

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

Kristine L. Svinicki, Chairman
Jeff Baran
Stephen G. Burns

In the Matter of

UNITECH SERVICES GROUP, INC.

(Export of Low-Level Waste)

Docket No. 11006249

License No. XW023

CLI-18-02

MEMORANDUM AND ORDER

I. INTRODUCTION

Nuclear Information and Resource Service, Beyond Nuclear, the Nuclear Energy Information Service, Tennessee Environmental Council, and Citizens for Alternatives to Chemical Contamination (collectively, Petitioners) request leave to intervene on an export license application filed by UniTech Services Group, Inc.¹ UniTech seeks to export up to 10,000 metric tons of byproduct material in the form of radioactively contaminated solids, metallic oxides, and other chemical forms to its customers in Canada. Petitioners seek a public hearing on UniTech's export license application, and they ask the NRC to reject the proposed export license. Petitioners further argue that the NRC violated its own regulations by not requiring

¹ See *Petition for Leave to Intervene against Specific Export License Issuance to UniTech Service Group, Inc. and Request for Adjudicatory Hearing* (May 5, 2017) (ADAMS accession no. ML17125A347) (Petition); Application for NRC Export, License No. XW023 (Oct. 27, 2016) (ML17024A270).

UniTech to obtain a specific license to import this material. For the reasons discussed below, we deny Petitioners' request for a hearing and we reject Petitioners' argument that UniTech needs a specific license to bring this material into the United States.

II. BACKGROUND

In October 2016, UniTech simultaneously submitted to the NRC two license applications. The first application sought a license for UniTech to import from Canada up to 10,000 tons of tools, metals, and other solid materials contaminated with both byproduct material and special nuclear material. UniTech's second application sought a license to export back to UniTech's customers in Canada the radioactive waste remaining after processing and recycling the imported materials that are suitable for unrestricted use.²

The NRC Staff determined that UniTech's proposed import activities did not require a specific license because these activities are already authorized under a general license. The Staff, therefore, returned UniTech's import application without action.³ The NRC noted the return of UniTech's import application in the *Federal Register* and explained that UniTech's export application was "the only regulatory action pending before the NRC."⁴ Petitioners thereafter submitted their hearing request.⁵ Separately—and outside of the adjudicatory

² Request for a License to Export Radioactive Waste, 82 Fed. Reg. 10,919 (Feb. 16, 2017) (corrected, 82 Fed. Reg. 12,641 (Mar. 6, 2017)). The NRC also forwarded UniTech's export application to the Executive Branch, and the Executive Branch provided its views via a letter dated December 20, 2016.

³ Letter from David Skeen, NRC, to Glenn Roberts, UniTech (Mar. 30, 2017) (ML17086A272).

⁴ Request for a License to Export Radioactive Waste, 82 Fed. Reg. 16,636, 16,636 (Apr. 5, 2017).

⁵ *Petition for Leave to Intervene against Specific Export License Issuance to UniTech Service Group, Inc. and Request for Adjudicatory Hearing* (May 5, 2017) (ML17125A347); *Answer to Petition for Leave to Intervene and Hearing Request Filed by [Nuclear Information and Resource Service], Beyond Nuclear, [Nuclear Energy Information Service,], [Tennessee Environmental Council], and [Citizens for Alternatives to Chemical Contamination]* (June 2, 2017) (ML17153A347); *Reply in Support of Petition to Intervene* (June 12, 2017) (ML17163A449). UniTech also seeks to strike portions of Petitioners' reply. *Motion to Strike Portions of Reply* (June 16, 2017) (ML17167A337); *Reply in Opposition to UniTech Motion to*

process—the NRC received four sets of written comments opposing UniTech’s export application.⁶

Petitioners seek a public adjudicatory hearing before an Atomic Safety and Licensing Board.⁷ Petitioners further request that the NRC reject UniTech’s export application for its failure to describe the material to be exported in sufficient detail.⁸ Finally, Petitioners argue that the Staff improperly granted UniTech a “*de facto* general import license” to import radioactive waste when it returned UniTech’s import application without action.⁹ As discussed below, we deny Petitioners’ hearing request.

