UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of	)	
	)	Docket No. 11006249
UNITECH SERVICES GROUP, INC.	)	
	)	
(Export of Low-Level Waste)	)	June 2, 2017

UNITECH'S ANSWER TO PETITION FOR LEAVE TO INTERVENE AND HEARING REQUEST FILED BY NIRS, BEYOND NUCLEAR, NEIS, TEC, & CACC

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I. INTRODUCTION

UniTech Services Group, Inc. ("UniTech") plans to import certain radioactive materials from its customers in Canada under a general license; process those materials at facilities in the United States with appropriate licenses; and then return any resulting radioactive waste to its customers in Canada under a specific export license (XW023) subject to a pending application before the U.S. Nuclear Regulatory Commission ("NRC") ("Export Application").[1]

Pursuant to 10 C.F.R. § 110.83(a), UniTech files this Answer opposing the "Petition for Leave to Intervene Against Specific Export License Issuance to UniTech Service [sic] Group, Inc. and Request for Adjudicatory Hearing" ("Petition"),[2] dated May 5, 2017, submitted by the Nuclear Information and Resource Service ("NIRS"), Beyond Nuclear, the Nuclear Energy

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1 UniTech Services Group, Inc., Application for NRC Export License (Oct. 20, 2016) (ML17024A270) ("Export Application").

2 Petition for Leave to Intervene Against Specific Export License Issuance to UniTech Service [sic] Group, Inc. and Request for Adjudicatory Hearing (May 5, 2017) (ML17125A347) ("Petition"); Petitioner[s]' Appendix of Membership Declarations in Support of Petition for Leave to Intervene Against Specific Export License Issuance to UniTech Service[s] Group, Inc. and Request for Adjudicatory Hearing (May 5, 2017) (ML17125A348) ("Declaration Appendix"). Petitioners submitted an additional declaration after expiration of the hearing opportunity period. *See* Notice of Filing of Declaration of Jessica Azulay Chasnoff (May 12, 2017) (ML17132A424) ("Chasnoff Declaration"). NOTE: Petitioners improperly seek a hearing before an Atomic Safety and Licensing Board. Petition at 1. However, export proceeding filings must be made to the Commission and any hearing would be typically handled by the Commission. *See* 10 C.F.R. §§ 110.89(a), 110.104(a).

Information Service ("NEIS"), Tennessee Environmental Council ("TEC"), and Citizens for Alternatives to Chemical Contamination ("CACC") (collectively, "Petitioners") to the NRC. Petitioners ostensibly seek a hearing to challenge UniTech's Export Application; however, Petitioners' requested relief—the imposition of a requirement that UniTech obtain "a specific *import* license"[3]—is immaterial to and far beyond the scope of the instant proceeding.

As a preliminary matter, the Petition addresses the wrong standard for hearing requests. Specifically, Petitioners fail to identify, much less address, the NRC regulations in 10 C.F.R. Part 110, Subpart H, that govern hearing requests on export license applications. In particular, contrary to Subpart H, Petitioners do not discuss or demonstrate why a hearing would be in the public interest and would assist the Commission in making its statutory determinations on the Export Application. Petitioners' failure to address this standard or even mention the relevant findings renders the Petition incurably deficient.

Nonetheless, as explained below, even if the correct standard were considered, the Petition does not support a hearing on the Export Application. It is a bald attempt to litigate UniTech's import activities (authorized under a general license) and other activities in the United States covered by existing licenses or regulations, which are not at issue in this export license proceeding. Furthermore, Petitioners fail to demonstrate an interest which may be affected by this proceeding because the Petition contains only: (1) alleged harms related to activities already authorized under existing licenses or regulations (not the pending Export Application), and (2) assertions which the Commission has explicitly held to be insufficient to demonstrate standing (*e.g.*, mere proximity to potential transportation routes). Petitioners' other arguments are similarly baseless and out-of-scope, rely on outdated regulations and mistaken interpretations,

[3] Petition at 22 (emphasis added).

challenge valid, long-standing NRC regulations (subject to public review and comment during their respective rulemaking processes), and otherwise do not demonstrate, as required by law, that a hearing would be in the public interest or assist the Commission in adjudicating the Export Application.

Accordingly, UniTech respectfully requests that the Commission expeditiously reject the Petition and thereby allow UniTech to proceed with its business activities.

II. BACKGROUND ON UNITECH'S PROPOSED ACTIVITIES

UniTech plans to import, under the terms of a general license[4] issued by regulation and codified at 10 C.F.R. § 110.27 (the "General Import License"), tools, metals, and other solid materials that are contaminated with byproduct material and incidental amounts (less than 15 grams per shipment) of special nuclear material ("SNM") (collectively, "Regulated Materials") from Canada in order to recover and recycle materials that can be released for unrestricted use ("Import Activity").[5] As required for importation of materials under the General Import License, UniTech's Import Activity would not result in any items or articles not amenable for treatment being transferred to any land disposal area or facility subject to 10 C.F.R. Parts 40 or 61, or any equivalent Agreement State licensed facility.[6] After the recovery and recycling activities are complete, UniTech would then repackage and export any articles or items not amenable to treatment, under the terms of a specific export license issued by the NRC under the auspices of

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4 A *general* license is "effective without the filing of a specific application with the Commission or the issuance of licensing documents to a particular person" and is "issued through rulemaking by the NRC," whereas a *specific* license is "issued to a named person . . . based upon the review and approval of an NRC Form 7 application" and authorizes activities beyond the scope of those authorized under general licenses. 10 C.F.R. § 110.2 (definitions of *general license* and *specific license*).

