



power plants” and unspecified “policy efforts” and the WCS Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this sentence and accordingly deny them. The WCS Defendants deny the allegations set forth in the third sentence of paragraph 2 regarding the creation of a “near-monopoly.” The remaining allegations in the third sentence of paragraph 2 concern unspecified utilities and the WCS Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this sentence and accordingly deny them. The WCS Defendants admit that numerous operating nuclear reactors are located in the Relevant States, but the allegations in the fourth sentence of this paragraph concern an unsourced map and unspecified “nuclear reactors” and the WCS Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this sentence and accordingly deny them.

3. The allegations in paragraph 3 concern unidentified third parties’ costs and whether and how they are passed on to unidentified third-party businesses and consumers in various states utilities and the WCS Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph and accordingly deny them.

4. The allegations in the first sentence of paragraph 4 concern *EnergySolutions, Inc.* (“ES”) and the WCS Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations and accordingly deny them. The WCS Defendants admit that several hundred million dollars were invested to build WCS’s state-of-the art LLRW disposal facility, and 19 years were spent building and obtaining the necessary licenses for the facility. WCS Defendants deny the remaining allegations set forth in paragraph 4.

5. The allegations of paragraph 5 concern ES and the WCS Defendants lack knowledge or information sufficient to form a belief as to the truth of these allegations and accordingly deny them.

6. The allegations of paragraph 6 concern ES and an unidentified third-party (“one of ES’s investors”) and the WCS Defendants lack knowledge or information sufficient to form a belief as to the truth of these allegations and accordingly deny them.

7. The allegations in the first sentence of paragraph 7 concern ES and the WCS Defendants lack knowledge or information sufficient to form a belief as to the truth of these allegations and accordingly deny them. The WCS Defendants admit that ES sent a letter to WCS dated February 10, 2015. The WCS Defendants further admit that there was litigation between WCS and ES. In all other respects, the WCS Defendants deny the allegations set forth in paragraph 7.

8. The WCS Defendants admit that an internal document from March 2015 contains the quoted language in paragraph 8, but in all other respects, deny the allegations set forth in paragraph 8.

9. The allegations of paragraph 9 concern ES and the WCS Defendants lack knowledge or information sufficient to form a belief as to the truth of these allegations and accordingly deny them.

10. The WCS Defendants admit that WCS and ES attended a mediation in August 2015. The WCS Defendants further admit that this transaction was announced in November 2015. The remaining allegations of paragraph 10 concern ES and the WCS Defendants lack knowledge or information sufficient to form a belief as to the truth of these allegations and accordingly deny them.

11. The allegations of paragraph 11 state legal conclusions to which no response is required. To the extent that they purport to be factual allegations, the WCS Defendants deny them.

12. The allegations of paragraph 12 concern ES and the WCS Defendants lack knowledge or information sufficient to form a belief as to the truth of these allegations and accordingly deny them.

13. The WCS Defendants admit that WCS is a Delaware limited liability company headquartered in Dallas, Texas. The WCS Defendants admit that WCS provides LLRW disposal services to commercial, industrial, and government LLRW generators in the Relevant States. The WCS Defendants admit that WCS's revenues were approximately \$45 million in 2015. The WCS Defendants admit that WCS is wholly owned by Andrews County Holdings, a Delaware corporation.

14. The WCS Defendants admit the allegations set forth in paragraph 14.

15. The WCS Defendants admit that LLRW comprises some categories of nuclear waste that are not spent nuclear fuel, high-level waste, transuranic waste, or uranium milling tailings and can include such items as personal protective clothing, tools, water purification filters and resins, hardware from nuclear power plants, soil, construction debris, and equipment from medical research institutions, but denies the remaining allegations set forth in paragraph 15.

16. Paragraph 16 states only legal conclusions, to which no response is required. To the extent that they purport to be factual allegations, the WCS Defendants admit that these allegations are a generally accurate recitation of AEA.

17. Paragraph 17 states only legal conclusions, to which no response is required. To the extent a response is required, the WCS Defendants admit that NRC regulations create general

waste classifications that attach to a package of LLRW at disposal, and that Class B and Class C LLRW have higher levels of radioactivity than Class A LLRW. Further, to the extent a response is deemed required, the WCS Defendants admit that the definition of “Greater than Class C” waste in the footnote of paragraph 17 is generally accurate and there are no commercial disposal facilities currently licensed to dispose of “Greater than Class C” waste. The WCS Defendants deny the remaining allegations in paragraph 17.