III. PETITIONERS’ HEARING REQUEST

A. Requirements for Obtaining a Hearing on an Export License

Initially, we note that Petitioners offer contentions and attempt to satisfy the requirements for intervention contained in 10 C.F.R. Part 2, Subpart C. Those standards, however, apply only to domestic licensing proceedings. For export licensing proceedings, 10 C.F.R. Part 110, Subpart H applies.¹⁰ As we recently explained, in export licensing proceedings, we allow for public participation when we find that such participation will be in the

Strike Portions of Reply (June 21, 2017) (ML17172A751). We decline to address UniTech’s motion to strike and consider all the pleadings as a matter of discretion.

⁶ Comments from the Western New York Environmental Alliance on UniTech Services Group, Inc.’s Request for a License to Export Radioactive Waste (May 4, 2017) (ML17129A207); Comments from the Sierra Club Niagara Group on UniTech Services Group, Inc.’s Request for a License to Export Radioactive Waste (May 4, 2017) (ML17129A205); Comments from the Great Lakes Environmental Alliance, *et al.* on UniTech Services Group, Inc.’s Request for a License to Export Radioactive Waste (May 5, 2017) (ML17129A365); Comments from Congressman Brian Higgins on UniTech Services Group, Inc.’s Request for a License to Export Radioactive Waste (May 5, 2017) (ML17129A208).

⁷ Petition at 1.

⁸ *Id.* at 7-12.

⁹ *Id.* at 12-20.

¹⁰ 10 CFR 110.80 (“The procedures in this part will constitute the exclusive basis for hearings on export and import license applications.”).

public interest and will assist us in making the statutory determinations required by the Atomic Energy Act.¹¹ Hearing requests in export cases 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.”¹² We consider these factors in deciding whether to grant or deny a hearing request.¹³

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[.]”¹⁴ “If a hearing request or intervention petition asserts an interest which may be affected, the Commission will consider:

- (1) The nature of the alleged interest;
- (2) How that issue 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.”¹⁵

As we have explained, persons without an affected interest are not as likely as persons with an affected interest to contribute to our decision-making by showing that a hearing would be in the public interest and assisting us in making the statutory determinations.¹⁶ We first consider Petitioners’ assertion of an interest, and then we address whether Petitioners have

¹¹ *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). These procedures are contained in 10 C.F.R. Part 110, Subpart H.

¹² 10 C.F.R. § 110.82(b)(3).

¹³ *Id.* § 110.84(a).

¹⁴ *Id.* § 110.82(b)(4).

¹⁵ *Id.* § 110.84(b).

¹⁶ *See U.S. Department of Energy* (Plutonium Export License), CLI 04 17, 59 NRC 357, 367 (2004).

shown that a hearing would be in the public interest and would assist us in making the required statutory and regulatory determinations.¹⁷

B. Analysis of Petitioners' Hearing Request

Petitioners assert that their individual members live or commute near areas where the material will be processed or transported. Petitioners cite various harms that their individual members may suffer if the NRC grants this export license: being stuck in traffic next to UniTech's cargo trucks, "chance highway encounters" with UniTech's trucks, and general environmental degradation resulting from leaks or accidents involving UniTech's trucks.¹⁸ Petitioners further assert harm from UniTech's processing this material before it is exported back to Canada.¹⁹ Finally, Petitioners claim harm from a potential fire at one of the recycling facilities.²⁰

Although Petitioners 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 an asserted interest that may be affected by a proceeding. Petitioners' asserted harms relate to activities that are separately authorized by domestic possession and transportation licensing. To show an interest that may be affected by this proceeding, Petitioners must assert that granting the export itself could cause them harm. Denying this export license will not hinder UniTech's ability to operate its domestic recycling plants because those activities are separately authorized. Nor would denial interfere with UniTech's ability to domestically transport low-level radioactive waste. As a result, we conclude

¹⁷ In their effort to comply with Part 2's hearing requirements, Petitioners sought to demonstrate standing consistent with those rules. We consider Petitioners' standing arguments under the "interest" provisions of Section 110.84(b).

¹⁸ Petition at 3.

¹⁹ *Id.*

²⁰ Reply at 3.

that Petitioners have not demonstrated that they possess an interest that may be affected by this export licensing 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. As we recently explained, to satisfy these factors, a petitioner must show how a hearing would bring new information to light.²¹

Petitioners first assert various omissions in UniTech's export application—specifically, UniTech's failure to characterize the waste material being exported to Canada. But UniTech's export application incorporates by reference information from the now-returned import application (specifically, the import license application lists all the radionuclides to be exported, along with the maximum quantities for each radionuclide).²² The export application, therefore, contains the specific information required by 10 C.F.R. § 110.32. Petitioners have not shown that an actual omission exists with respect to UniTech's application nor have they demonstrated with their first argument that a hearing would be in the public interest.