5 *See* UniTech Services Group, Inc., Application for NRC Import License at 3 (Oct. 20, 2016) (ML17024A278) ("Import Application"). UniTech also would conditionally release other materials in accordance with its Tennessee facility licenses. *See id*.

6 *See id*.

10 C.F.R. § 110.45, back to its customers in Canada (not to a disposal facility) ("Export Activity").[7]

On October 20, 2016, UniTech filed Applications with the NRC seeking specific licenses for both the Import Activity and the Export Activity.[8] 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 inviting public comments and announcing the opportunity to request a hearing and petition to intervene in the proceedings.[9] On March 30, 2017, following subsequent discussions between UniTech and the NRC to clarify the scope of the Import Activity, the NRC issued a letter to UniTech returning the Import Application without action (the "No Action Letter").[10]

The No Action Letter explained "that none of the requested activities require a specific import license under the Commission's regulations" because the Import Activity "would not, at the threshold, qualify as 'radioactive waste.'"[11] The NRC further noted that its existing regulations already authorize the public to engage in the type of import activities contemplated in the Import Application under a "general license,"[12] *i.e.*, without the filing of a specific application or the issuance of licensing documents.[13] More specifically, the NRC determined

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7 *See id*. at 3.

8 *See* Import Application; Export Application (collectively, the "Applications").

9 *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).

10 *See* Letter from D. Skeen, OIP, to G. Roberts, UniTech (Mar. 30, 2017) (ML17086A272) ("No Action Letter").

11 *Id.* at 2.

12 *Id.* at 1.

13 *See* 10 C.F.R. § 110.2 (definition of *general license*).

that the Import Activity is authorized by the General Import License issued to "all persons," and codified in 1984 at 10 C.F.R. § 110.27.

On April 5, 2017, the NRC published a notice in the *Federal Register* noting the return of the Import Application without action, explaining that "the only regulatory action pending before the NRC is UniTech's" Export Application, and extending (until 30 days after publication of the notice) the opportunity to file a request for a hearing or petition for leave to intervene as to the Export Application.[14] On May 5, 2017, Petitioners submitted their Petition.[15] UniTech provides these details regarding its proposed Import Activity for background purposes only; the Import Activity is outside the scope of this proceeding.

III. REQUIREMENTS FOR A HEARING ON AN EXPORT APPLICATION

Pursuant to section 304(b) of the Nuclear Non-Proliferation Act of 1978, the NRC established procedures that allow for "public participation in nuclear export licensing proceedings when the Commission finds that such participation will be in the public interest and will assist the Commission in making the statutory determinations required by the [AEA], including such public hearings and access to information as the Commission deems appropriate."[16] These procedures, which govern hearing requests and petitions to intervene on

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14 Request for a License To Export Radioactive Waste; UniTech Service[s] Group, Inc., 82 Fed. Reg. 16,636 (Apr. 5, 2017).

15 The Petition was improperly filed on both the export license docket and the import license docket. The import license docket no longer exists because of the No Action Letter, which returned the Import License to UniTech without action. Although the import license docket is no longer available for submission of electronic filings on the Electronic Information Exchange (the NRC's E-Filing System), UniTech's Answer should be considered filed on both dockets to the extent the Petition is considered to have been filed on both dockets.

16 42 U.S.C. § 2155a.

an export license application, appear in 10 C.F.R. Part 110, Subpart H, and "constitute the *exclusive* basis for hearings in nuclear export licensing proceedings."[17]

According to 10 C.F.R. Part 110, hearing requests in export cases must: "[s]et forth the issues sought to be raised"; "[e]xplain 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 determinations required by § 110.45"; and "[s]pecify, when a person asserts that his interest may be affected, both the facts pertaining to his interest and how it may be affected."[18] If a petitioner does assert such an interest, 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.[19]

Notably, although section 189a of the Atomic Energy Act of 1954, as amended,[20] affords hearing rights to certain persons in certain proceedings, "any section 189a hearing rights to which [p]etitioners [in import and export proceedings] may be entitled" are satisfied by operation of the existing Part 110 procedures—*e.g.*, the public comment opportunity in 10 C.F.R. § 110.81—because these regulations "afford [p]etitioners an opportunity to submit and challenge evidence as to any and all issues of material fact regarding [import and export] applications."[21]

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17 *Id*. (emphasis added); *see also* 10 C.F.R. § 110.80 ("The procedures in this part will constitute the exclusive basis for hearings on export and import license applications.").

18 10 C.F.R. §§ 110.82(b)(2)-(4).

19 *Id*. § 110.84(b).

20 42 U.S.C. § 2239.

21 *EnergySolutions, LLC* (Radioactive Waste Import/Export Licenses), CLI-11-3, 73 NRC 613, 623 (2011) (internal citations omitted).

