



State of Utah

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Governor

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Department of
Environmental Quality

Amanda Smith
Executive Director

DIVISION OF RADIATION CONTROL
Rusty Lundberg
Director



March 29, 2013

Dan Shrum, Senior Vice-President Regulatory Affairs
EnergySolutions, LLC
423 West 300 South, Suite 200
Salt Lake City, Utah 84101

RE: Request for Additional Information for Transfer of Control of Radioactive Materials
Licenses Number UT 2300478 and UT 2300249 and Utah Ground Water Quality
Discharge Permit Number UGW 450005

Dear Mr. Shrum:

DRC-2013-001870

The Division of Radiation Control (DRC) received a letter from you dated January 13, 2013 and a letter from David Lockwood, Chief Executive Officer of EnergySolutions, Inc. and EnergySolutions, LLC. During review of the letters, it was determined that additional information is necessary to clarify certain provided information. As you have indicated the time sensitive nature of this transfer, a prompt response to this letter would allow a final decision to be made regarding your request for a transfer of control of your licenses.

When responding to this letter, please reference Project Number L-2013-88 in the response. In support of your requests, please provide the following information:

1. In your letter dated January 21, 2013 (CD13-0017), you state that "[w]hile the proposed transaction will result in an indirect transfer of control of ES LLC and the licenses held by ES LLC, it will not change the current technical and financial qualifications, or operations, of ES LLC as the DEQ's licensee for these licenses." Please provide additional information to demonstrate that the financial qualifications for the operations conducted under the licenses and permit held by EnergySolutions, LLC will not change. The provided information should demonstrate how EnergySolutions, LLC will be able to continue to meet the obligations of operating under the licenses and permits issued by the Utah Department of Environmental Quality. At a minimum, your response should summarize the financial instruments and qualifications that you maintain will not change as a result of the proposed buyout merger.

2. For each transfer of control, the Division must determine if the new owner is controlled by a foreign entity or foreign entities. Although the State of Utah does not oversee issues related to common defense and security, the State has an obligation to identify and notify NRC regarding any concerns related to common defense and security, including foreign ownership. Therefore, additional information regarding the future parent companies of EnergySolutions, LLC must be provided to the Division. You stated that ECP II is owned by five U.S. citizens, which suggests there will be no foreign ownership of the parent company. However, in a January, 10, 2013, letter to the U.S. Nuclear Regulatory Commission, Mr. Patrick Daly stated that the intended parent company for EnergySolutions, Inc., Rockwell Holdco, Inc., "will be directly held by a number of affiliated investments" including Energy Capital Partners II, LP; Energy Capital Partners II-A, LP; Energy Capital Partners II-B, LP; Energy Capital Partners II-C, LP; and Energy Capital Partners II-D, LP ("collectively the ECP II Partnerships"). Mr. Daly further stated that the ECP Partnerships and the controlling partners, i.e., Energy Capital Partners GP II, LP, are owned by ECP II and various passive limited partner investors. Mr. Daly also stated that less than forty percent of the equity in all of the ECP II Partnerships and the controlling partners are held by passive investors "that are foreign domiciled entities, and no foreign domiciled entity or group or foreign domiciled entities under common control holds more than twelve percent of these equity interests."

Both you and Mr. Daly emphasize that passive limited partner investors do not have any rights to make decisions regarding running the businesses. Accordingly, provide documentation that the equity of any parent company of ES LLC held by foreign domiciled entities or a group of foreign domiciled entities will not be inimical to the common defense and security.

3. You state that transfer of ownership does not involve any planned changes in the management personnel or members of the ES LLC Board of Managers. Additionally, on March 4, 2013, Mr. David Lockwood states he is "the Chief Executive Officer of ES, and following the proposed transaction, this parent company of ES LLC will retain operational control of its business, including the ability to control the operations of ES LLC. [emphasis added]." Notwithstanding these statements, section 2.6(a) of "The Agreement and Plan of Merger By and Among Rockwell HoldCo, Inc, Rockwell Acquisition Corp, and EnergySolutions, Inc." (the Agreement), dated January 7, 2013, filed by ES as Exhibit 2.1 to a Securities and Exchange Commission (SEC) Form 8-K, states that:

Section 2.6 Directors and Officers.

