



**CBS Corporation**

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December 6, 2007

U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001  
Attn: Document Control Desk

Subject: CBS Corporation Application to Terminate the TR-2 Facility License for the Former Test Reactor, NRC Docket No. 50-22.

References:

1. Application filed by Westinghouse to amend its SNM-770 license, dated December 6, 2007.
2. Letter to the Secretary of the Commission from Richard Murphy, dated August 30, 2007, forwarding a copy of the Final Arbitration Opinion and Award, American Arbitration Association Case No. 16Y 192 00937 02, dated July 20, 2007.
3. NRC letter dated March 17, 2006 to Richard Murphy et al, describing a "Path Forward" for terminating the TR-2 license.
4. Application to terminate TR-2 License, dated October 29, 2002.
5. TR-2 Final Decommissioning Plan, Revision 1, dated January 2000.

Dear Sir or Madam:

CBS Corporation ("CBS"), the holder of the TR-2 license for the former Test Reactor ("TR") on the Waltz Mill Site in Madison, Pennsylvania, hereby applies for that license to be terminated. This application supersedes in its entirety the application to terminate the TR-2 license that was filed on October 29, 2002 (reference 4), and that application is hereby withdrawn. Further, CBS will withdraw both its July 12, 2006 application to amend the TR-2 Final Decommissioning Plan, Rev. No. 1 (seeking a modification of the applicable remediation criteria), and its related July 12, 2006 application for a declaratory order with respect to the remediation criteria in the SNM-770 license, once the NRC has taken final action on both this termination application and the application to amend the SNM-770 license in Reference 1. In concert with this application, CBS asks for permission to withdraw its decommissioning financial assurance for both the TR-2 and SNM-770 licenses upon the NRC's acceptance of appropriate substitute financial assurance provided by Westinghouse Electric Company LLC ("Westinghouse") under its SNM-770 license

This application is filed in accordance with the "Path Forward" in the NRC's March 17, 2006 letter and, in particular, the portion of the Path Forward entitled "Guidance on TR-2 License Termination." (Reference 3, Attachment 2, at pp. 8-9). This NRC guidance provides that the TR-2 license will be terminated when (1) the amendment to the SNM-770 license is issued accepting the transfer of all residual radioactive materials associated with the TR-2 license, and (2) the NRC's

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requirements for terminating non-power reactor licenses have been satisfied. These two requirements are addressed below. The withdrawal of CBS's decommissioning financial assurance is also addressed below in a separate section.

(1) The SNM-770 License Amendment

There are two NRC licenses held by two different entities in effect on the Waltz Mill Site. The TR-2 facility license, held by CBS, covers certain residual radioactive materials, structures, and equipment associated with the former TR. The SNM-770 license, held by Westinghouse, covers all radioactive materials within the NRC's regulatory authority located on the Waltz Mill Site but not covered by the TR-2 license. Because there must not be any gap in time when radioactive materials on the Waltz Mill Site are not under any NRC license, the TR-2 license cannot be terminated until all of the residual radioactive materials, structures, and equipment associated with the former TR are transferred to the SNM-770 license.

On December 6, 2007, Westinghouse filed an application to amend its SNM-770 license to accept the transfer of these TR-2 residual radioactive materials, structures, and equipment (Reference 1). CBS's application to terminate its TR-2 license should be granted as soon as the SNM-770 license is amended, as Westinghouse requested. After the SNM-770 license is amended, and the TR-2 license is terminated, the SNM-770 license will be the only NRC license in effect for radioactive materials on the Waltz Mill Site. Westinghouse, as the sole remaining NRC licensee on the Site, will then be solely responsible to the NRC for both the safe and environmentally acceptable possession and management of radioactive materials within NRC's authority on the Waltz Mill Site, and the safe and environmentally acceptable remediation and decommissioning of the Site when that becomes necessary or desirable. This is in accord with the Final Arbitration Opinion and Award (Reference 2) and CBS's longstanding plan to exit the nuclear business and pass on all of its nuclear decommissioning obligations to other entities.

