

U.S. NUCLEAR REGULATORY COMMISSION
SAFETY EVALUATION OF
INDIRECT TRANSFER OF CONTROL OVER
SPECIAL NUCLEAR MATERIALS LICENSE SNM-124
FROM NFS SERVICES, LLC.
TO NOG-ERWIN HOLDINGS, INC.

I. INTRODUCTION

By letters dated August 8, October 9, October 29, and December 8, 2008 and emails dated October 31, November 5, and December 11, 2008, (collectively the Application), Nuclear Fuel Services, Inc., (NFS or the licensee) requested approval, by the U.S. Nuclear Regulatory Commission (NRC), of the indirect transfer of control over Special Nuclear Materials License No. SNM-124 from NFS Services, LLC (the Transferor) to NOG-Erwin Holdings, Inc (the Transferee). SNM-124, issued pursuant to Title 10 of the Code of Federal Regulations (10 CFR), Part 70, authorizes the possession and use of special nuclear material (SNM) at the NFS facility in Erwin, Tennessee. This safety evaluation report (SER) evaluates the proposed indirect transfer of control over the license from the Transferor to the Transferee.

In accordance with 10 CFR Part 2, Subpart M, a notice of receipt of the Application was placed on the NRC Web site at <http://www.nrc.gov>. The NRC also published a notice of receipt of the Application and an opportunity to request a hearing and provide written comments in the *Federal Register* on September 19, 2008 (73 FR 54437-54439). No comments or requests for a hearing were received regarding the Application.

II. BACKGROUND

NFS holds Special Nuclear Materials License No. SNM-124, issued pursuant to 10 CFR Part 70 of the NRC's regulations. This license authorizes NFS to receive, possess, and use special nuclear material for the research, fabrication, and assembly of nuclear fuel products at its facility in Erwin, Tennessee. The license provides, among other things, that the facilities are subject to all NRC rules, regulations, and orders, now or hereafter in effect.

The Transferor is NFS Services, LLC. The Transferor is the ultimate parent company that is selling NFS Holding Inc. NFS is a wholly-owned subsidiary of NFS Holdings, Inc., a Delaware corporation, which in turn is a wholly-owned, and an indirect subsidiary of the Transferor. NFS was originally incorporated in Maryland, in 1962 and subsequently changed the State of incorporation to Delaware in 2007. The Transferee is a holding company that was incorporated in 2008, and is a wholly-owned subsidiary of Babcock & Wilcox Nuclear Operations Group, Inc. ("B&W NOG"), which was incorporated in Delaware in November 2007. B&W NOG is a wholly-owned subsidiary of BWX Technologies, Inc. ("BWXT"). BWXT is a wholly-owned subsidiary of The Babcock & Wilcox Company, ("B&W"). NFS will be an indirect subsidiary of the Transferee. The transaction will thus involve the indirect transfer of control over the NRC-issued license.

Additionally, the Quality Assurance Program Approval (QAPA) 0249 will transfer from the Transferor to the Transferee.

The Transferee is NOG-Erwin Holdings, Inc. The Transferee will become the new owner of NFS Holdings, Inc., and thus the new owner of the NRC licensee. NFS will remain a wholly-owned subsidiary corporation of NFS Holdings, Inc., which will be a wholly-owned subsidiary of the Transferee, and thus an indirect subsidiary of B&W NOG. There will be no change in the management or technical personnel responsible for licensed activities. The current safety and licensing organizations within NFS will remain unchanged. Additionally, there are no planned changes in the operational organization, location, facilities, equipment, or procedures associated with the NRC license, and there will be no changes in NFS operating or emergency procedures.

Because the licensee remains the same, there will be no physical transfer of any records. All records concerning the safe and effective decommissioning of the facility, public dose, and waste disposal, will remain physically located, maintained and available at the Erwin, TN site. The Transferee will abide by, and be ultimately responsible for meeting, all commitments and representations previously made by NFS with respect to SNM License No. SNM-124. These include, but are not limited to, maintaining decommissioning records, implementing decontamination activities, and eventually decommissioning the facilities and site.

