

September 19, 2008

Mr. Richard K. Smith  
Vice President, CBS Corporation  
Environmental Remediation  
11 Stanwix Street, Room 370  
Pittsburgh, PA 15222

SUBJECT: REQUEST TO TERMINATE THE TR-2 LICENSE, AND GRANT AN EXEMPTION  
FROM 10 CFR 50.82(b)(6)(ii), DOCKET NO. 50-022  
(TAC NO. J60621)

Dear Mr. Smith:

Enclosed is a copy of the staff's assessment of your application of December 6, 2007, for the granting of an exemption from 10 CFR 50.82(b)(6)(ii) and the termination of the Facility Operating License (TR-2) for the former Test Reactor (TR) on the Waltz Mill Site in Madison, Pennsylvania. The assessment concludes that the exemption from 10 CFR 50.82(b)(6)(ii) may be granted, and the TR-2 license can be terminated.

As the holder of the TR-2 license, CBS has provided decommissioning financial assurance in accordance with 10 CFR §§ 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 Nuclear Regulatory Commission (NRC), CBS has also provided 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.

With the transfer of the residual radioactive materials, structures, and equipment associated with the former TR to the SNM-770 license (now PA-1053S) and the termination of the TR-2 license, CBS will no longer be obligated to the NRC to maintain any financial assurance for decommissioning since 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 December 6, 2007, application by Westinghouse (ML073620136) correctly states that CBS's financial assurance obligation will be undertaken by Westinghouse upon approval of its license amendment for the transfer of the residual radioactive materials, structures, and equipment associated with the former TR to the SNM-770 license. That amendment application was approved on March 26, 2008. Accordingly, CBS requested permission from the NRC 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. Westinghouse previously submitted this financial assurance information as part of its December 6, 2007, request to amend the SNM-770 license. In a March 19, 2008, letter (ML080870275) to the NRC staff, Westinghouse acknowledges that the letters of credit previously submitted by CBS as evidence of the financial qualifications for the TR-2 license have been returned to CBS.

With this letter we have also enclosed a copy of the Federal Register Notice Granting the Exemption Request and the License Termination which is being sent to the Office of the Federal Register for publication.

R. Smith

- 2 -

In addition, in connection with the license termination, we are enclosing two copies of Amendment No. 18 to indemnity Agreement No. B-18. Please sign and return one copy to this office.

In accordance with 10 CFR 2.390 of the NRC's "Rules of General Applicability," a copy of this letter and the referenced correspondence will be available electronically in the U.S. Nuclear Regulatory Commission's (NRC) Public Document Room or from the Publically Available Records component of the NRC's document system (ADAMS) at the referenced ML numbers. ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm1adams.html>.

If you have any questions concerning this matter, please contact Mr. Jack Hayes at (301) 415-5928 or via email at [john.hayes@nrc.gov](mailto:john.hayes@nrc.gov).

Sincerely,

**/RA/**

Keith I McConnell, Deputy Director  
Decommissioning and Uranium Recovery  
Licensing Directorate  
Division of Waste Management  
and Environmental Protection  
Office of Federal and State Materials  
and Environmental Management Programs

Docket No.: 50-022

Enclosures:

1. Staff License Termination Assessment
2. Federal Register Notice
3. Two (2) copies of the TR-2 License Indemnity Agreement

cc w/encl: See next page

R. Smith

- 2 -

In addition, in connection with the license termination, we are enclosing two copies of Amendment No. 18 to indemnity Agreement No. B-18. Please sign and return one copy to this office.

In accordance with 10 CFR 2.390 of the NRC's "Rules of General Applicability," a copy of this letter and the referenced correspondence will be available electronically in the U.S. Nuclear Regulatory Commission's (NRC) Public Document Room or from the Publically Available Records component of the NRC's document system (ADAMS) at the referenced ML numbers. ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm1adams.html>.

If you have any questions concerning this matter, please contact Mr. Jack Hayes at (301) 415-5928 or via email at [john.hayes@nrc.gov](mailto:john.hayes@nrc.gov).