For import and export proceedings, Congress "contemplated hearings *only* when the NRC finds that hearings will assist the NRC" in evaluating an application.[22] Therefore, the Commission considers any standing arguments as input into its determination of whether a hearing would aid its review: "persons without standing are not as likely as persons with standing to contribute significantly to Commission decisionmaking."[23] In other words, petitioners are never entitled to a 10 C.F.R. Part 110, Subpart I hearing as a matter of right; rather, the Commission must conclude that it needs to initiate further proceedings in order to fulfill its statutory obligations. To that end, the Commission must determine whether a petitioner has demonstrated that a hearing *would* be in the public interest or otherwise assist the Commission.[24] Ultimately, "a petitioner must specifically identify how a hearing would bring new information to light."[25]

IV. PETITIONERS HAVE NOT SATISFIED THE REQUIREMENTS FOR A HEARING ON THE EXPORT APPLICATION

A. Petitioners Address the Wrong Legal Standard

As a preliminary matter, the Petition applies the incorrect legal standard for hearing requests on export applications. The Petition cites to and attempts to address the requirements in 10 C.F.R. Part 2, Subpart C.[26] But Part 2 is inapplicable here because it "governs the conduct of

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22 *U.S. Dep't of Energy* (Plutonium Export License), CLI-04-17, 59 NRC 357, 367 (2004) (emphasis in original). For export applications, those findings are specified in 10 C.F.R. §§ 110.42 and 110.45.

23 *DOE*, CLI-04-17, 59 NRC at 367.

24 10 C.F.R. § 110.84(a); *see also Edlow Int'l Co.* (Export of 93.20% Enriched Uranium), CLI-17-03, 85 NRC __, __ (slip op. at 7) (Feb. 17, 2017) (explaining the Commission "consider[s] both factors when evaluating whether to grant a hearing or intervention").

25 *U.S. Dep't of Energy* (Export of 93.20% Enriched Uranium), CLI-16-15, 84 NRC 53, 58 (2016); *see also Edlow*, CLI-17-03, 85 NRC at __ (slip op. at 7).

26 *See, e.g.*, Petition at 1 (claiming the Petition was submitted "pursuant to 10 C.F.R. § 2.309"); *id*. at 4 (citing authority discussing "standing" in Part 2 proceedings); *id*. at 7-21 (proposing "contentions," which are required under Part 2 but not contemplated in Part 110).

all proceedings, *other than* export and import licensing proceedings described in part 110 . . . ."[27] As previously explained, the procedures in 10 C.F.R. Part 110 "constitute the *exclusive* basis for hearings on export . . . license applications."[28]

The standard in Part 2 is quite different than the standard in 10 C.F.R. Part 110, Subpart H. As noted above, Subpart H requires the Commission to consider whether a hearing would be in the public interest and whether a hearing would assist the Commission in making its statutory determinations.[29] The Part 2 standard is silent regarding consideration of public interest and does not include the findings required to issue an export license. Indeed, the Petition likewise does not mention "public interest," nor does it mention the relevant statutory or regulatory determinations. Petitioners' failure to address the correct standard renders the Petition incurably deficient, and it should be denied for this reason alone.

Nonetheless, UniTech further considered the information and arguments in the Petition against the correct legal standard in 10 C.F.R. Part 110, Subpart H, and Petitioners have not satisfied that standard. As explained below, they have neither identified an interest that may be affected by the present proceeding, nor demonstrated that a hearing would be in the public interest or assist the Commission in evaluating the Export Application. Accordingly, the Petition should be denied for that additional reason.

B. Petitioners Have Not Established an Interest Which May Be Affected by the Issuance of the Export License

Pursuant to 10 C.F.R. § 110.84(b), the Commission considers the nature of a petitioner's alleged interests and how they relate to issuance or denial of the requested export license, and whether the alleged injuries can be redressed in the proceeding at hand. Here, Petitioners

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27 10 C.F.R. § 2.1 (emphasis added).

28 10 C.F.R. § 110.80 (emphasis added).

29 10 C.F.R. §§ 110.82, 110.84.

submitted various declarations from members of Petitioners' respective organizations in an attempt to demonstrate standing.[30] Petitioners summarize the alleged interests and purported injuries of those members as follows:

> Generally, the harms or threats cited by the individual members of the Petitioner groups include exposures from being physically stuck in traffic proximate to, or in chance highway encounters with UniTech cargo trucks; spills and runoff from accidents or leakage from those vehicles; downwind vapors from processing or sorting facilities; possible dumping of irradiated water into local sewage systems from the facilities; the potential that radioactive metals recycled by UniTech are used in consumer products and other metal uses in civic life; and landfilling in Tennessee landfills of discarded UniTech wastes which contain radiation.[31]

Petitioners allege an assortment of remote and speculative harms that allegedly would stem from possession or transportation of the Regulated Materials within the United States, but such activities are already authorized under existing licenses and regulations.[32] Thus, Petitioners' alleged harms in this regard are outside the scope of, and cannot be redressed in, this proceeding.[33] Furthermore, to the extent Petitioners' complaints challenge the beneficial reuse or conditional release of certain materials, as contemplated in NRC and Agreement State regulations,[34] such arguments are collateral attacks on those regulations, which are not subject to

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30 *See* Declaration Appendix (containing the declarations of Pamela Hughes (NIRS), Lynda Schneekloth (NIRS), Nora Natof (NIRS), Michael Keegan (Beyond Nuclear), Daniel Stephenson (TEC), David Collins Wasilko (TEC), Connie Beauvais (CACC), April Gerstung (NEIS), and Elizabeth Zimmer-Lloyd (CACC)); *see also* Chasnoff Declaration (submitted after expiration of the hearing opportunity period).

31 Petition at 3.

32 *See, e.g.*, TDEC License R-M3007-A23; IEMA License IL-01008-01; PaDEP License PA-1073; 10 C.F.R. Part 71; 49 C.F.R. Parts 107, 171-180, and 390-397.

33 *See EnergySolutions*, CLI-11-3, 73 NRC at 625 ("challenges to the domestic licenses that authorize possession, use, [and] transport . . . of the waste are outside the scope of [an import/export] proceeding").