18. The allegations of paragraph 18 concern unspecified “nuclear power plants” operated by unspecified “utilities” and the WCS Defendants lack knowledge or information sufficient to form a belief as to the truth of these allegations, and therefore denies them. The WCS Defendants admit that most of the commercial LLRW WCS receives for disposal is generated by nuclear power plants. The WCS Defendants further admit that different types of LLRW sometimes require different disposal protocols.

19. The WCS Defendants admit that waste is not classified as Class A, B, or C until it is packaged for disposal. The remaining allegations in this paragraph concern processing techniques by unidentified parties and the WCS Defendants lack knowledge or information sufficient to form a belief as to the truth of these allegations and accordingly deny them.

20. The allegations in paragraph 20 contain Plaintiff’s own characterization and definition of terms to which no response is required.

21. The allegations in the first sentence of paragraph 21 concern the intentions of Congress in enacting legislation and the WCS Defendants lack knowledge or information sufficient to form a belief as to the truth of these allegations and accordingly deny them. The allegations in the second sentence of paragraph 21 concern “efforts” by unspecified parties and unspecified “political opposition” and the WCS Defendants lack knowledge or information

sufficient to form a belief as to the truth of these allegations and accordingly deny them. The WCS Defendants admit that one federal circuit court stated, in part, in *EnergySolutions, LLC v. Utah*, 625 F.3d 1261, 1268 (10th Cir. 2010), the language quoted in paragraph 21.

22. The allegations in paragraph 22 assert legal conclusions, to which no response is required. To the extent a response is required, WCS denies the allegations in paragraph 22.

23. The WCS Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 23 regarding the facilities in Richland, Washington and Barnwell, South Carolina and accordingly deny them. Upon information and belief, the WCS Defendants understand that there are four licensed LLRW disposal facilities in the United States.

24. The allegations of paragraph 24 concern ES and the WCS Defendants lack knowledge or information sufficient to form a belief as to the truth of these allegations and accordingly deny them. Upon information and belief, the WCS Defendants understand Clive to be licensed to dispose of Class A LLRW.

25. The WCS Defendants admit that WCS is licensed to dispose of Class A, B, and C LLRW from states in the Texas Compact (i.e., Texas and Vermont), and to dispose of Class A, B, and C LLRW from states outside the Texas Compact subject to strict oversight and limitations, including an import tax for out-of-compact generators shipping waste into the state.

26. The WCS Defendants deny that ES is “long dominant” in the disposal of any class of LLRW and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 26 regarding ES and accordingly deny them. The WCS Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 26 regarding unspecified “customers” and accordingly deny

them. The WCS Defendants deny that WCS is a “start-up.” The WCS Defendants deny that WCS expanded its capabilities in 2014 to dispose of lower-level LLRW more cost effectively.

27. The allegations of paragraph 27 concern ES and the WCS Defendants lack knowledge or information sufficient to form a belief as to the truth of these allegations and accordingly deny them.

28. The first two sentences of paragraph 28 are legal conclusions, to which no response is required. To the extent that these allegations require a response, WCS admits that the Texas Commission on Environmental Quality has regulatory authority over WCS’s CWF and admits that TCEQ regulations require WCS to charge commercial generators from states other than Texas and Vermont a higher rate to dispose of their waste at the CWF. The WCS Defendants admit that the TCEQ regulations hamper WCS’s ability to compete for the disposal of LLRW at the CWF but otherwise deny the remaining allegations in the third sentence of paragraph 28.

29. The WCS Defendants admit that WCS obtained a license from the TCEQ to dispose of certain radioactive waste in its Resource Conservation and Recovery Act (“RCRA”), also known as the “Exempt Cell” but otherwise deny the description in paragraph 29 of the waste that can be disposed in the Exempt Cell. The WCS Defendants deny that this was an innovative service, and the WCS Defendants deny that the Exempt Cell applies to a substantial subset of lower-level LLRW. The WCS Defendants further deny that the Exempt Cell improved WCS’s ability to compete for the disposal of lower-level LLRW from the Relevant States.

30. The WCS Defendants deny all allegations set forth in this paragraph. The allegations contained in paragraph 30 do not specify to what “internal documents” they are

referring. Moreover, the WCS Defendants have found no documents asserting the statements that are alleged in paragraph 30.

31. The WCS Defendants admit that WCS's president and CEO stated, in part, in a letter to the TCEQ the quoted language contained in paragraph 31. In all other respects, the WCS Defendants deny the allegations set forth in paragraph 31. Specifically, the WCS Defendants deny that the Exempt Cell enhanced WCS's competitiveness; to the contrary, WCS's revenues have declined substantially each year since 2014.