(2) The NRC's Requirements for Terminating Non-Power Reactor Licenses

The NRC's regulations in 10 C.F.R. §50.82(b)(6) provide that the Commission will terminate a non-power reactor license if it determines that the decommissioning has been performed in accordance with the approved decommissioning plan and the terminal radiation survey and associated documentation demonstrate that the facility and site are suitable for release in accordance with Subpart E of 10 C.F.R. Part 20.

(a) Compliance with the Decommissioning Plan

The NRC approved of the Final TR-2 Decommissioning Plan, as supplemented, in Amendment No. 8 of the TR-2 license, dated September 30, 1998. Amendment No. 8, which signified the NRC's approval of the Plan by providing for it to be included in the TR Safety Analysis Report, is still in effect. Revision 1 to that Plan (the only revision) revised the method for removing the pressure vessel from the containment building, and was properly made pursuant to 10 C.F.R. § 50.59 (see Reference 2 at Attachment 1, pg. 1, note 3).

Reference 3 states (at Attachment 1, pg.1) that "[r]eactor component and related equipment removal required by the TR-2 has been completed, even though portions of the biological shield remain." Accordingly, the component removal portion of the TR-2 Final Decommissioning Plan, Revision 1, has been performed in accordance with that Plan.

Reference 3 also states (at Attachment 1, pg. 1) that “the only actions remaining to complete the TR-2 Decommissioning Plan are “(1) documentation that is required for transfer of the remaining residual radioactivity and WTR facilities to the SNM-770 License, and (2) issuance of a license amendment to the SNM-770 License that transfers residual radioactivity from the WTR structures, materials, and equipment onto that license.” The application for an amendment to the SNM-770 license filed by Westinghouse (Reference 1) will satisfy these remaining requirements once the NRC approves of it.

(b) The Terminal Radiation Survey and Associated Documentation

It was never the purpose of the NRC-approved TR-2 Final Decommissioning Plan to remove radioactive material from the TR to the point that the decommissioning requirements of Subpart E would be fully satisfied, leaving only the contingency in 10 C.F.R. § 20.1401(c). Rather, the purpose of that Plan was to dismantle and remove TR components to the point that there would no longer be a utilization (reactor) facility remaining on the Site, and the residual radioactive materials, structures, and equipment associated with the former TR could be transferred to the SNM-770 materials license for further remediation to the extent necessary. After all principal licensed activities at the Waltz Mill Site cease, or possibly earlier, the residual radioactive materials, structures, and equipment associated with the former TR, along with other buildings and lands covered by the SNM-770 license, would be decommissioned by Westinghouse as Subpart E of 10 C.F.R. Part 20 requires. In its application to amend the SNM-770 license (Reference 1), Westinghouse acknowledges that it will have the sole responsibility to satisfy the NRC’s decommissioning requirements applicable to the Site, including requirements applicable to the residual radioactive materials and structures, materials and equipment associated with the former TR.<sup>1</sup>

It was never the purpose of the TR-2 Final Decommissioning Plan to comply with 10 C.F.R. § 50.82(b)(6)(ii) and, to effectuate this NRC-approved Plan, an exemption from this regulation is needed. Accordingly, CBS applies for an exemption from 10 C.F.R. § 50.82(b)(6)(ii) pursuant to 10 C.F.R. § 50.12. In accordance with 10 C.F.R. § 50.12, the following is provided:

- (i) The requirements of 10 C.F.R. § 50.12 (a)(1) are satisfied. The NRC has broad power to grant exemptions of this type pursuant to 10 C.F.R. § 50.12 of its regulations and sections 161b and 161i of the Atomic Energy Act. The requested exemption will not present any undue risk to the public health and safety and would be consistent with the common defense and security because the affected radioactive materials will remain under NRC license (the SNM-770 license) and will be fully subject to NRC authority and control. Full decommissioning may safely be deferred until later when all licensed activities at the Waltz Mill Site cease. Moreover, as indicated, the exemption is required to implement the NRC-approved TR-2 Final Decommissioning Plan, and the NRC found in approving of that Plan and in issuing Amendment No. 8 to the TR-2 license that the Plan could be implemented consistent with the public health and safety and the common defense and security.
- (ii) The requirements of 10 C.F.R. § 50.12 (a)(2) are satisfied. Special circumstances are present in several respects. First, in the circumstances of this case there is a conflict between 10 C.F.R. §50.82(b)(6)(ii), which requires a survey and demonstration of compliance with the