34 *E.g.*, 10 C.F.R. Parts 20 and 61.

challenge in this proceeding.[35] As explained further below, these assertions do not demonstrate an interest which may be affected by issuance of the export license.

1. Proximity to Domestic Facilities Does Not Demonstrate Standing in an Export Proceeding

Four of the standing declarations submitted by Petitioners appear to seek standing based on proximity to UniTech's domestic facilities.[36] Petitioners summarize the alleged harms as coming from "downwind vapors from processing or sorting facilities; possible dumping of irradiated water into local sewage systems from the facilities."[37] But such alleged harms would flow from the domestic *possession* of the Regulated Materials at these facilities—a topic which is far beyond the bounds of the instant proceeding.[38] This proceeding considers issuance of a license to export materials that *already* would be legally *possessed* in the United States—indeed the proposed export is "the *only* regulatory action pending before the NRC."[39]

The Commission has explained in another proceeding that "[p]etitioners' questions or challenges to the domestic licenses that authorize possession, use, [and] transport . . . of the waste are outside the scope of" an export proceeding.[40] Put simply, Petitioners' purported harms from domestic possession simply cannot be redressed here, as required by 10 C.F.R. § 110.84(b).

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35 *See EnergySolutions*, CLI-11-3, 73 NRC at 625 (challenges to NRC regulations are not a valid basis for a hearing); *id*. n.65 (citing Export and Import of Nuclear Equipment and Material; Updates and Clarifications, 75 Fed. Reg. 44,072, 44,075 (July 28, 2010) for the proposition that import/export proceedings are "not a mechanism to alter the established domestic authorization process, including Agreement State regulations").

36 *See* Declaration Appendix (declarations of Nora Natof, Daniel Stephenson, David Collins Wasilko, and April Gerstung).

37 Petition at 3.

38 *See EnergySolutions*, CLI-11-3, 73 NRC at 625 ("challenges to the domestic licenses that authorize possession . . . of the waste are outside the scope of [an import/export] proceeding").

39 82 Fed. Reg. at 16,637 (emphasis added).

40 *EnergySolutions*, CLI-11-3, 73 NRC at 625.

Thus, Petitioners' claims in this regard do not identify an interest which may be affected by this proceeding.

2. Proximity to Domestic Transportation Routes Does Not Demonstrate Standing in an Export Proceeding

Petitioners' members also allege harm "from being physically stuck in traffic proximate to, or in chance highway encounters with UniTech cargo trucks," and "spills and runoff from accidents or leakage from those vehicles," and allege standing based on proximity to "possible shipping routes."[41] But the purported threat of injury here—from *chance encounters* and along *possible* transportation routes—is conjectural or hypothetical at best, and certainly is not the type of "concrete and particularized" injury necessary to demonstrate standing.[42]

Furthermore, the Commission has held that "[m]ere potential exposure to minute doses of radiation within regulatory limits does not constitute a 'distinct and palpable' injury on which standing can be founded."[43] In any event, such alleged harms would flow from the domestic *transportation* of the Regulated Materials—a topic which also is beyond the bounds of the instant proceeding.[44] More to the point, the Commission has already considered—and *rejected*—claims identical to those raised by Petitioners here, concluding that "mere geographical proximity to potential transportation routes is insufficient to confer standing" in export licensing proceedings.[45] Accordingly, Petitioners' claims in this regard are inadequate, as a matter of law, to demonstrate standing.

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41 Petition at 3-6.

42 *Sequoyah Fuels Corp.* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 72 (1994) (citations omitted).

43 *EnergySolutions*, CLI-11-3, 73 NRC at 623 (citation omitted).

44 *See id.* at 625 ("challenges to the domestic licenses that authorize transport . . . of the waste are outside the scope of [an import/export] proceeding").

45 *DOE*, CLI-04-17, 59 NRC at 364 n.11 (citation omitted).

3. Objections to NRC and Agreement State Regulations Do Not Demonstrate Standing in an Export Proceeding

Petitioners' members also allege harms from "the potential that radioactive metals recycled by UniTech are used in consumer products and other metal uses in civic life; and landfilling in Tennessee landfills of discarded UniTech wastes which contain radiation."[46] To the extent Petitioners challenge the beneficial reuse of materials that can be released for unrestricted use or the disposition of certain materials in accordance with existing licenses and existing NRC and Agreement State regulations, UniTech does not—and is *not* required to—seek approval from the NRC for such actions as part of the Export Application. Thus, Petitioners' grievances cannot be redressed here. Furthermore, such arguments are collateral attacks upon NRC and Agreement State regulations,[47] which are expressly forbidden.[48] "The Commission adheres to the fundamental principle of administrative law that its rules are not subject to collateral attack in adjudicatory proceedings."[49] Consequently, Petitioners' claims in this regard do not identify an interest which may be affected by this proceeding.

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Because Petitioners have not identified any alleged injury that could be redressed here, they have not identified an interest that may be affected by the present proceeding. Thus, Petitioners' standing arguments provide no support for the proposition that a hearing would be in the public interest or assist the Commission in evaluating the Export Application.

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46 Petition at 3.

47 *See generally, e.g.*, 10 C.F.R. Parts 20 and 61.

48 *See EnergySolutions*, CLI-11-3, 73 NRC at 625 (stating that challenges to NRC regulations are "impermissible" in import/export proceedings); *id*. n.65 (citing 75 Fed. Reg. at 44,075 for the proposition that import/export proceedings are "not a mechanism to alter the established domestic authorization process, including Agreement State regulations").

