes only the physical transfer of nuclear equipment or material at an international border. Denying this application, therefore, would not address the Petitioners' asserted harms because a denial would not alter Diversified Scientific Services' license to domestically possess the radioactive material or its authority to transport low-level radioactive waste. Because of the lack of a nexus between the export application and the asserted harms, we conclude that Petitioners have not demonstrated that they possess an interest that may be affected by this proceeding.

Additionally, Petitioners have not demonstrated that granting an adjudicatory hearing would be in the public interest and would assist us in making the required statutory and regulatory determinations. To satisfy these factors, a petitioner must show how a hearing would bring new information to light.¹⁷ The crux of the amended petition is that Diversified Scientific Services has not properly identified the characteristics of the waste that it proposes to export to Canada, and it has not confirmed that the Canadian recipient of the waste is authorized to receive the waste.¹⁸ These arguments are stated clearly in the petition itself, however, and

¹⁶ See *U.S. Department of Energy*, CLI-04-17, 59 NRC at 365 (explaining that in export cases, the alleged harm must “result from the grant or denial of the export license”).

¹⁷ *U.S. Department of Energy*, CLI-16-15, 84 NRC at 58 n.25 (quoting *U.S. Department of Energy*, CLI-04-17, 59 NRC at 369 (“Petitioners have already submitted detailed information as to the basis for their position. We do not believe a hearing will result in significant new information that is not already available to and considered by the Commission in making the requisite statutory determinations.”); *Transnuclear, Inc.* (Export of 93.3% Enriched Uranium), CLI-00-16, 52 NRC 68, 72 (2000) (explaining that nothing in the petitioner’s filings indicates it will be able to “present significant information not already available to and considered by the Commission”)).

¹⁸ Petition at 2.

Petitioners do not explain how a hearing is necessary to generate the information necessary to address any asserted omissions in the application.

The 2017 Petition, which the amended petition incorporates, also raises concerns with respect to transportation and reprocessing.¹⁹ Here too, Petitioners do not explain how a hearing will generate additional information to assist the agency in making its determination. Petitioners argue that a hearing would assist the agency and be in the public interest, but instead of addressing the relevant standard for export licensing—which generally reflects international nonproliferation concerns—they focus their arguments on domestic issues.²⁰ Moreover, Petitioners have not shown that they possess “special knowledge” or that they would be in a position to present information at a hearing that we do not otherwise possess.²¹

Even though Petitioners have not satisfied the NRC’s hearing requirements in Part 110, the NRC can still consider the points raised in the petition. Part 110 explicitly encourages written comments from the public regarding export license applications and provides that the NRC will consider and, if appropriate, respond to any comments received.²² In our view, the amended petition is properly considered as a public comment on Diversified Scientific Services’ application. We therefore refer the amended petition to the Office of International Programs as a public comment pursuant to 10 C.F.R. § 110.81(a).

VI. CONCLUSION

We deny Petitioners’ request for a hearing. For the reasons discussed above, we find that the request does not meet the established standard for holding a hearing because a

¹⁹ 2017 Petition at 6-9; Petition at 2.

²⁰ Compare 10 C.F.R. § 110.42(c)-(d) (providing that for export licensing of byproduct material, the agency will consider whether the export is “inimical to the common defense and security”), with 2017 Petition at 9-11 (addressing whether a hearing would assist the agency).

²¹ Cf. *Transnuclear, Inc.* (Export of 93.15% Enriched Uranium), CLI-94-1, 39 NRC 1, 6 (1994).

²² 10 C.F.R. § 110.81.

hearing would not be in the public interest and would not assist us in making the required statutory and regulatory determinations. The NRC Staff should consider the amended petition as a public comment on Diversified Scientific Services' application, consistent with 10 C.F.R. § 110.81(a).

IT IS SO ORDERED.

For the Commission

NRC Seal

/RA/

Annette L. Vietti-Cook
Secretary of the Commission

Dated at Rockville, Maryland,
this 11TH day of March, 2019.

Additional Views of Commissioner Baran

While I agree that it is not necessary to hold a hearing on this matter, I write separately because I disagree with the majority's conclusion that Petitioners have not demonstrated that they possess an interest that may be affected by this proceeding.

In the declarations accompanying their 2017 Petition, Petitioners include statements from one member who resides within 1.5 miles of the Peace Bridge and another member who resides within 2.5 miles of the Blue Water Bridge.¹ Both bridges are listed by Diversified Scientific Services in the revised application as the exit ports to be used for the export of low-level radioactive waste from the United States to Canada.² As the majority decision acknowledges, Petitioners assert several harms that their individual members could suffer if this export license is granted.³ And although Diversified Scientific Services is separately authorized to possess and transport the low-level radioactive material within the United States, there is no reason to believe that the material would be present at these international crossings (and a short distance from the homes of Petitioners' members) if it were not being exported to Canada. Because the low-level radioactive material at issue would not cross the Peace Bridge or Blue Water Bridge in the absence of the requested export license, the stated concerns of the nearby residents have a sufficient nexus to the proposed export for the Commission to find that Petitioners have an affected interest in this proceeding.

¹ See *[Petitioners'] Appendix of Membership Declarations in Support of Petition for Leave to Intervene Against Diversified Scientific Services, Inc. Specific Export License Amendments/Renewal and Request for Adjudicatory Hearing*, at ScheenKloth Decl. 1 and Zimmer-Lloyd Decl. 1 (Aug. 10, 2017) (ML17222A833).

² Application for NRC Export, License No. XW008/05, Attach. 1, at 3 (Feb. 9, 2018) (ML18085A690).

³ See *[Petitioners'] Appendix of Membership Declarations in Support of Petition for Leave to Intervene Against Diversified Scientific Services, Inc. Specific Export License Amendments/Renewal and Request for Adjudicatory Hearing* (Aug. 10, 2017) (ML17222A833).

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(Export of Radioactive Waste))
)
)

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **Commission Memorandum and Order CLI-19-02** have been served upon the following persons by Electronic Information Exchange, with those parties noted with an asterisk receiving delivery by Electronic Mail (E-mail).

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[Original signed by Clara Sola _____]
Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 11th day of March, 2018