32. The allegations of paragraph 32 concern ES and the WCS Defendants lack knowledge or information sufficient to form a belief as to the truth of these allegations and accordingly deny them.

33. The allegations of paragraph 33 concern ES and the WCS Defendants lack knowledge or information sufficient to form a belief as to the truth of these allegations and accordingly deny them.

34. The allegations of paragraph 34 concern ES and an unspecified "utility" and the WCS Defendants lack knowledge or information sufficient to form a belief as to the truth of these allegations and accordingly deny them.

35. The allegations of paragraph 35 concern ES and an unspecified "customer" and the WCS Defendants lack knowledge or information sufficient to form a belief as to the truth of these allegations and accordingly deny them.

36. The allegations of paragraph 36 concern ES and an unspecified "customer" and the WCS Defendants lack knowledge or information sufficient to form a belief as to the truth of these allegations and accordingly deny them.

37. The allegations of paragraph 37 concern ES and unspecified LLRW generators and the WCS Defendants lack knowledge or information sufficient to form a belief as to the truth of these allegations and accordingly deny them.

38. The allegations of paragraph 38 concern ES and the WCS Defendants lack knowledge or information sufficient to form a belief as to the truth of these allegations and accordingly deny them. The WCS Defendants admit that WCS received some waste from SempraSafe for storage and disposal.

39. The allegations of paragraph 39 concern ES and the WCS Defendants lack knowledge or information sufficient to form a belief as to the truth of these allegations and accordingly deny them.

40. The allegations in the first sentence of paragraph 40 concern unidentified commercial LLRW generators and their options for “dispositioning,” an undefined term, certain “Higher Activity Waste” and the WCS Defendants lack knowledge or information sufficient to form a belief as to the truth of these allegations and accordingly deny them. The WCS Defendants do admit that Class A, B and C LLRW can be disposed at WCS’s CWF in Andrews, Texas. The remaining allegations of paragraph 40 concern ES and the WCS Defendants lack knowledge or information sufficient to form a belief as to the truth of these allegations and accordingly deny them.

41. The allegations of paragraph 41 concern ES and the WCS Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph and accordingly deny them.

42. The allegations of paragraph 42 concern ES and the WCS Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph and accordingly deny them.

43. The allegations of paragraph 43 concern prices for “dispositioning” unidentified “Higher Activity resins” at an unidentified customer or customers and the WCS Defendants lack knowledge or information sufficient to form a belief as to the truth of these allegations and accordingly deny them.

44. The allegations of paragraph 44 concern unidentified utilities and the WCS Defendants lack knowledge or information sufficient to form a belief as to the truth of these allegations and accordingly deny them. The WCS Defendants admit that when utilities retire nuclear reactors in the United States, they must decommission the facility in accordance with NRC regulations.

45. The allegations of paragraph 45 concern unidentified “commercial nuclear reactors” and the WCS Defendants lack knowledge or information sufficient to form a belief as to the truth of those allegations and accordingly deny them.

46. The allegations of paragraph 46 concern unidentified person(s) “expected” revenues from unidentified commercial nuclear reactor decommissionings and the WCS Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph and accordingly deny them.

47. The allegations of paragraph 47 concern unidentified pages on the website of the Nuclear Regulatory Commission and the WCS Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph and accordingly deny them.

48. The WCS Defendants deny all allegations set forth in paragraph 48, except to the extent they call for a legal conclusion to which no response is required.

49. The WCS Defendants deny the allegations in the first sentence of paragraph 49. The WCS Defendants admit that a January 2016 presentation to the NRC and the TCEQ contains the language excerpted in paragraph 49. In all other respects, the WCS Defendants deny the allegations set forth in paragraph 49.

50. The WCS Defendants deny that the allegations contained in paragraph 50 constitute an accurate recital of the December 2015 internal document to which it attempts to refer.

51. The WCS Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 51 regarding the beliefs and opinions of unidentified “industry participants” and accordingly deny them. In all other respects, the WCS Defendants deny the allegations set forth in paragraph 51 because the presentation referred to only represents that up to 80% of the projected waste could qualify, not that it necessarily would qualify for the Exempt Cell.

52. The WCS Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 52 regarding ES and the beliefs and opinions of unidentified “participants in the commercial nuclear reactor decommissioning industry” and accordingly deny them. The WCS Defendants admit that they were recently part of a winning bidding team for a decommissioning project in Vermont.

