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GG-EA-LTR-13-010

February 20, 2013

U.S. Nuclear Regulatory Commission, Region I
Kathy Modes, Division of Nuclear Materials Safety
2100 Renaissance Blvd., Suite 100
King of Prussia, PA 19406-2713

REC RG1 0221 13AM10:12

Material License No. 06-20775-01, Docket No. 030-22060

Subject: Request for Approval of Indirect Transfer of Control of License

Reference 1: Letter from Kathy Modes to Art Palmer dated February 12, 2013, "Request for Additional Information Concerning Application for Amendment to License, Control No. 579880"

Dear Ms. Modes,

In Reference 1 the Nuclear Regulatory Commission ("NRC") requested additional information regarding the proposed transaction whereby EnergySolutions, Inc., the parent company of EnergySolutions, LLC will be acquired by Rockwell Holdco, Inc. As more fully explained below, the proposed acquisition described in our application has not been consummated and will not occur until EnergySolutions, LLC and its subsidiaries receive all required regulatory approvals, including approvals requested from the NRC. This responds to the request for information in Reference 1.

The following restates two requests for information and provides our response.

1. **Your license currently lists a mailing address in Danbury, Connecticut. However, the letterhead used in your letter dated January 18, 2013 clearly indicates an Oak Ridge, Tennessee address. In addition, our last inspection conducted in 2011 indicates that your Radiation Safety Officer and all radiation safety records are physically located in Tennessee. The inspector first visited your Connecticut address only to be re-directed to a location in Tennessee. The NRC performs unannounced safety inspections and this cannot be accomplished if we are directed to the wrong address. Please provide the Tennessee address as you would like it to appear on your license, so that your license clearly and accurately maintains the current location of your Radiation Safety Officer and radiation safety records. The NRC needs to assure that we maintain the most up-to-date mailing addresses to be able to send your Radiation Safety Officer all the necessary correspondence in a timely manner.**

579880

NMSS/RGN1 MATERIALS-002

EnergySolutions, LLC would like the address for the licensee to appear on the license as follows:

1009 Commerce Park Drive, Suite 100
Oak Ridge, TN 37830

The above referenced license is a mobile license and, therefore, is not used for the possession of radioactive materials at the address of the licensee. Responsibility for administration of this license is more properly located at the Oak Ridge, TN address.

2. **It appears from your letter that a possible change of ownership (control) has already occurred.**

10 CFR 30.34(b)(1) states, “No license issued or granted pursuant to the regulations in this part and parts 31 through 36, and 39 nor any right under a license shall be transferred, assigned or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person, unless the Commission shall, after securing full information, find that the transfer is in accordance with the provisions of the Act and shall give its consent in writing.”

Licensees must provide full information and obtain NRC’s prior written consent before transferring control of the license. Control of a license is in the hands of the person or persons who are empowered to decide when and how that license will be used. That control is to be found in the person or persons who, because of ownership or authority explicitly delegated by the owners, possess the power to determine corporate policy and thus the direction of the activities under the license. A transferee is an entity that proposes to purchase or otherwise gain control of an NRC-licensed operation. A transferor is an NRC licensee selling or otherwise giving up control of a licensed operation. Based on Section 5.1.1 of Attachment 1 to your letter dated January 18, 2013, it appears this transaction occurred on January 7, 2013. This appears to be an apparent violation of 10 CFR 30.34(b). Please provide an explanation as to the delay in notifying the NRC and any taken and/or planned corrective actions to prevent recurrence in the future.

We respectively disagree that a violation of 10 CFR 30.34(b) has occurred, because no transfer of control has yet occurred. As indicated in the January 18, 2013 application, the Agreement and Plan of Merger By and Among Rockwell HoldCo, Inc., Rockwell Acquisition Corp., and EnergySolutions, Inc. (“Merger Agreement”), dated as of January 7, 2013, was filed as Exhibit 2.1 to a Securities and Exchange Commission (“SEC”) Form 8-K filed by EnergySolutions, Inc. The link to the Merger Agreement has changed since the filing of the January 18, 2013 application, and a public record copy of the Merger Agreement is now available in the SEC’s records at:

http://www.sec.gov/Archives/edgar/data/1393744/000104746913000090/a2212375zex-2_1.htm

EnergySolutions, LLC understands the requirement that it must receive prior written consent from the NRC before any indirect transfer of control of its NRC licenses is completed. Thus, under the terms of the Merger Agreement, no merger was completed on January 7, 2013. Rather, the Merger Agreement was executed as the first stage of an "agreement to merge in the future." The preconditions to completing the merger include various conditions, which include the written consent of the NRC before any merger will be completed, as well as consent from various Agreement States and other regulatory authorities.

For example, Section 2.2 on page 16 of the Merger Agreement states that the closing of the merger will not occur until all of the conditions set forth in Section VII have occurred. Section 7.1(e) on page 73 of the Agreement lists the receipt of all regulatory approvals and consents as a condition of the merger. *See also* "Zion Nuclear Power Station, Units 1 and 2; ZionSolutions, LLC; Consideration of Indirect Transfer," 78 FR 11904, 11905 (Feb. 20, 2013) (NRC consideration of application requesting prior written consent to the indirect transfer of control of the Zion licenses).

Therefore, no merger, and thus no transfer of control, has yet occurred. EnergySolutions, Inc. will not complete the proposed merger until after prior written consent of the NRC has been received.

I declare under penalty of perjury that the foregoing is true and correct. Executed on the 20th day of February 2013.

Respectfully,



Art Palmer
Director, Environmental Safety & Health and Radiological Services
EnergySolutions, LLC

cc: Regional Administrator, Region I, US NRC