EGAN, FITZPATRICK & MALSCH, PLLC

Counselors at Law

7918 Jones Branch Drive • Suite 600
McLean, Virginia 22102
Tel: (703) 918-4942
Fax: (703) 918-4943

www.nuclearlawyer.com

1777 N.E. Loop 410 • Suite 600
San Antonio, Texas 78217
Tel: (210) 820-2667
Fax: (210) 820-2668

Joseph R. Egan
jegan@nuclearlawyer.com

Martin G. Malsch
mmalsch@nuclearlawyer.com

Charles J. Fitzpatrick
cfitzpatrick@nuclearlawyer.com

February 6, 2004

Via Facsimile @ 301-415-2279
and First Class U.S. Mail
Mr. Patrick J. Isaac, Project Manager
Research & Test Reactors Section
Office of Nuclear Reactor Regulation
Mail Stop: O-12G13
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

RE: Docket No. 50-22, TAC No. MB8491
Response of Viacom Inc. to Letters from Westinghouse Electric Company LLC, Dated January 26, 2004

Dear Mr. Isaac:

As you know, Viacom Inc. ("Viacom") has applied for: (1) the termination of the 10 C.F.R. Part 50 portion of its TR-2 license; and (2) a determination that the decommissioning of TR-2 structures has been completed satisfactorily. This Application has been pending since October 29, 2002. Viacom provided additional information in support of its Application on September 26, November 4, and November 12, 2003. Now, after "waiting on the sidelines" for over two months, Westinghouse Electric Company LLC ("Westinghouse") has provided NRC Staff with its comments. In essence, Westinghouse wants NRC to deny the Application. In the alternative, Westinghouse asks for a delay in the decision on the Application so that the arbitration panel now presiding over the dispute between the parties will not be able to consider NRC's views on matters within NRC's jurisdiction and expertise.

Westinghouse is not admitted as a party in this proceeding and its late comments have no formal legal status. Moreover, Viacom does not want to delay NRC Staff's consideration of its Application by piling on additional and unnecessary paperwork. Accordingly, Viacom will comment only briefly on Westinghouse's submissions, which contain numerous misstatements of fact and misapplications of the regulations.

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VIACOM'S COMMENTS:

1. Westinghouse's constant references to the arbitration pending between the parties are irrelevant. Viacom's Application does not ask for anything from the NRC beyond what is entirely proper and consistent with ordinary NRC review practices. The same Application would have been filed had no arbitration ever been commenced. Viacom is not now, nor has it ever sought to involve the NRC in the commercial dispute between the parties as Westinghouse repeatedly suggests.

2. The TR-2 Final Decommissioning Plan required the removal (decommissioning) of specified structures and reactor components of the Westinghouse Test Reactor ("WTR") in order for NRC to be able to conclude that the WTR no longer constitutes a utilization facility requiring a Part 50 license, and so that the residual contamination in the WTR could be transferred to the SNM-770 license without the need for that license to be reconfigured as a Part 50 license. Westinghouse now concedes that what has been removed is sufficient for this purpose (see footnote 2 in Westinghouse's comments on Viacom's November 12, 2003 submittal).

3. Westinghouse argues that Viacom is using new, less stringent decontamination criteria. The dispute here boils down to whether the criteria in option (a) of the June 19, 1998 letter to NRC are applicable. By its terms, the criteria in option (a) apply "within buildings that are being remediated from inactive (retired) areas to restricted areas which may be used for future use under the license." The NRC-approved TR-2 Final Decommissioning Plan expressly represents (at page 1-1) that "[f]uture use of [the WTR] shall be in accordance with the SNM-770 license conditions and site procedures controlling occupational exposures and exposures to the public." Moreover, on numerous occasions, express representations were made to the NRC that the TR-2 Final Decommissioning Plan and the SNM-770 Remediation Plan were both premised on future licensed uses of the buildings including the WTR (see, for example, Exhibit 1, the transcript of a January 22, 1999 presentation by Mr. Joseph Nardi to the NRC). Thus, the TR-2 Final Decommissioning Plan contemplated that the WTR would be reserved for continued licensed use and remain subject to controls to limit both public and occupational exposures. These circumstances are precisely the ones where option (a) applies.[1]