- (a) Subject to applicable Law, each of the Parties hereto shall take all necessary action to ensure that the board of directors of the Surviving Corporation [EnergySolutions, Inc. (ES, Inc.)] effective as of, and immediately following, the Effective Time shall consist of the members of the board of directors of Merger Sub [Rockwell Acquisition Corp.] immediately prior to the Effective Time, each to hold office in accordance with the certificate of incorporation and bylaws of the Surviving Corporation until their respective successors shall have been duly elected, designated or qualified, or until their earlier death,

resignation or removal in accordance with the certificate of incorporation and bylaws of the Surviving Corporation.

- (b) The officers of the Company immediately prior to the Effective Time shall, from and after the Effective Time, be the officers of the Surviving Corporation until their successors shall have been duly elected, designated or qualified, or until their earlier death, resignation or removal in accordance with the certificate of incorporation and bylaws of the Surviving Corporation and with applicable Law.

The information in Item 2.6 of the Agreement mandates that EnergySolutions, Inc.'s Board Members be replaced by the Board Members of Rockwell Acquisition Corp. It is recognized that the Agreement does not mandate immediate replacement of the officers of EnergySolutions, Inc.

The information provided to NRC on January 10, 2013 identifies various individuals as the directors and executive personnel of Rockwell Holdco, Inc. Provide similar information in your response for both Rockwell Holdco, Inc. and Rockwell Acquisition Corp., including the current directors and executive personnel. In addition, describe and document the directors of the surviving EnergySolutions, Inc. following the proposed buyout merger transaction.

If ES, Inc. as the parent company of ES, LLC, has the ability to control the operations of ES, LLC, and the Board Members of ES, Inc. are to be replaced by the Board Members of Rockwell Acquisition Corp., explain how you determined that personnel who have the ability to control the license will not change, including how Mr. Lockwood and current managers will retain operating control of ES LLC. Also describe, with supporting documentation, any expected changes in personnel and the anticipated effect, if any, on the operation of the facility.

4. Mr. Lockwood states in his letter dated March 4, 2013, that "[a]s the Chief Executive Officer of ES LLC, I can confirm that ES LLC will maintain direct control of the Materials Licenses and permits, and ES LLC agrees to abide by all commitments and representations previously made by it in connection with the Materials Licenses and permits Rockwell Holdco, Inc. and its parent companies have confirmed to me their expectation that ES LLC will continue to fulfill its commitments and obligations as a licensee."

Although Rockwell Holdco, Inc. and its parent companies have confirmed to Mr. Lockwood that they expect ES, LLC to continue to fulfill their commitments and obligations as a licensee, documentation must be provided to the Division stating that ES, Inc., Rockwell Holdco, Inc., and any other parent company of ES LLC, including Energy Capital Partners II, LLC, will not take any action that would interfere with ES LLC's ability to abide by all constraints, license conditions, requirements, representations, and commitments identified in and attributed to each of the licenses and permits issued to ES LLC by the Utah Department of Environmental Quality. The requested documentation must be signed by an authorized individual or by individuals authorized to sign for each of

the parent companies for ES LLC. Signed acknowledgements from the acquiring parent companies are necessary because a parent company, if it so desired, could exercise control over a licensee's activities of any wholly owned subsidiary; and upon consummation of a sale of a company, that the full right to direct and control licenses become vested in the new owners. See *In the Matter of Safety Light Corporation*, 31 NRC 350, 365 (ALAB 1990); see also *In the Matter of Safety Light Corporation*, 41 NRC 413 (LBP 1995).

5. Your, January 21, 2013, request for approval of an indirect transfer of control of licenses states that "[t]his Application is submitted on behalf of itself, Rockwell [Holdco, Inc.] and the other proposed future parent companies." If you intend to represent the positions of the proposed acquiring entities, you must include all necessary authorizing signatories or documentation that you are authorized to represent the entities.

Upon receipt of the requested information, we will continue review of your request. Please contact Gwyn Galloway or John Hultquist at (801) 536-4250 if you have questions regarding this matter.

UTAH DIVISION OF RADIATION CONTROL



Rusty Lundberg, Director

Cc: Amanda Smith, Director of Utah Department of Environmental Quality
Randy Erikson, Regional State Agreements Officer, NRC Region IV