49 *Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant, Units 1 & 2), LBP-82-119A, 16 NRC 2069, 2073 (1982); *see also Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 334 (1999).

C. Petitioners Have Not Demonstrated That a Hearing Would Be in the Public Interest or Assist the Commission

Even if Petitioners demonstrated an interest that may be affected by the present proceeding, which they have not done, a hearing still would not be justified because Petitioners have not demonstrated that a hearing would be in the public interest or assist the Commission in making the required findings. Petitioners have submitted their concerns as to the Export Application in the Petition itself, as well as via comments on the application review docket,[50] setting forth their views, objections, and alleged deficiencies. Despite being baseless and immaterial (as explained further below), those views are now part of the record in this proceeding. Petitioners point to no material information that warrants consideration or that could only be "brought to light" through a hearing. Upon receipt of the Executive Branch's views, the Commission will have ample information upon which to base its decision. Thus, under the circumstances, a hearing would not be in the public interest or otherwise assist the Commission in making the required findings under 10 C.F.R. §§ 110.42 and 110.45. The discussion below examines the two issues—incorrectly styled as "contentions"—raised by Petitioners[51]—neither of which supports, let alone justifies, a hearing.

1. Contention 1 Does Not Demonstrate That a Hearing Would Be in the Public Interest or Assist the Commission

Petitioners' first contention ("Contention 1"), in essence, claims that UniTech has not provided sufficient detail in the Export Application to satisfy the requirements in 10 C.F.R. Part 110—making it a contention of omission. But Petitioners' claims in this regard are meritless and based on outdated regulations. As a threshold matter, even assuming *arguendo* that Petitioners'

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[50] *See, e.g.*, D. D'Arrigo, NIRS, and M. Keegan, Don't Waste MI, Public Submission, Docket NRC-2017-0054 (Mar. 13, 2017) (ML17075A136).

[51] Petition at 7-21.

claims were valid, the Commission now has notice of the alleged deficiencies and can proceed as it sees fit. Thus, a hearing would not otherwise assist the Commission in this regard, and is wholly unnecessary.

a. Petitioners' Claims in Contention 1 Are Meritless

Petitioners argue that the Export Application:

> does not adequately define or characterize the waste materials to be returned to Canada in such a way as to allow measurement, calculation or prediction of types and amount of radioactivity or the volume or the chemical and physical for[m] of the radioactive waste.[52]

More specifically, Petitioners allege that the Export Application "does not characterize the waste in terms of radionuclides, it does not provide the [quantity of radioactive material, expressed in] TBq of the material to be exported, nor does it depict the chemical or physical form" of the material.[53] Petitioners' claims in this regard are plainly wrong. The Export Application incorporates by reference the Import Application,[54] which provides a list of radionuclides and maximum total activity (TBq),[55] and the chemical or physical form of the materials are described in both Applications.[56]

Notably, NRC regulations at 10 C.F.R. § 110.32(f)(5) specify the required contents of an application to export radioactive waste, including a description of the "volume, physical and chemical characteristics, route of transit of shipment . . . and ultimate disposition" of the waste. Petitioners cite to an outdated version of that regulation,[57] which the NRC amended in 2010,[58]

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52 *Id*. at 7-8.

53 *Id*. at 9.

54 *See* Export Application at 1 (box 10), 3 (discussion of "Item 10").

55 *See* Import Application at 4.

56 *See* Export Application at 1 (box 10a); Import Application at 2 (box 15a).

57 *Compare* Petition at 9 (apparently quoting 10 C.F.R. § 110.32(f)(5) (2010)) *with* 10 C.F.R. § 110.32(f)(5) (2016).

and allege that the Export Application "fails to provide essentially any of this information."[59] But Petitioners are mistaken. The Export Application provides all of the information required by the current regulations.[60] To the extent Petitioners complain that the Export Application does not provide the "classification (as defined in § 61.55)" of the waste, the regulations no longer require such information unless the material is exported for "direct disposal at [a] part 61 or equivalent Agreement State licensed facility,"[61] which is not the case here.[62]

Petitioners also cite to 10 C.F.R. § 110.32(f)(7), which requires applications to describe the ultimate end use "in sufficient detail to permit accurate evaluation of the justification for the proposed export," and allege the Export Application contains "insufficient detail."[63] Despite the fact that the Export Application squarely addresses this regulatory requirement,[64] Petitioners complain that:

(1) the application purportedly "does not explain why radioactive waste material should be *brought into* the United States";

(2) the Regulated Material purportedly is "*sorted, handled and processed* in ill-explained or unexplained ways"; and

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58 75 Fed. Reg. at 44,090.

59 Petition at 9.

60 *See, e.g.*, Export Application at 1 (box 10a) (providing the maximum total volume and physical and chemical characteristics); *id*. (box 10) (incorporating by reference the Import Application which discusses transportation routes at page 3); *id*. at 1 (box 9a), 3 (discussion of "Item 9a") (describing the ultimate end use).

61 *Compare* 10 C.F.R. § 110.32(f)(5) (2010) (requiring this information for all exports of radioactive waste) *with* 10 C.F.R. § 110.32(f)(5) (2016) (requiring it only for waste exported for "direct disposal").

62 *See* Import Application at 3 (incorporated by reference in the Export Application) (explaining the Regulated Materials "shall be returned to the *customer*" (not directly to a disposal facility) (emphasis added)).