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[1] The Westinghouse Test Reactor Decommissioning Environmental Report, submitted to the NRC on March 20, 1998, states (at page 6) that "[a]t the completion of licensed activities [under SNM-770], the remaining facilities, including the former WTR facilities, would be decommissioned using the DECON alternative in the future." If, after transfer to SNM-770, Westinghouse informs NRC that it has decided to permanently cease principal licensed activities in the WTR, this would alter a fundamental premise of the Plans. The result under 10 C.F.R. §§ 30.36 and 70.38 would be that Westinghouse would need to prepare a decommissioning plan for the WTR. However, the SNM-770 Remediation Plan could not be used for

4. Westinghouse argues that Viacom's ALARA analysis is inadequate because it compares the costs and benefits of doing further remediation of the WTR now, many years prior to termination of the SNM-770 license, and does not include eventual costs and benefits that will arise from implementation of the future decommissioning plan that will need to be prepared to terminate the SNM-770 license. But delaying decommissioning of the WTR until termination of the SNM-770 license is precisely what the Plans contemplate. Moreover, when actual decommissioning, pursuant to 10 C.F.R. Part 20 – Subpart E, commences at a future date, it will almost certainly be the case that the radiological criteria for unrestricted use in 10 C.F.R. § 20.1402 will apply. This regulation does not allow for the use of less stringent criteria based on ALARA considerations. Thus, in applying 10 C.F.R. § 20.1402, the actual costs and benefits of decommissioning are essentially irrelevant. On the other hand, the opposite is the case when deciding when to commence the decommissioning process. Under10 C.F.R. §§ 30.36 (f) and 70.38 (f), the NRC may consider the costs and benefits of a delay in commencing the decommissioning process in deciding whether to allow such a delay under the rules. Put another way, the costs and benefits of actual decommissioning when the SNM-770 license is terminated are inevitable, and the only variable in calculating costs and benefits is the timing of the commencement of the decommissioning process. Thus, Viacom's ALARA approach, which focuses on the costs and benefits associated with a delay in beginning the decommissioning process for the WTR, is entirely in accord with NRC requirements. In contrast, Westinghouse's preferred ALARA approach is contrary to NRC's rules.

If NRC Staff has any further questions about Westinghouse's submittals, Viacom will be pleased to give a prompt reply.

Sincerely,

Martin G. Malsch
Egan, Fitzpatrick & Malsch, PLLC
7918 Jones Branch Drive, Suite 600
McLean, VA 22102

Michael F. McBride
John M. Collins
LeBoeuf, Lamb, Greene & McRae, L.L.P.
1875 Connecticut Avenue, N.W., Suite 1200
Washington, DC 20009-5728
Attorneys for Viacom Inc.

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this purpose because it is expressly denominated as a Remediation Plan because a "decommissioning plan to terminate the license is not appropriate" (see SNM-770 Remediation Plan at page 1-1). Clearly, a decommissioning plan as required by 10 C.F.R. §§ 30.36 and 70.38 would be something entirely different from the two Plans now approved by NRC.

Of Counsel:
Robert A Noethiger
William D. Wall
Vice President, Counsel
Viacom Inc.
11 Stanwix Street
Pittsburgh, PA 15222-1384

MGM/ec
Enclosure (Exhibit 1)

c: Jack R. Goldberg, Esq. (OGC-NRC)
Mr. Derek A. Widmayer (NMSS-NRC)
F. Ramsey Coates, Esq. (Vice President & General Counsel – Westinghouse)
Richard G. Murphy, Esq. (Sutherland Asbill & Brennan – Counsel for Westinghouse)
Mark J. Wetterhahn, Esq. (Winston & Strawn – Counsel for Westinghouse)

EXHIBIT #1

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

***

PUBLIC WORKSHOP ON DEVELOPING
AN SRP FOR DECOMMISSIONING

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USNRC, TWFN BLDG., Auditorium
11545 Rockville Pike
Rockville, MD 20851-2738

Friday, January 22, 1999

The above-entitled workshop commenced, pursuant to notice, at 8:32 a.m.