53. The allegations contained in paragraph 53 are legal conclusions to which no response is required or require economic analysis, which is premature. To the extent that the

paragraph purports to allege facts, the WCS Defendants deny all allegations set forth in paragraph 53.

54. The allegations contained in paragraph 54 are legal conclusions to which no response is required or require economic analysis, which is premature. To the extent that the paragraph purports to allege facts, the WCS Defendants deny all allegations set forth in paragraph 54.

55. The allegations contained in paragraph 55 are legal conclusions to which no response is required or require economic analysis, which is premature. To the extent that the paragraph purports to allege facts, the WCS Defendants deny all allegations set forth in paragraph 55.

56. The allegations contained in paragraph 56 are legal conclusions to which no response is required or require economic analysis, which is premature. To the extent that the paragraph purports to allege facts, the WCS Defendants deny all allegations set forth in paragraph 56.

57. The allegations in the first sentence of paragraph 57 are legal conclusions to which no response is required. The WCS Defendants admit that federal government generators are subject to a different regulatory scheme than commercial generators, and that federal generators have access to government-owned and/or operated LLRW disposal facilities. The WCS Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 57 regarding ES and accordingly deny them. The WCS Defendants admit that they dispose of waste from federal entities and that they distinguish such waste from waste received from commercial generators.

58. The allegations in the first sentence of paragraph 58 are legal conclusions to which no response is required. The WCS Defendants admit that generators of non-radioactive waste and naturally occurring radioactive material have disposal options that are not available for the disposal of LLRW.

59. The allegations of paragraph 59 are legal conclusions to which no response is required or require economic analysis, which is premature. To the extent that the paragraph purports to allege facts, the WCS Defendants deny all allegations set forth in paragraph 59.

60. The allegations of paragraph 60 are legal conclusions to which no response is required or require economic analysis, which is premature. To the extent that the paragraph purports to allege facts, the WCS Defendants deny all allegations set forth in paragraph 60.

61. The allegations of paragraph 61 are legal conclusions to which no response is required or require economic analysis, which is premature. To the extent that the paragraph purports to allege facts, the WCS Defendants deny all allegations set forth in paragraph 61.

62. The first two sentences of paragraph 62 call for legal conclusions, to which no response is required. The third and fourth sentences of paragraph 62 contain allegations that concern ES and the WCS Defendants lack knowledge or information sufficient to form a belief as to the truth of these allegations and accordingly deny them. The allegations contained in the last sentence of paragraph 62 are legal conclusions to which no response is required or require economic analysis, which is premature. To the extent that the last sentence of paragraph 62 purports to allege facts, the WCS Defendants deny all allegations set forth in this last sentence of paragraph 62.

63. The WCS Defendants admit that commercial generators may send lower-level LLRW to be disposed of in the RCRA hazardous waste landfill operated by U.S. Ecology in

Grand View, Idaho. The WCS Defendants further admit that generators may receive an exemption from the NRC under 10 C.F.R. § 20.2002 to dispose of LLRW in a licensed LLRW disposal facility. The remaining allegations contained in paragraph 63 are legal conclusions to which no response is required or require economic analysis, which is premature. To the extent that these allegations purport to allege additional facts, the WCS Defendants deny them.

64. The first sentence of paragraph 64 concerns unidentified “industry participants” and the WCS Defendants lack knowledge or information sufficient to form a belief as to the truth of these allegations and accordingly deny them. The remaining allegations of paragraph 64 are legal conclusions to which no response is required or require economic analysis, which is premature. To the extent that these allegations purport to allege additional facts, the WCS Defendants deny them.

65. The WCS Defendants deny all allegations set forth in paragraph 65, except to the extent they state a legal conclusion, to which no response is required.

66. The allegations of paragraph 66 concern ES and the WCS Defendants lack knowledge or information sufficient to form a belief as to the truth of these allegations and accordingly deny them.

67. The allegations of paragraph 67 concern ES and the WCS Defendants lack knowledge or information sufficient to form a belief as to the truth of these allegations and accordingly deny them.

68. The allegations of paragraph 68 concern ES and the WCS Defendants lack knowledge or information sufficient to form a belief as to the truth of these allegations and accordingly deny them.

69. The WCS Defendants admit that when LLRW is accepted for disposal at the CWF, title to the LLRW is transferred to the State of Texas. The remaining allegations of paragraph 69 concern ES and the WCS Defendants lack knowledge or information sufficient to form a belief as to the truth of these allegations and accordingly deny them.