²¹ *U.S. Department of Energy*, CLI-16-15, 84 NRC at 58 (citing *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*, CLI-00-16, 52 NRC at 72 (same).

²² Even though the Staff returned UniTech's import application without action, it remains as a document in public ADAMS. Further, the Staff has placed UniTech's import application into the export licensing docket and provided notice on the adjudicatory docket that the export application continues to incorporate by reference information contained in the returned import application. See Memorandum to the Secretary from the Office of International Programs (July 7, 2017) (ML17193A272). Applicants frequently incorporate by reference certain material in our proceedings. See, e.g., *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 336 (1999) (describing a challenge to a license application's incorporation by reference of several generic reports on the ground that the Staff was still reviewing the generic reports).

Petitioners' second argument centers on its concern that the material UniTech plans to import under the general license provision is "radioactive waste" which requires a specific license.

Petitioners maintain that the NRC granted a "*de facto* general import license" that allowed UniTech to improperly import radioactive waste into the United States.²³ Essentially, Petitioners contend that because UniTech plans to bring radioactive material into the United States for processing, it must have a specific license.²⁴ By rule, however, 10 C.F.R. § 110.27(a) grants a general license²⁵ to any person for the import of "byproduct, source, or special nuclear material if the U.S. consignee is authorized to receive and possess the material under the relevant NRC or Agreement State regulations." Here, UniTech, the U.S. consignee, is authorized to receive and possess this material under its existing Agreement State radioactive material licenses. Therefore, UniTech already has a general license to import the material.

Section 110.27 contains two exceptions to the general license—exceptions that, if applicable, would require an importer to seek a specific license. But neither exception applies in this case. First, section 110.27(b) provides that the general license does not authorize the import of more than 100 kilograms per shipment of source and/or special nuclear material. Here, UniTech will be importing less than fifteen grams of special nuclear material per shipment. Second, section 110.27(c) provides that the general license does not authorize the import of radioactive waste (in any quantity).

For purposes of import and export licensing, "radioactive waste" is defined in relevant part as:

²³ Petition at 12-21.

²⁴ *Id.*

²⁵ See 10 C.F.R. § 110.19 ("A general license is effective without the filing of an application with the Commission or the issuance of licensing documents to a particular person.").

[A]ny material that contains or is contaminated with source, byproduct, or special nuclear material that by its possession would require a specific radioactive material license in accordance with this Chapter *and is imported or exported for the purposes of disposal in a land disposal facility as defined in 10 CFR Part 61, a disposal area as defined in Appendix A to 10 CFR Part 40, or an equivalent facility.*²⁶

This definition clarifies that imported or exported material qualifies as “radioactive waste” only if three separate criteria are all met:

- (1) The material is contaminated with source, byproduct, or special nuclear material;
- (2) The material requires a specific materials possession license; and
- (3) The material is imported or exported for the purpose of disposal in a Part 61 land disposal facility, a Part 40 disposal area, or equivalent facility.²⁷

UniTech’s import activities do not satisfy the third element of the definition. As Petitioners

concede, UniTech has repeatedly confirmed that “all materials that would require transfer to a land disposal facility subject to 10 [C.F.R.] Part 61 shall be returned to Canada.”²⁸

Consequently, the third element—importing the material for the purpose of disposal—is not met, and therefore UniTech is not importing “radioactive waste” under the terms of our existing regulations. Briefly stated, UniTech is not importing material that requires a specific import

²⁶ *Id.* § 110.2 (emphasis added).