MR. ORLANDO: Okay, thanks, Keith and John and everybody. I appreciate it. That was a very good presentation. Joe, are you up?

Okay, the next speaker will be Joe Nardi with Westinghouse.

MR. NARDI: It's going to be kind of a tough act to follow because I think people are expecting me to give you a lot of practical experiences on how to do a restricted release. And if you'll notice in my title, I put restricted release in quotes because in our situation we really did not ever approach a restricted release as it means now in accordance with the regulations.

We have other considerations on our site. So our experience -- what I'm going to be giving is more of an historical experience of what happened and how we evolved over time. But it does not meet the concept of a restricted release as we're talking today.

This relates to the Waltz Mill Site which is near Pittsburgh, about 25-30 miles southeast of the Pittsburgh area. The site has a long history of operation. We started in the mid-1950's with a reactor at the site. And over time,.it evolved with many different uses.

We had hot cells there. We had critical facilities. We had all kinds of research and development. We had non-nuclear work. The site is fairly extensive with

many uses that have changed over the years. We are now really a site that supplies services to the commercial nuclear power operations with our base there at the Waltz Mill Site.

Many of the other operations have gone by -- into legacy. There are currently two licenses on the site. The reactor that was there from the operations in about the late 1950's through 1962 is currently a possession only license on the site. It has been in standby for the last 30 years or so -- over 30 years.

And we have the current S&M license which covers all of the other operations on the site. One of the legacy issues that resulted was that in part of our site, we have a waste disposal area. And in the early 1980's, we started with a groundwater monitoring program around a retention basin where all the waste water on the site was collected.

That waste water retention basin -- as we did monitoring, we identified that we had some form of groundwater contamination. And in 1991, we did a lot of things in the interim, but I'll talk about in 1991, we replaced on the SDMP list primarily because of the groundwater contamination that we identified in the monitoring.

That was a major transition point for the site with respect to what issues we had to address and what we

had to do. That waste disposal area over time we have done a lot of things associated with it. One of the first things was that we removed that as an active waste processing for liquid waste processing for that area.

In essence, we replaced it with another waste water treatment system at another area of the site and deactivated that facility in the mid-1980's, and then continued to do an extensive groundwater monitoring and a continuous pump and treat to monitor what was happening and in essence shrink the plume and control the plume that we had there on the site.

The constraints that we had -- I'm sorry. I got a little out of order here. The other activities that we did was that once we were placed on the SDMP list was we started an extensive site characterization in dealing with all of the sequence of events that SDMP Program would have.

And we did not limit our activities in that to just what was on the groundwater contamination issue. But we looked at characterization of the ground and the groundwater, all of our active facilities on the site, and all of our inactive facilities, and that includes the legacies, as I said.

For example, we had the hot cells that were deactivated, were no longer in use. Well, we did an extensive characterization throughout that portion of the

site. And as a separate -- and the only reason I listed separately, we did a characterization of the Westinghouse test reactor facility. That's what the WTR facility means. And that is listed separately because from a licensing standpoint, that was a separate license. And so we always segmented the characterization studies.

But there was extensive documentation developed that was a major effort and really developed it for our standpoint a strong understanding of what the site issues really were. And with it, we established a priority list that in essence goes down here in terms of our first priority was to be the groundwater contamination -- get ourselves off the SDMP list.

The second priority was the inactive facilities -- to clean those up and get them returned to continued use. And the third was to terminate the WTR license from its possession-only standpoint to active use.

The constraints that complicate matters a little bit here are that we intended always that there would be continued site operations. We were not decommissioning the site. And we had no intention of terminating the license.

Our acceptance criteria for the soil was really initially stated to be that we were going to remove the source term and in order to resolve the SDMP issue of groundwater contamination. What we selected in doing that

was an industrial use scenario to calculate what would be our release criteria, and with the understanding that we were planning to return the area to continued use. So we weren't really asking for a restricted release, and we weren't really asking for an unrestricted release in that situation.