As described in the Application, the ownership of the Erwin, TN facility will be transferred to the Transferee, but NFS will continue to be the holder of the SNM-124 license. More specifically, the Transferor has entered into a Stock Purchase Agreement with the Transferee, whereby the Transferor will sell to the Transferee all of the Transferor's interest in NFS Holdings, Inc. – the holding company that presently is the licensee's direct owner (see Exhibit D(1) of the Application) and which owns 100% of NFS. This transaction will be accomplished through a stock purchase and sale agreement between the parties and will result in an indirect transfer of control over NFS and its licensed activities. In this regard, control over Quality Assurance Program Approval (QAPA) 0249 will transfer from the Transferor to the Transferee.

The name of the licensee will continue to be Nuclear Fuel Services, Inc. The contact name will continue to be Ms. B. Marie Moore. For day-to-day matters, she will continue to report to Timothy Lindstrom, the NFS General Manager.

By letter dated August 8, 2008, NFS submitted its Application regarding the indirect transfer of control over NFS' license and QAPA. The Application was submitted in accordance with Section 184 of the Atomic Energy Act of 1954 (as amended) (42 U.S.C. §2234) and the provisions of 10 CFR §70.36.

As stated in the Application, NFS will continue to be technically and financially qualified to be the holder of the License, and will fulfill the responsibilities of such a holder. Individuals responsible for the licensed materials will remain employees of NFS and will continue to be responsible for licensed activities with the exception of the current President and CEO. The new President will be David Kudsin, a citizen of the United States. The indirect change of control will not otherwise affect the organizational or operational structure described in the License. Further, there will be no change in operating organizations, locations, facilities, equipment or procedures associated with the licensed-activities; and there will be no change in the use, possession, locations or storage of licensed materials. Licensed activities will continue in their current form without interruption of any kind resulting from the indirect change of control.

III. REGULATORY REQUIREMENTS AND APPLICABLE GUIDANCE

Pursuant to Sections 183 and 184 of the Atomic Energy Act of 1954, as amended (the Act), and 10 CFR 70.36, no license granted under the regulations in 10 CFR Part 70 shall be transferred, assigned or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license, unless the NRC 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. Control over licensed activities is construed as the authority to decide when and how that license (licensed material and/or activities) will be used. 10 CFR Part 70 licensees are subject to financial assurance and recordkeeping requirements for decommissioning pursuant to 10 CFR 70.25.

In materials licensing, pursuant to Section 57c, 69, and 81 of the Act, the NRC must make a finding that issuance of the license for SNM, source material, or byproduct material would not be inimical to the common defense and security, and would not constitute unreasonable risk to the health and safety of the public. The NRC makes the same finding when consenting to a transfer of control over materials licenses. Pursuant to the Act and 10 CFR 70.36, the NRC, in reviewing the requested materials license transfer, will secure full information about the transaction and determine whether the transfer is in accordance with the Act before giving its written consent. The NRC must find that the transfer is consistent with applicable provisions of the law and the regulations and orders issued by the Commission.

NUREG-1556, "Consolidated Guidance about Changes of Control and about Bankruptcy Involving Byproduct, Source or Special Nuclear Materials Licenses," Vol. 15, outlines the information needed to evaluate a transfer of control. 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 will 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 a party selling or otherwise giving up control of an NRC-licensed operation.

IV. DISCUSSION

The staff reviewed the Application to determine whether NFS has provided an adequate basis to support NRC's consent to the transfer, in accordance with the criteria and guidance outlined above. The staff's evaluation is discussed below.