63 Petition at 9.

64 *See* Export Application at 3 (noting that the export would allow UniTech's customer to "reuse, store, transfer, or dispose of materials in accordance with their CNSC License"); *see also* Import Application at 3 (incorporated by reference in the Export Application) (explaining that "[t]he public benefits . . . include reduced utilit[y] costs through increased utility efficiency[,] recovery of valuable materials, [and] a significant reduction in . . . the amount of radioactive waste generated.").

(3) UniTech's *Agreement State licenses* purportedly "are not provided as part of the public record and for which insufficient time and access have been provided to acquire."[65]

But none of these topics, which can be best described as relating to import authority, possession and use authority, or Agreement State authority, are within the scope of the instant proceeding.[66] Moreover, Petitioners provide nothing to explain their unsupported conclusion that the absence of discussion of these irrelevant topics in the Export Application amounts to insufficient detail to justify the proposed export. Accordingly, Petitioners' claims as to 10 C.F.R. § 110.32(f)(7) are both meritless and immaterial.

Petitioners' remaining claims in Contention 1 are equally baseless, and outside the scope of, and immaterial to, the instant proceeding. For example, Petitioners appear to allege (without any basis whatsoever) that UniTech's proposed export will contain "plutonium in excess of 1.0 gram per shipment," which is "the cutoff limit for general licenses found in 10 C.F.R[.] § 110.21(b)(1)."[67] First, UniTech's Export Application seeks a *specific* export license; thus, the limitations on *general* licenses in Section 110.21 are entirely irrelevant here. Second, Petitioners' assertion is contrary to the plain text of the Export Application, which explains that any "plutonium shall be incidental; *i.e.*, *micro*grams per shipment, *if any*."[68] Thus, Petitioners' claim in this regard is both baseless and irrelevant.

Moreover, Petitioners' spurious assertions of "economic and physical harm" "along the transportation routes"[69] amount to little more than irrational fear-mongering, alleging harms that

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65 Petition at 9-10 (emphasis added).

66 *See EnergySolutions*, CLI-11-3, 73 NRC at 625. Indeed, 10 C.F.R. § 110.50(a)(4) explains that an export license "does not authorize any person to receive title to, acquire, receive, possess, deliver, use, transport or transfer any nuclear equipment or material subject to this part."

67 Petition at 11.

68 Export Application at 1 (box 10c) (emphasis added).

69 Petition at 11-12.

they claim would flow from domestic possession and transportation, which are not at issue in this proceeding,[70] and do not relate to the criteria the Commission considers in examining export applications.[71]

Finally, Petitioners' general "object[ion] to importing foreign radioactive waste and materials," and collateral attacks on the "EPA Protective Action Guides" and Tennessee "clearance" regulations[72] are far beyond the ambit of the current proceeding.[73] Overall, Petitioners' claims in Contention 1 are baseless or irrelevant or both, and offer nothing to support the claimed need, and desire for a hearing.

b. *Contention 1 Provides Nothing to Demonstrate That a Hearing Would Bring New and Relevant Information to Light*

To be granted a hearing in an export proceeding, "a petitioner must specifically identify how a hearing would bring new information to light"[74] or "present significant information not already available to and considered by the Commission."[75] Here, Petitioners offer only unsupported and demonstrably incorrect allegations that the Export Application purportedly lacks required content. Regardless, where "[p]etitioners' written views are on the record" and "[p]etitioners do not claim to have special knowledge on any of the issues raised by [the] application," the Commission "need not devote adjudicatory resources to providing an oral hearing on [p]etitioners' grievances."[76]

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70 *See EnergySolutions*, CLI-11-3, 73 NRC at 625; *see also* 10 C.F.R. § 110.50(a)(4).

71 *See* 10 C.F.R. §§ 110.45, 110.42; *see also Westinghouse Elec. Corp.* (Export to South Korea), CLI-80-30, 12 NRC 253, 260-61 (1980) (explaining the Commission primarily focuses on "non-proliferation and safeguards concerns" in making export licensing decisions).

72 Petition at 12.

73 *See EnergySolutions*, CLI-11-3, 73 NRC at 625 ("impermissible challenges to the Part 110 regulations . . . are not a valid basis for providing a . . . hearing on a particular import/export license application").

74 *DOE*, CLI-16-15, 84 NRC at 58.

75 *Transnuclear, Inc.* (Export of 93.3% Enriched Uranium), CLI-00-16, 52 NRC 68, 72 (2000).

76 *EnergySolutions*, CLI-11-3, 73 NRC at 623, 625.

Here, Petitioners already have provided their views to the Commission in their Petition. As discussed above, UniTech has provided the information required by NRC regulations. Nonetheless, even if additional data was needed to evaluate the Export Application, which is not the case here, the Commission could easily request such information from UniTech. Petitioners have not demonstrated how a hearing would provide *further* information that the Commission otherwise could not obtain via readily-available means; nor do Petitioners assert that *they* possess such information. As the Commission observed in *Westinghouse*:

> Even assuming that the health and safety-related issues raised by Petitioners are matters that the Commission considers in making its export license determinations, we cannot conclude from Petitioners' submissions that they would offer anything in a hearing that will generate significant new information or insight about [the] export application. On the contrary, the submissions reflect that Petitioners would not offer any information or documentation in a hearing that is not already readily available to the Commission.[77]

Likewise, the Petition does not claim that Petitioners would offer *any* information or documentation in a hearing—much less information or documentation that is both (a) not readily-available to the Commission, and (b) relevant here, *i.e.*, "would relate to the findings that [the Commission] must make."[78] Rather, Petitioners' various claims are essentially comments expressing their apprehensions about practices regulated in other channels that are not at issue. Furthermore, their comments are baseless and irrelevant with respect to the Export Application, but are nevertheless comments which the Commission can consider under 10 C.F.R. § 110.81(a).[79] Ultimately, Contention 1 fails to demonstrate that a hearing would bring new information to light.