The same way with the buildings. We were saying that we would remediate them to a continuation -- to a license use so that we could continue to use them under the license. This has some relationship to the timeliness rule in that we understood that if we had no continued use, we would have to meet the timeliness rule. That would affect us.

And our goal really was -- we were working towards maximum flexibility for continued use of the site. With the understanding in our mind that, while we were asking for the NRC to give us approval that was basically very free in terms of we weren't going to take it unrestricted use, that internally we could make decisions that would lead us toward extensive contamination or more extensive effort. But that would be our decision.

One of the thoughts and one of the things that we always talked about to the NRC was that understand that we were going to have -- the NRC would have another chance to look at the site at final license termination. And we

understood from our standpoint that if we did not go far enough at this point, we may have to do more later. With doing this, though, we made a decision that does not fit within the current regulatory environment.

Our remediation plan was submitted in November, 1996. As I mentioned, the end basis for that plan was that we would use an industrial use scenario to calculate the criteria for the ground. It was based on 15 millirem per year because that was what at that time the regulations were proposing.

Our modeling was based on RESRAD. We presented in our remediation -- and notice that I use the term remediation plan. We took a very deliberative effort there not to use the term decommissioning plan as a part of that because it did not fit what we thought was our end use.

In the RESRAD, we presented in our remediation plan the entire parameter list that we thought was appropriate. However, when you use an industrial use scenario, you do end up with certain problem isotopes. The industrial use scenario does not have the groundwater pathway turned on. So if you use -- if you look at that straight calculation, you end up with Strontium levels that would be permitted that would be very high.

And the reality would not really have let us do that because we did not have, as we saw it, any real areas

where Strontium was the only contaminant. And if we cleaned up all of the other isotopes under the sum of the fractions kind of rule, the Strontium could never be as high as what we were calculating -- like 8,000 pico curies per gram under that scenario. So we never considered that to be a realistic situation that would exist. But theoretically, in the modeling it could exist, and that, I understand, can be an issue.

Our status at this point is that the plan has not yet really been approved with respect to ground remediation of the soils and the groundwater issue. We had been doing a case by case approval to continue to work. We've done a lot of preparatory work with respect to the ground contamination issues. And we have received approval -- not approval. We have presented an approach that said that the interior building work could be done under the license rather than under the remediation plan.

We've always understood that we felt that we felt we could do it under the license. But when we prepared the remediation plan, we encompassed everything we were going to do and the sequence we were going to do it. We are actively doing the remediation inside the buildings, and we are still looking for approval for soil remediation.

Very quickly, there was also at this decommissioning plan submitted for the WTR facility --

that's the reactor facility which is a separate license. We submitted that in July of 1997. Again, we are not going to a free release, unrestricted use approach. Our basis for the acceptance criteria is to remove those aspects of the facility that in essence make it a reactor. The reactor vessel and the bio shield. It's a matter of what constitutes a reactor, but nobody really defines that.

But our approach was to make the area a useful area. We would remove those two components primarily and transfer the facility to SNM 770, the active license for continued use. Our status right now for that is we are approved. The plan has been approved. We are doing the necessary engineering and planning, but recognizing that this is, again, not an unrestricted approach, but it's not a restricted release approach. It's a transfer to another license.

What were our problems in looking back at it with respect to the approach we took. We really presented a situation with very unusual licensing issues. We're not asking for decommissioning. We're not asking for a lot of things. We're asking for continued use. And it just doesn't quite fit into the structure of the regulations as they're written. I think that that was one of our major problems.

We felt from this unconventional approach we were

looking at that the NRC would always have another look. At the end of life of the facility, we would get another chance to go through the formal process of license termination. Because of that, we did not incorporate any public involvement, any SSAB or anything else in our plan. And I think that is a major issue in terms of whether we would have foreclosed options if we proceeded along the way we were going.

We did not propose any site restrictions or any mechanism for that other than the fact that we've always said that we're still going to be a licensed operation. You're still going to be inspecting us.