The staff has determined that the Application contains a complete description of the transaction, including the new name of the owner. There were no changes in personnel or duties that relate to the licensed programs and no changes to the organization, facilities, equipment, or procedures that relate to the licensed programs. There will be no changes to staffing or qualifications of the staff required by the license. There are no changes in the use, possession, location, or storage of the licensed materials associated with the license. The Application states that the Transferee will not be owned, controlled or dominated by an alien, a foreign corporation, or a foreign government. Accordingly, the staff finds that the licensee will not be controlled or influenced by foreign ownership. The staff has concluded that it need not make any findings with respect to technical qualifications since there is no proposed change in the technical operating authority or change in the current operator's qualifications to operate the facilities.

Surveillance items and records associated with the license will continue to be maintained without regard to the change in ownership. All records concerning safe and effective decommissioning/closure of the facilities, public dose and waste disposal by release to sewers, incineration, radioactive material spills, and on-site burials will remain with the licensee.

The staff concludes that there is reasonable assurance that the transfer of control over the subject license will have no effect on the licensee's decommissioning records, that the transaction will not involve the physical relocation of any records, and that all records concerning the safe and effective decommissioning of the facilities will remain with the licensee. The status of the licensed facilities, including, but not limited to the status of decontamination and decommissioning activities, will remain the same.

V. FINANCIAL EVALUATIONS:

NFS provided a balance sheet forecast for FY 2007-2012 and an income statement for 2003-2012. The staff evaluated the reasonableness of the revenue and expense figures provided in the projection and found that the projected revenue and expenses are within reasonable expectations, given past performance.

In response to NRC staff questions, NFS verified that NFS will remain a wholly-owned subsidiary corporation of NFS Holdings, Inc., which, as a result of the proposed acquisition, will be a wholly-owned subsidiary of NOG-Erwin Holdings, Inc., an indirect subsidiary of BWX Technologies, Inc. (BWXT). NFS will remain a solvent stand-alone entity, continuing to maintain and manage its own financial statements and existing financial assurance arrangements, including but not limited to the balance sheet, statement of cash flows, and income statement. NFS provided descriptions of three general situations whereby NFS assets, revenues, and/or cash flows may be transferred to parent, subsidiary or affiliated companies of NFS. These are day-to-day cash management, restructuring of NFS' off-site operations, and service centers.

The NRC staff compared pro-forma financial data showing projections after the transfer to financial data prior to the transfer, and found the projections showed that NFS, Inc. will remain profitable. In addition, the licensee provided general information on how funding transactions will flow to related companies and provided a written statement indicating that the NFS, Inc. will remain a solvent independent company.

The staff has determined that the licensee will continue to have adequate financial resources to safely operate the facilities.

VI. DECOMMISSIONING

10 CFR 70.25 requires that a licensee provide a decommissioning funding plan that contains a cost estimate for decommissioning, and a description of the methods for assuring funds for decommissioning. As explained below, the Department of Energy (DOE) has confirmed that the transaction between NFS, Inc. and B&W NOG will have no impact on the decommissioning liability under the contracts. NFS also provided letters of credit from SunTrust Bank and First Tennessee Bank assuring that financial instruments issued to NFS, relative to decommissioning activities, will not be affected by the indirect transfer of control. Financial assurance for

decommissioning the Erwin, TN facility is provided through a number of instruments. Decommissioning financial assurance for plant facilities and equipment existing as of 12/08/1992, and all facilities and equipment used for Naval Reactor programs, is contained in the terms of NFS' contract with the DOE. DOE has confirmed that the transfer of control of NFS will have no impact on DOE's decommissioning liability under these contract clauses (e-mail from D. Rippentrop to Kevin Ramsey, October 31, 2008, Subject: Confirmation of NFS Financial Assurance - ML083470457).

Decommissioning financial assurance for the Blended Low-Enriched Uranium (BLEU) Preparation Facility is contained in the terms of Tennessee Valley Authority's contract with DOE for the uranium-aluminum dissolution and downblending activities performed. DOE confirmed that the sales transaction between B&W NOG and NFS, Inc. will have no impact on the liability under the DOE/TVA Interagency Agreement (e-mail from Philip Kirby to Kevin Ramsey - ML083100853).