Sincerely,

Keith I McConnell, Deputy Director  
Decommissioning and Uranium Recovery  
Licensing Directorate  
Division of Waste Management  
and Environmental Protection  
Office of Federal and State Materials  
and Environmental Management Programs

Docket No.: 50-022

Enclosures:

1. Staff License Termination Assessment
2. Federal Register Notice
3. Two (2) copies of the TR-2 License Indemnity Agreement

cc w/encl: See next page

**ML081330398**

Office	DWMEP	DWMEP	OGC	DWMEP	DWMEP	DWMEP
Name	JHayes	SMichonski	JTH for JHull	CG for R.Tadesse	JHayes	KMcConnell
Date	5/14/08	5/ 27 /08	9/10/08	9/10/08	9/10/08	9/19/08

**OFFICIAL RECORD COPY**

cc w/encl:

Mr. Robert Maiers, Chief Decommissioning Section  
Commonwealth of Pennsylvania Department of Environmental Protection  
Rachel Carson State Office Building  
P. O. Box 8469  
Harrisburg, PA 17105-8469

Mr. James G. Yusko, Regional Manager Radiation Protection  
Commonwealth of Pennsylvania Department of Environmental Protection  
400 Waterfront Drive  
Pittsburgh, PA 15222-4745

Mr. Wayne D. Vogel, Radiation Safety Officer  
Westinghouse Electric Company  
Nuclear Services  
P. O. Box 158  
Madison, PA 15663

Mr. Martin G. Malsch, Esquire  
Egan, Fitzpatrick and Malsch PLLC  
2001 K Street, N.W., Suite 400  
Washington, DC 20006

Mr. Mark J. Wetterhahn, Esquire  
Winston & Strawn LLP  
1700 K Street, N. W.  
Washington, DC 20006-3817

**NRC Staff Assessment Covering  
Exemption Request Regarding 10 CFR 50.82(b)(6)(ii) &  
Termination of CBS License TR-2  
NRC Docket No. 50-22**

Introduction

On December 6, 2007, CBS Corporation "CBS", the holder of the TR-2 license for the former test reactor (TR) on the Waltz Mill site in Madison, PA submitted an application to the NRC for the termination of the TR-2 license, and a related exemption request from the 10 CFR §50.82(b)(6)(ii) requirements. The December 2007, submittal superseded in its entirety a termination application submitted October 29, 2002.

Background

There are two NRC licenses in effect at the Waltz Mill Site. Each is held by a different entity. The TR-2 facility license, held by CBS, covers certain residual radioactive materials, structures, and equipment associated with the former TR (ML0736201360). 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. (Note that regulatory responsibility for the SNM-770 has now shifted to the State of Pennsylvania which became an NRC Agreement State on March 31, 2008. The SNM-770 license has now been replaced by PA-1053S) Since 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.

In the context of facilitating the resolution of a commercial arbitration dispute between CBS and Westinghouse regarding the Waltz Mill site, the NRC, by letter dated March 17, 2006 (ML060750730), advised the parties that a request for an exemption from 10 CFR §50.82(b)(6)(ii) should be submitted jointly by CBS and Westinghouse, or by CBS with a concurrence or affidavit from Westinghouse, stating Westinghouse's willingness to accept the TR facility in the condition it was left in by CBS. The arbitration case between CBS and Westinghouse resulted in a final arbitration opinion and award (American Arbitration Association Case No. 16Y 192 00937 02), dated July 20, 2007.

On December 6, 2007 – the same day CBS filed the subject request -- Westinghouse filed an application (ML073620136) to amend its SNM-770 license to accept the transfer of the TR-2 residual radioactive materials, structures, and equipment. Therein, Westinghouse acknowledged that it will have the sole responsibility to satisfy the NRC's decommissioning requirements applicable to the Waltz Mill site, including requirements applicable to the residual radioactive materials, structures, and equipment associated with the former TR.

On March 20, 2008, NRC Region I conducted an inspection of the Waltz Mill site for the purpose of assessing the transfer of the equipment, material, and structures from the TR-2 license to Westinghouse's SNM-770 license. No violations were identified during the course of the inspection. On March 26, 2008, an amendment was issued to the SNM-770 license to permit

incorporation of the material associated with the TR-2 structures, equipment and components. With the amendment to the SNM-770 license to accept the TR-2 materials, structures and equipment, the need for the separate TR-2 license ended.

## **Discussion**

### **A. Requirements for Terminating Non-Power Reactor Licenses**

The NRC's regulations in 10 CFR §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 CFR Part 20.

#### **(1) Compliance with the Decommissioning Plan (10 CFR §50.82(b)(6)(i))**

The NRC approved of the Final TR-2 Decommissioning Plan (DP) on September 30, 1998. Revision 1 to that Plan (the only revision) revised the method for removing the pressure vessel from the containment building. In its March 2006 guidance letter, the NRC advised CBS that the only actions then needed to complete implementation of the TR-2 DP were: (1) provide documentation showing that the remaining residual radioactivity associated with the TR-2 facility would be transferred to the SNM-770 License; and (2) issuance of a license amendment to the SNM-770 License authorizing the transfer of this residual radioactivity.