One of the problems, I think, in all of our trying to get this approval was that we were doing this in the midst of all of the ongoing NRC involvement with the new regulations without the complete guidance when we prepared it with someone uncertain regulatory basis in the modeling areas that we've been discussing for this meeting and the prior meetings.

One of our major mistakes, I think, if I would speak for myself, was that we started up the program in terms of mobilizing people and starting to do work before we had full approval with the expectation that we would get approval on a timely basis, not recognizing fully all of the issues. And that has driven us in many ways to require that

we do case-by-case evaluations and other things to maintain an effective operation for what we've developed.

Where are we at today? In looking at things in terms of as they settle down, the 25 millirem in trying to meet the unrestricted release, we redid an evaluation of what our soil volumes were and really came to the conclusion that the difference in the soil volumes that we would have to remove and to deal with were not very different between a restricted release under the industrial use scenario -- I shouldn't say restricted release. Developing a criteria with an industrial use scenario and 15 millirems versus developing the criteria with 25 millirem and an eventual unrestricted release were really not much different.

What we're proposing, though, is again not completely within the current regulations in that we're not asking for unrestricted release criteria based on today. One of the problems with this site is that the groundwater issues are going to take probably several decades to resolve themselves because we have groundwater contamination in the bedrock. And even removing the sources that we know about are not going to resolve the groundwater issue immediately.

We're going to have a restricted period of time where our groundwater contamination levels will be high enough to prevent an unrestricted release anyway. So our proposal was that we would go for an unrestricted release in

the future in the time frame of like 20 to 30 years with the understanding that there was a continued groundwater treatment that would be needed anyway, and we would be continuing our licensed operations.

So we still have new licensing issues that have to be dealt with. I'll end up by just saying a couple comments, but I want to make these comments specific to myself.

In view of what I've seen in all of this, the regulations, I don't think, can deal with, even as they are today, resolve major issues when you have remediation but a return to use. I don't think we quite have that built into things.

There's no real understanding of what we mean by restricted or unrestricted release in these situations. And also there's not a clear understanding in my mind of what is the concept of what can be done within the scope of the license. That's the thing that we have dealt with many times in terms of can you do that within the scope of the license. And a lot of times, we've done things part of our maintenance. Does this mean we can continue to do it for remediation.

That term within the scope of the license, I don't believe, is very well defined. The SDMP Program, we are on it. There is no definition of how we get off of it, and

that's been something that we've been struggling with a long time is to what constitutes an effective conclusion of what the issues are, and what are the criteria for removal from the list.

Right now, the SDMP list is in a sense inactive -- not from your standpoint. You have the list, and you're looking at the sites. But from a regulatory standpoint, there is not a basis. But from our standpoint, the SDMP action plan still exists as an order for us to follow and has never really been removed from us from a licensing standpoint.

What we're proposing in here is in essence to go to an unrestricted release on an alternate time schedule. And it's not clear to me what the standards will be for the review of that justification of that alternate schedule. The regs provide a lot of flexibility for the license termination case. But in my view, provide inadequate flexibility with really dealing with the odd ball situations.

And the bottom line is that for complex sites, it seems that the exceptions rule rather than the normal course. Any questions?

MR. ORLANDO: Yeah, I just got one. The process that you went through to get to the point where you are now, and what was your involvement with the NRC as far as getting

the sort of the upfront discussions.

One of the things you said earlier was that one of the problems you had was you had started down the path and had done a lot of work sort of before you knew what the issues and everything were going to be.

This is just for me. I don't know. Did you come in and discuss --

MR. NARDI: Because we weren't treating it as a decommissioning, we were treating it more as a licensing action, all of our involvement really was with the region, and there was extensive involvement and discussion with the region and then working with us to, you know, keep things moving.

MR. ORLANDO: I see.

MR. NARDI: But we never addressed it as a decommissioning plan that required the whole full headquarters involvement.

MR. ORLANDO: Okay, thanks.

MR. MURRAY: Scott Murray from GE. If I could add to what Joe said, we talked about this in our fuel cycle meetings several times. There's a huge difference in our mind and industry's mind between remediating a site for all sorts of reasons. You want to clean up some past legacies. The money's available. You want to do some things to remediate it.