Decommissioning financial assurance for the new CD Line is contained in the terms of the BJC contract with DOE. The CD Line license amendment application is still under NRC review, and the facility is not contaminated with licensed materials.

Decommissioning financial assurance for KAST/BAST equipment is provided via an AcStar performance bond for \$525,000, listing NRC as the obligee. The equipment has been removed and properly dispositioned by NFS. NRC considered the possibility that residual contamination may remain in the building from the previous operations. We find that the financial assurance for decommissioning the entire process line is sufficient to fund removal of any residual contamination. The presence of any residual contamination will be addressed before NRC permits the bond to be withdrawn.

Decommissioning financial assurance for the BLEU Complex is provided via two letters of credit from Framatome ANP, Inc., to NRC. Crédit Industriel et Commercial issued the letters, and has confirmed that the instruments will not be affected by the transfer in control (ML083470197).

Decommissioning financial assurance for the press cake/soil blender is provided by an escrow agreement with First Tennessee Bank. First Tennessee Bank has confirmed that the financial instruments will not be affected by the transfer in control (ML082910062).

Decommissioning financial assurance for the uranium metal equipment in the BLEU Preparation Facility is provided by a SunTrust Letter of Credit. SunTrust has confirmed that the Letter of Credit will not be affected by the transfer of control (ML082910062).

VII. FOREIGN OWNERSHIP, CONTROL OR INFLUENCE

As a result of this transaction, except as indicated above regarding the President and CEO, there will be no change in personnel named as responsible for the License and QAPA. NFS will remain a Delaware corporation and all of its principal officers are United States citizens. All of the principal officers of B&W and its subsidiaries are U.S. citizens.

As a result of this transaction, there will be no foreign nationals who gain access to Restricted Data and/or other classified information, sensitive nuclear technology or export controlled data (not covered by NRC export licenses). Thus, the NRC has determined that the transaction does

not create any concerns regarding foreign ownership, control or influence over the Erwin, TN site and is not inimical to the common defense and security of the United States and does not constitute unreasonable risk to public health and safety.

VIII. QUALITY ASSURANCE PROGRAM APPROVAL 0240

NFS requested that the NRC consent to the indirect transfer of control of the Quality Assurance Program, Approval No. 0249 (Docket No. 71-0249) from the Transferor to the Transferee, effective upon the closing of the transaction. As stated above, the transaction involves a stock purchase and sale agreement between the Transferor and the Transferee, and does not result in a transfer of the NFS licensing documents. Both the SNM license and the Quality Assurance Program approval will remain under the direct control of NFS, which will continue to operate under the same name.

X. ENVIRONMENTAL REVIEW

In accordance with 10 CFR 51.22(c)(21), approvals of indirect transfers - such as the action at issue here - are within a set of actions that the Commission has declared to be a categorical exclusion. Therefore, in accordance with 10 CFR 51.22(b), neither an Environmental Assessment nor an Environmental Impact Statement is required for this action.

XI. CONCLUSION

The staff has reviewed NFS' application for the NRC's consent to the indirect transfer of control over SNM-124. The staff concludes that the transfer is in accordance with the provisions of the Act and with the Commission's regulations.

The staff finds that approval of the requested transfer is not inimical to the common defense and security, and does not constitute an unreasonable risk to the health and safety of the public.

The staff also reviewed the request for the transfer of control of the Quality Assurance Program, Approval No. 0249. Transfer of such control to the Transferee was approved by letter dated September 3, 2008 (ML082470453).

The staff concludes that, subject to the two conditions set forth in the Order accompanying this SER, the Application provides adequate assurance of compliance with all constraints, conditions, requirements, and commitments of Special Nuclear Materials License No. SNM-124.

PRINCIPAL CONTRIBUTORS

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