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77 *Edlow*, CLI-17-03, slip op. at 8 n.26 (quoting *Westinghouse Elec. Corp.* (Nuclear Fuel Export License for Czech Republic – Temelin Nuclear Power Plants), CLI-94-7, 39 NRC 322, 334 (1994)).

78 *Edlow*, CLI-17-03, slip op. at 8.

79 *See id.* at 9.

In summary, because Petitioners' claims in Contention 1 are baseless or irrelevant or both, and fail to demonstrate that a hearing would bring new information to light, Contention 1 does not demonstrate that a hearing would be in the public interest or of any assistance to the Commission.

2. Contention 2 Does Not Demonstrate That a Hearing Would Be in the Public Interest or Assist the Commission

In Petitioners' second contention ("Contention 2"), "Petitioners seek adjudication of the issue of whether a specific *import* license is required"[80] and "seek a hearing on the adequacy of the protections of the public via general license," and whether certain regulated material "would be adequately regulated under general licensing requirements."[81] But the Commission's Part 110 regulations simply are not subject to attack in this proceeding.[82] Moreover, Petitioners' blatant attempt to litigate import activities is far beyond the scope of this export licensing proceeding.[83]

Even assuming *arguendo* that Petitioners' claims were within the scope of the instant proceeding, the Commission is now alerted to Petitioners' arguments on this subject, which are on the record, and Petitioners do not otherwise claim "special knowledge" regarding the issues they raise.[84] Thus, Petitioners again fail to show that a hearing is necessary to bring relevant information to light. Accordingly, Contention 2 does not demonstrate that a hearing would be in the public interest or assist the Commission.

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80 Petition at 15 (emphasis added).

81 *Id*. at 16.

82 *EnergySolutions*, CLI-11-3, 73 NRC at 625.

83 82 Fed. Reg. at 16,637 ("the only regulatory action pending before the NRC is UniTech's application for a specific export license (XW023) to export low-level radioactive waste to Canada").

84 *See EnergySolutions*, CLI-11-3, 73 NRC at 623, 625.

a. *Petitioners' Claims in Contention 2 Are Meritless and Entirely Outside the Scope of This Proceeding*

In Contention 2, Petitioners argue that "[t]he NRC granted a de facto general import license to import 'radioactive material' containing 'radioactive waste,' which violates regulatory criteria."[85] But as repeatedly explained throughout this Answer, import activities are not within the scope of this proceeding, and Petitioners' arguments do not even mention, much less offer meaningful commentary related to, the findings the Commission must make to approve UniTech's Export Application.[86] In the end, Petitioners' arguments in Contention 2 hinge upon a demonstrably-incorrect interpretation of the definition of "radioactive waste," based on their reading of an outdated regulation that was amended by the Commission several years ago. Again, Petitioners' claims are incorrect, meritless, and immaterial to the instant proceeding.

As a preliminary matter, Petitioners' arguments in Contention 2 are difficult to follow. As best UniTech can discern, Petitioners' logic proceeds as follows:

1. the Import Application states that plutonium may be among the Regulated Materials that are imported;
2. the Export Application states that the same Regulated Materials discussed in the Import Application may be exported;
3. the *presence of plutonium* renders the Regulated Materials within the definition of "radioactive waste" for both the import and the export;
4. because the Regulated Materials are "radioactive waste," they may not be imported under a general import license; and
5. if the Regulated Materials are improperly imported to the United States, then the Export Application cannot be granted.

Petitioners' apparent logic falls apart at step 3, however, because they incorrectly define "radioactive waste." In one part of the Petition, they cite to an old definition of "radioactive

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85 Petition at 12.

86 *See generally* 10 C.F.R. §§ 110.42, 110.45.

waste"[87] that has since been superseded via rulemaking.[88] Reliance on this outdated definition may be the source of, or otherwise contribute to, their mistaken belief that, "the presence of plutonium in radioactive shipments requires that the material be deemed 'radioactive waste.'"[89] Regardless, Petitioners' assertion is demonstrably incorrect.

Plutonium is simply "special nuclear material"[90] unless it otherwise satisfies the definition of "radioactive waste" in 10 C.F.R. § 110.2, which reads as follows:

> [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; or recycling, waste treatment or other waste management process that generates radioactive material for 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. [Subject to six exclusions.]

Thus, the presence of "special nuclear material" is but one element of the NRC's multi-part definition of "radioactive waste," and is treated the same as source and byproduct material for the purposes of the definition. Petitioners' assertion to the contrary contradicts the plain text of the regulatory definition, and is therefore meritless.

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87 *Compare* Petition at 20-21 (citing 10 C.F.R. § 110.2 (definition of *radioactive waste*) (2010)) *with* 10 C.F.R. § 110.2 (definition of *radioactive waste*) (2016).

88 75 Fed. Reg. at 44,086. *Radioactive waste* was previously defined as "any *waste* that contains or is contaminated with source, byproduct, or [SNM] [subject to certain exceptions]." 10 C.F.R. § 110.2 (2010) (emphasis added). At that time, Part 110 did not define the term "waste." *See id*. The current definition of *Radioactive waste* includes "any *material* that contains or is contaminated with source, byproduct, or [SNM]," and that satisfies two additional criteria: (1) a specific materials license would be required to possess such material, and (2) the material is imported or exported for a disposal-related purpose. *See* 10 C.F.R. § 110.2 (2016) (emphasis added) (also subject to certain exceptions).