As indicated above in the Background discussion, those actions have been taken and implementation of the TR-2 DP is thus complete. Accordingly, the NRC finds that the requirements of 10 CFR §50.82(b)(6)(i) have been met.

#### **(2) Terminal Radiation Survey and Associated Documentation (10 CFR §50.82(b)(6)(ii))**

In addition to showing that decommissioning has been performed in accordance with the approved DP, a terminal radiation survey and associated documentation must show that the facility and site are suitable for release in accordance with Subpart E of 10 CFR Part 20 before a non-power reactor license may be terminated. This is the requirement from which CBS seeks an exemption. In its December 6, 2007, submittal, CBS maintains it was never the purpose of the NRC-approved TR-2 Final DP to remove radioactive material associated with the TR to the point that the decommissioning requirements of Subpart E would be fully satisfied. Rather, the purpose of that DP was to dismantle and remove TR components to the point that there would no longer be a utilization (reactor) facility remaining on the Site. These actions would then allow the residual radioactive materials, structures, and equipment associated with the former TR to be transferred to the Westinghouse materials license for further remediation to the extent necessary. After all principal licensed activities at the Waltz Mill Site cease, the residual radioactive materials, structures, and equipment associated with the former TR, along with other buildings and lands covered by the PA-1053S license, will be decommissioned by Westinghouse in accordance with the State of Pennsylvania's requirements. As discussed below, the NRC finds that the requested exemption is warranted.

B. Requirements for Granting Exemptions from 10 CFR Part 50

Pursuant to 10 CFR §50.12 (a)(1), the NRC must find that granting the requested exemption is authorized by law, will not present any undue risk to the public health and safety and would be consistent with the common defense and security. Because the TR-2 radioactive materials will remain under an NRC Agreement State license held by Westinghouse, they will be fully subject to regulatory authority and control. Full decommissioning at the Waltz Mill Site may safely be deferred until such time that all licensed activities there cease. The NRC thus finds that the requirements of 10 CFR §50.12 (a)(1) are met.

Pursuant to 10 CFR §50.12 (a)(2), the NRC must also find, in granting any exemption, that at least one of several enumerated "special circumstances" are present. In this regard, CBS maintains that the special circumstance here is that the application of 10 CFR §52.82(b)(6)(ii) to this case is unnecessary to achieve the underlying purpose of the rule, which is to provide for safe decommissioning and license termination. The NRC agrees, and finds that CBS has met the requirements of 10 CFR §50.12 (a)(2)(ii) for granting an exemption. The basis for this finding is the fact that Westinghouse has assumed complete responsibility for safe decommissioning of the Waltz Mill initially under its materials license SNM-770 and now PA-1053S.

Conclusion

The NRC has reviewed CBS's December 6, 2007, request to terminate Facility Operating License No. TR-2, and its related exemption request.

With the SNM-770 license amended (now PA-1053S) and the TR-2 license terminated, the Westinghouse license will be the only license in effect for radioactive materials at the Waltz Mill Site. Westinghouse, as the remaining licensee on the Site, will then be solely responsible for both the safe and environmentally acceptable possession and management of radioactive materials on the Waltz Mill Site. Westinghouse will also become solely responsible for the safe and environmentally acceptable remediation and decommissioning of the Waltz Mill Site when that becomes necessary or desirable. This is in accord with the 2007 arbitration opinion and award, and is consistent with CBS's longstanding plan to exit the nuclear business and pass on all of its nuclear decommissioning obligations to other entities.

For the reasons discussed above, the exemption request is granted, and Facility Operating License No. TR-2 is hereby terminated.

Docket No. 50-22

**AMENDMENT TO INDEMNITY AGREEMENT NO. B-18**

**AMENDMENT NO. 18**

Effective 09/19, 2008, Indemnity Agreement No. B-18 between Westinghouse and its successor organizations and the Atomic Energy Commission, dated                     , as amended is hereby terminated.

FOR THE UNITED STATES NUCLEAR REGULATORY COMMISSION

Robert D. Carlson, Branch Chief  
Financial Policy and Rulemaking Branch  
Division of Policy and Rulemaking  
Office of Nuclear Reactor Regulation

Accepted \_\_\_\_\_, 2008

By \_\_\_\_\_  
CBS Corporation