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<sup>1</sup> Reference 3 states (at Attachment 2, pg. 8) that “Westinghouse has agreed to meet the LTR [license termination rule] requirements at the Waltz Mill site for all of the residual materials connected with operations (including the materials transferred from the TR-2 License) when it seeks license termination after all activity has ceased at the site.”

decommissioning requirements of Subpart E of 10 C.F.R. Part 20, and the requirements of the TR-2 Final Decommissioning Plan, as approved in Amendment No. 8 to the TR-2 license, which call for a transfer of residual materials and a termination of the TR-2 license without full compliance with that Subpart. This constitutes a special circumstance under § 50.12 (a)(2)(i).

Second, the application of 10 C.F.R. §52.82(b)(6)(ii) to this case is not necessary to achieve the underlying purpose of the rule, which is to provide for safe decommissioning and license termination. This is because Westinghouse has assumed complete responsibility for safe decommissioning of the Waltz Mill Site when all principal licensed activities on the Site cease and the SNM-770 license is terminated. This constitutes a special circumstance under 10 C.F.R. § 50.12 (a)(2)(ii).

The Path Forward (reference 3 at Attachment 2, pg. 9) recognizes that such an exemption is necessary and appropriate. Also, granting such an exemption would be consistent with prior NRC practice and policy for non-power reactors, as exemplified in the Order Terminating Facility Operating License No. R-117, University of Illinois at Urbana-Champlain Low Power Reactor Assembly, TAC No. M98404 (letter to Mr. Richard L. Holm from NRC, dated July 16, 1997).

The Path Forward states (Reference 3 at Attachment 2, pg. 9) that the request for an exemption from 10 C.F.R. § 50.82 (b)(6)(ii) should be submitted jointly by CBS and Westinghouse or by CBS with a concurrence or affidavit from Westinghouse stating that it is willing to accept the TR facility in the condition as left. Westinghouse's application (Reference 1) provides a concurrence from Westinghouse in CBS's exemption request, and a formal acknowledgment by Westinghouse that it is willing to accept the residual radioactive materials, structures, and equipment associated with the former TR in the condition as left, just before they are transferred to the SNM-770 license.

### (3) Withdrawal of Decommissioning Financial Assurance

As the holder of the TR-2 license, CBS provides decommissioning financial assurance in accordance with 10 C.F.R. §§ 50.75 (d)(2)(ii) and 50.82(b)(4)(iv). Pursuant to the Asset Purchase Agreement between CBS and Westinghouse, and as acknowledged and approved by the NRC, CBS also provides certain decommissioning financial assurance that is used by Westinghouse to meet part of its decommissioning financial obligations as the holder of the SNM-770 license. This is fully explained in References 1 and 2.

Once the residual radioactive materials, structures, and equipment associated with the former TR are transferred to the SNM-770 license, and the TR-2 license is terminated, CBS will no longer be obligated to the NRC to maintain any financial assurance for decommissioning because it will no longer have any decommissioning obligations to assure. While, as indicated, CBS was contractually obligated to Westinghouse to maintain certain decommissioning assurance associated with the SNM-770 license, the application by Westinghouse (Reference 1) correctly states that this CBS financial assurance obligation will be undertaken by Westinghouse upon approval of its license amendment application. Accordingly, CBS asks the NRC for permission to withdraw all of its decommissioning financial assurance for the Waltz Mill Site upon the NRC's acceptance of appropriate substitute financial assurance provided by Westinghouse under its SNM-770 license.

Respectfully submitted,

A handwritten signature in black ink that reads "Richard K. Smith". The signature is written in a cursive style with a large, prominent "R" and "S".

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