²⁷ We substantially revised the 10 C.F.R. § 110.2 definition of “radioactive waste” in a 2010 rulemaking. Export and Import of Nuclear Equipment and Material; Updates and Clarification, 75 Fed. Reg. 44,072 (July 28, 2010). In the statements of consideration for this rule, we explained that the revised definition of radioactive waste “links the specific license requirement for the export and import of radioactive waste to those materials (in the form of waste) that require a specific license in accordance with NRC’s domestic regulations.” *Id.* at 44,073. This linkage explains why we amended its definition such that a specific export or import license was only required for radioactive material that requires a waste disposal license and is exported or imported for the specific purposes of “disposal in a land disposal facility as defined in Part 61, a disposal area as defined in Appendix A to Part 40, or an equivalent facility.” *Id.*

In the import context, the term “equivalent facility” refers to an Agreement State-licensed facility. In the export context, it refers to a foreign disposal facility that is comparable to a Part 61 disposal facility. For both exports and imports, the purpose of the phrase “equivalent facility” is to ensure the linkage between import and export licensing and domestic licensing by requiring a specific import or export license only when the applicant intends to dispose of the material in a radioactive waste site (rather than a hazardous waste site).

²⁸ Petition at 18.

license, but rather is importing via a general import license byproduct material for which it already has an agreement state license to possess. The general import license is granted by operation of our regulations, without further action.

Petitioners argue that UniTech needs to import under a specific license because if the material UniTech intends to export were to remain in the United States, then it would need to go to a Part 61 land disposal facility.²⁹ Petitioners are correct that if the radioactive material were retained in the United States and sent to a Part 61 disposal facility, then UniTech would need a specific import license. Petitioners are also correct that when this material is ultimately sent to Canada for disposal, it will satisfy the definition of “radioactive waste.”³⁰ But those points only serve to explain why UniTech needs a specific license to export—they have no bearing on whether UniTech’s proposed import activities required a specific license. Because UniTech does not intend to send any imported material to domestic land disposal facilities licensed under Part 61 or its equivalent, the material UniTech is importing does not meet the Part 110 definition of radioactive waste, no specific license is required, and the Staff therefore properly returned UniTech’s import application without action.

Petitioners argue, in the alternative, that the 2010 rulemaking that established this definition can be challenged at this point in time now that it is being implemented.³¹ But our rules are not subject to collateral attack during adjudicatory proceedings.³² Further, to the extent that Petitioners seek to waive—under 10 C.F.R. § 110.111—Part 110’s definition of

²⁹ *Id.* at 19.

³⁰ *Id.*

³¹ Reply at 13-14.

³² See, e.g., *American Nuclear Corp.* (Revision of Orders to Modify Source Materials Licenses), CLI-86-23, 24 NRC 704, 707 (Nov. 17, 1986) (“the Commission adheres to the fundamental principle of administrative law that its rules are not subject to collateral attack in adjudicatory proceedings.”).

radioactive waste for this particular proceeding so that UniTech would need a specific import license, we find that Petitioners have not shown that the definition of “radioactive waste” fails to serve the purposes for which it was adopted.³³ We amended the definition of radioactive waste to link the specific license requirement for importing radioactive materials to those materials (in the form of waste) that require a specific license under our domestic regulations.³⁴ This case provides a clear application of the rule because UniTech does not plan to dispose of this material in a Part 61, or equivalent, facility in the United States.

Fundamentally, Petitioners’ import arguments do not relate to the questions at issue in this export proceeding, because those import-related arguments bear no relevance to the statutory determinations we must make on the proposed export. For these reasons, we deny Petitioners’ hearing request.

³³ 10 C.F.R. § 110.111. In other waiver contexts, we have considered whether waiver proponents have shown or alleged special circumstances that were not contemplated during the rulemaking proceeding. See *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-05-24, 62 NRC 551, 559-60 (2005). Petitioners have not done so here.

³⁴ Export and Import of Nuclear Equipment and Material; Updates and Clarification, 75 Fed. Reg. 44,072, 44,073 (July 28, 2010).

IV. CONCLUSION

For the reasons discussed above, we find that a hearing in this matter would not be in the public interest and would not assist us in making the required statutory and regulatory determinations. Accordingly, we *deny* Petitioners' request for a hearing. The NRC Staff should expeditiously address the pending export license application in accordance with the NRC's regulations.

IT IS SO ORDERED.

For the Commission

NRC Seal

/RA/

Annette L. Vietti-Cook
Secretary of the Commission

Dated at Rockville, Maryland,
this 5th day of April, 2018.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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In the Matter of)
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) Docket Nos. 11006248,
) 11006249
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UNITECH SERVICES GROUP, INC.)
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(Export of Radioactive Waste)
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **COMMISSION MEMORANDUM AND ORDER (CLI-18-02)** have been served upon the following persons by Electronic Information Exchange.

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

Dated at Rockville, Maryland
This 5th day of April, 2018