But there's really no mechanism in the rule making for interim remediation or remediation in a sense that you're not leading to a license termination. And we tried to avoid using the decommissioning phrase in several of our paperwork exchanges for that very reason. We didn't want to call it a decommissioning because it wasn't leading to license termination.

I think Joe and I and several other folks have had this experience where you want to remediate. You want to do the right thing. Obviously, you want to get material off your site. You want to move away from your boundary. You want to reduce the dose. You want to do all the right things, but there's not a mechanism to do it in that it's not in the sense a decommissioning for the facility.

MR. ORLANDO: Just for myself, I think we've heard that a couple times, and that is definitely an issue that I think we need to do something about. I've heard it from several folks that they want to partially clean up a site or get -- comply with the timeliness rule enough to keep working without us breathing down your necks. But yet, you don't want to terminate the license.

And I agree. I think that the way the regulation is written, it contemplates license termination. It doesn't get into, as you appropriately call it, site remediation. And so that's one of the issues I think we have to take back

and try and work with. So I agree.

MR. KILLAR: Nick, if might. Phil Killar. Back in May of 1995, we had petitioned the NRC for rulemaking to allow just this specific provision. And we had a discussion with the NRC staff last fall. And the indications were that the staff is trying to put some guidance documents together along this line.

So somewhere in the bowels in the NRC ship, this is being worked on.

MR. ORLANDO: I'll try and find it. Thanks. If no one has any questions, I'll cut you all free for lunch. Paul, were you going to -- we had on the schedule Ralph Anderson from NEI was going to speak. I was going to suggest that we, if that's okay -- Paul, were you going to do that for him.

MR. GENOA: I can do that in about three minutes. I have three points.

MR. ORLANDO: Okay.

MR. GENOA: If I might. Essentially, we restricted the scenario from the perspective of the reactor licenses. We sort of have a brief point.

The first point -- these are initial, obviously. But our initial point is that the reactors going through decommissioning today and those that are contemplating it in the near future do not contemplated restricted use. They

contemplated unrestricted release remediation licensure.

However, we have -- our executives have expressed a continued interest in pursuing an understanding of what it would take to release the site in a restricted fashion and understanding the guidance that you're developing. So we want to participate through this process and make sure that we thoroughly understand it.

There are scenarios where perhaps most of the higher activity waste is removed from the site. Some of the residual activity perhaps is left there. And you can envision under today's scenario a possibility where perhaps there would be a restricted provision with robust NRC role.

The third point is that it's not clear to us as I brought up to Nick earlier asking for perhaps in a future workshop to deal with it how you transition through a license's life of the facility. Perhaps, for instance, in a nuclear power plant, we have huge buffer zones, lots of land that is part of the site under the license, yet really is not impacted, and we would like ways to understand how to move through and release those lands for other uses, and how that works.

The fact that we may have spent fuel left on site greater than Class C left on site, perhaps mixed waste left on site, perhaps low level left on site due to the unavailability of disposal options for any or all of those

things, it's not clear to the Part 50 licensees how they're going to transition as they essentially reduce their power plants from an operating position to a permanently shut down with the fueled onsite storage only scenario.

And we need to go through license termination in Part 50 space and then turn over and apply for Part 30 or keep it all under 50. Those things haven't been well thought out yet, and it's not sure how that relates with the restricted release, but it's all sort of mixed up together.

So we'll be with you in trying to understand how this evolves as we move forward.

MR. ORLANDO: Great. We have a few more questions. I figure probably about an hour's worth of discussion or us I think indicating to you and hopefully some back and forth for the afternoon. I hope everybody can come back. But I'm assuming everybody is still interested in coming back.

The principal discussion this afternoon is going to be site specific advisory boards and getting public acceptance. That seems to be the two sets of questions we have left. So I hope everybody can come back. If not, as I said, the answers and the questions will be up on the website. And with that, we will be back at 1:30. Thank you very much.

(Whereupon, at 12:11 p.m., the meeting was