89 Petition at 20; *see also id.* at 14 ("UniTech's specific import license application states that three radioisotopes of plutonium are likely to be found in the waste. Since the material will contain these radioisotopes, regulations require the export material to be characterized and handled as radioactive waste.").

90 *See* 10 C.F.R. § 110.2 (definition of *special nuclear material*).

Based upon their misreading of the regulations, Petitioners go on to argue, without support, that it is not possible (or to use their phrase, "flagrantly incongruent"[91]) for regulated material to be outside the definition of "radioactive waste" when imported, but within the definition when exported.[92] The NRC's regulations provide for precisely such a scenario. The current definition of "radioactive waste" in 10 C.F.R. § 110.2 hinges largely on the *purpose* of the import or export. Materials can be imported for the purpose of recycling, whereas any resulting non-recyclable material can be exported for the purpose of disposal, and—because the two actions had different purposes and dispositions—only the latter would be considered "radioactive waste." Petitioners' misreading of the pertinent regulations is not a legitimate basis for a hearing.[93]

Petitioners' fundamental misunderstanding of the definition of "radioactive waste" eviscerates their overarching argument in Contention 2: that the NRC's conclusion that the Import Activity is authorized under a general license (which is inapplicable to radioactive waste) amounts to issuance of "a *de facto*, unlawful, general license for the import,"[94] and an "improper[] . . . *de facto* amendment of the agency's regulations."[95] But this construct relies upon Petitioners' mistaken belief that the mere presence of plutonium, by definition, renders a material "radioactive waste"—which is simply untrue.

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91 Petition at 14.

92 *Id.*

93 *Cf. Ga. Inst. of Tech.* (Ga. Tech Research Reactor), LBP-95-6, 41 NRC 281, 300 (1995) (holding that a petitioner's imprecise reading of a document cannot be the basis for a litigable contention), *aff'd*, CLI-95-12, 42 NRC 111 (1995).

94 Petition at 15.

95 *Id*. at 16.

Ultimately, Petitioners' claims in Contention 2, which employ faulty logic and ignore the relevant regulatory provisions, are baseless, misguided, far beyond the scope of the instant proceeding, and offer nothing to substantiate the claimed need for a hearing.

b. *Contention 2 Provides Nothing to Demonstrate That a Hearing Would Bring New and Relevant Information to Light*

Contention 2 ultimately boils down to a purported need for a specific import license. As explained above, however, to be granted a hearing, "a petitioner must specifically identify how a hearing would bring new information to light"[96]—specifically, information that "would relate to the findings that [the Commission] must make."[97] The requisite findings are identified in 10 C.F.R. §§ 110.42 and 45. But Petitioners' fundamentally-flawed arguments regarding the Import Activity say nothing about these findings. Indeed, Petitioners do not even mention them. Petitioners offer nothing more than their mistaken interpretation of other NRC regulations.

Even if the Commission were to find that a specific import license is required, which it is not, the Commission may act accordingly. Nonetheless, Petitioners point to no information—whatsoever—that would be revealed in a hearing that the Commission could not otherwise readily obtain; nor do Petitioners assert that *they* could supply such information or have any "special knowledge" on this issue. If the Commission "cannot conclude from Petitioners' submissions that they would offer anything in a hearing that will generate significant new information or insight about [the] export application," then a hearing is not authorized by law.[98] In this regard, Petitioners' various claims should be considered mere comments (although

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96 *DOE*, CLI-16-15, 84 NRC at 58.

97 *Edlow*, CLI-17-03, slip op. at 8.

98 *Westinghouse*, CLI-94-7, 39 NRC at 334.

baseless and irrelevant) on the Export Application, which the Commission can consider under 10 C.F.R. § 110.81(a).[99]

In summary, Contention 2 fails to demonstrate that a hearing would bring new, relevant information to light, as required by law;[100] thus, it does not demonstrate that a hearing would be in the public interest or assist the Commission.

V. CONCLUSION

Because Petitioners have not demonstrated an interest which may be affected by this proceeding, or otherwise demonstrated that a hearing would be in the public interest or assist the Commission, and because Petitioners' views, such as they are, now are part of the record in this proceeding, the Petition should be summarily rejected. UniTech respectfully requests that the Commission expeditiously reject this Petition and approve the Export Application to allow UniTech to proceed with its planned business activities.

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99 *See Edlow*, CLI-17-03, slip op. at 9.

100 *DOE*, CLI-16-15, 84 NRC at 58; *Edlow*, CLI-17-03, slip op. at 7-8.

Respectfully submitted,

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

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Dated in Washington, D.C.
this 2nd day of June 2017

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of	)	
	)	Docket No. 11006249
UNITECH SERVICES GROUP, INC.	)	
	)	
(Export of Low-Level Waste)	)	June 2, 2017

CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. §§ 2.305 and 110.89(d), I certify that, on this date, a copy of the foregoing "UNITECH'S ANSWER TO PETITION FOR LEAVE TO INTERVENE AND HEARING REQUEST FILED BY NIRS, BEYOND NUCLEAR, NEIS, TEC, & CACC" was served upon the Electronic Information Exchange (the NRC's E-Filing System) in the above-captioned docket.

Signed (electronically) by Ryan K. Lighty

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