70. The allegations of paragraph 70 concern ES and the WCS Defendants lack knowledge or information sufficient to form a belief as to the truth of these allegations and accordingly deny them.

71. The allegations of paragraph 71 concern ES and unspecified “customers” and the WCS Defendants lack knowledge or information sufficient to form a belief as to the truth of these allegations and accordingly deny them, except the WCS Defendants admit that paragraph 71 accurately quotes the language quoted therein.

72. The WCS Defendants deny all allegations set forth in paragraph 72.

73. The WCS Defendants deny all allegations set forth in paragraph 73.

74. The WCS Defendants deny all allegations set forth in paragraph 74.

75. The WCS Defendants deny all allegations set forth in paragraph 75, except to the extent they state a legal conclusion, to which no response is required.

76. The WCS Defendants admit that the language quoted in the third and fourth sentences of paragraph 76 is accurately quoted. The WCS Defendants deny the remaining allegations set forth in paragraph 76, except to the extent they state legal conclusions, to which no response is required.

77. The WCS Defendants deny all allegations set forth in paragraph 77, except to the extent they state a legal conclusion, to which no response is required.

78. The WCS Defendants admit that the United States brings this action. The remaining allegations set forth in paragraph 78 contain only legal conclusions, to which no response is required.

79. The WCS Defendants admit that WCS accepts LLRW for disposal from generators located in the Relevant States. The remaining allegations of paragraph 79 concern ES and the WCS Defendants lack knowledge or information sufficient to form a belief as to the truth of these allegations and accordingly deny them, except to the extent they state a legal conclusion, to which no response is required.

80. The allegations set forth in paragraph 80 contain only legal conclusions, to which no response is required.

81. The WCS Defendants admit that WCS and Andrews County Holdings are Delaware companies. The remaining allegations of paragraph 81 concern ES and the WCS Defendants lack knowledge or information sufficient to form a belief as to the truth of these allegations and accordingly deny them, except to the extent they state a legal conclusion, to which no response is required.

82. The WCS Defendants deny all allegations set forth in paragraphs 1 through 81, except as expressly admitted, or to the extent they call for a legal conclusion, which requires no response.

83. The WCS Defendants deny all allegations set forth in paragraph 83, except to the extent they state a legal conclusion, to which no response is required.

84. The WCS Defendants deny all allegations set forth in paragraph 84, except to the extent they state a legal conclusion, to which no response is required.

85. The WCS Defendants deny all allegations set forth in paragraph 85, except to the extent they state a legal conclusion, to which no response is required.

### **DEFENSES AND AFFIRMATIVE DEFENSES**

The WCS Defendants assert the following defenses and affirmative defenses, without assuming the burden of proof on such defenses that would otherwise rest with the DOJ:

1. The Complaint fails to state a claim upon which relief may be granted.
2. The Complaint fails to adequately allege any relevant antitrust product market.
3. The Complaint fails to adequately allege any relevant antitrust geographic market.
4. Granting the relief is contrary to the public interest.
5. The Complaint fails to adequately allege harm to consumers.
6. The Complaint fails to adequately allege harm to competition.
7. The Complaint fails to adequately allege harm to consumer welfare.
8. Customers have the ability to ensure that they will receive competitive pricing and terms notwithstanding the transaction.
9. New entry and expansion by competitors is easy and can be timely, likely and sufficient, such that it will ensure that there is no harm to competition, consumers, or consumer welfare.
10. The proposed acquisition will not create or enhance market power as WCS is unable to meet its financial obligations as they come due, is unable to successfully confirm a plan of reorganization under Chapter 11 of the Bankruptcy Code to continue as a going concern, and has made unsuccessful good-faith efforts to elicit reasonable alternative offers that would keep its tangible and intangible assets in the marketplace.

11. WCS's LLRW disposal services are conducted in accordance with Texas legislative regulations and actively supervised by the TCEQ. Since WCS's disposal services are in accordance with a clearly articulated and affirmatively expressed state policy that is actively supervised by the state, the state action immunity doctrine applies.

12. The proposed acquisition is procompetitive and will result in substantial cognizable merger-specific efficiencies, cost-synergies and other procompetitive effects that will greatly benefit consumers. These benefits greatly outweigh any alleged anticompetitive effects.

13. The WCS Defendants reserve the right to assert any other defenses as they become known and incorporate ES's affirmative and other defenses by reference.

**PRAYER FOR RELIEF**

The WCS Defendants respectfully request that this Court dismiss the Complaint of the United States of America with prejudice and grant such further and other relief to which the WCS Defendants may be entitled.

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