

DOCKET: 70-1151
70-36

LICENSEE: WESTINGHOUSE ELECTIC COMPANY, LLC

SUBJECT: SAFETY EVALUATION REPORT: SUBMITTAL DATED DECEMBER 9, 2010:
APPROVAL OF THE USE OF A PARENT COMPANY GUARANTEE FOR
FINANCIAL ASSURANCE (TAC L33096)

BACKGROUND

By cover letter dated December 9, 2010, Westinghouse Electric Company LLC (Westinghouse) submitted a request to use a Parent Company Guarantee (PCG) and supporting documentation as financial assurance for decommissioning its Columbia Fuel Fabrication Facility (Docket 70-1151) and Hematite Facility (Docket 70-36).

DISCUSSION

Regulatory Requirements

Nuclear facilities licensed under Title 10 of the *Code of Federal Regulations* (10 CFR) Parts 30, 40, and 70 are required to establish adequate financial assurance for decommissioning, decontamination and reclamation pursuant to 10 CFR 30.35, 40.36, and 70.25, "Financial Assurance and Recordkeeping for Decommissioning." Westinghouse is a holder of two U.S. Nuclear Regulatory Commission (NRC) licenses, SNM-1107 and SNM-33, for its Columbia Fuel Fabrication Facility (CFFF) located in Columbia, South Carolina, and its Hematite Facility (Hematite), located in Festus, Missouri, respectively.

In the past, Westinghouse has relied on Letters of Credit (LOCs) to satisfy its financial assurance for decommissioning requirement. Westinghouse's December 9, 2010, submittal seeks to replace its LOCs with a guarantee by Westinghouse's ultimate parent company, Toshiba Corporation (Toshiba), that Toshiba will provide funds for decommissioning when needed. Under 10 CFR 30.35(f)(2), 40.36(e)(2), and 70.25(f)(2), in order to rely on a PCG, Westinghouse's parent company, Toshiba, must meet the requirements set forth in 10 CFR Part 30, Appendix A, Section II.A.1 or A.2.

Staff Review

In addition to its December 9, 2010, submittal, Westinghouse also submitted:

- by letter dated May 5, 2011 (ML11157A007), its responses to NRC's Request for Additional Information (RAI);
- by letter dated February 15, 2011 (ML110800572), an Amendment No. 1 to Westinghouse's existing July 27, 2009, Standby Trust Agreement (STA);
- by letter dated May 13, 2011, a revised Certification of Financial Assurance (Certification) and an Amendment No. 2 to the STA; and
- by letter dated May 31, 2011 (ML111580051), a revised PCG and supporting documentation.

Enclosure

Upon review of the referenced submittals, as detailed below, the staff finds that Westinghouse's revised PCG dated May 24, 2011, revised Certification, and Amendments No.1 and No. 2 to its existing STA are acceptable. Therefore, the revised PCG is approved.

Staff Review of Parent Company Guarantee and Supporting Documentation

In its review, the staff relied on the regulations set forth in 10 CFR 30.35, Appendix A to 10 CFR Part 30, 10 CFR 40.36, and 10 CFR 70.25, as well as NRC guidance contained in NUREG-1757, Volume 3, Appendix A.13. Westinghouse's December 9, 2010, submittal included:

- a PCG;
- a Letter from Westinghouse's Chief Executive Officer (CEO Letter);
- a Letter from Toshiba's Chief Financial Officer (CFO Letter) and financial test;
- an Auditor's Special Report;
- a copy of Toshiba's audited financial statements; and
- an Affidavit regarding ownership of Westinghouse.

The staff reviewed the December 9, 2010, submittal and found that additional information was needed to complete the review. By letter dated March 21, 2011 (ML110760027), the staff provided its RAI. By letter dated May 5, 2011 (ML11157A007), Westinghouse provided its response to the staff's RAI, and by letter dated May 31, 2011 (ML111580051), Westinghouse provided a revised PCG and supporting documentation. The May 31, 2011, submittal included:

- a revised PCG dated May 24, 2011;
- a revised CFO letter;
- a revised CEO letter;
- a revised Auditor's Special Report;
- a copy of Toshiba's audited financial statements;
- an Affidavit regarding ownership of Westinghouse;
- a letter from Toshiba's General Manager of the Legal Affairs Division stating that Toshiba has the approval of its Board of Directors to enter into this PCG and that the CFO of Toshiba has the authority to sign for Toshiba and bind Toshiba to the PCG;
- financial statements of Toshiba Nuclear Energy Holdings (US), Inc. and Toshiba Nuclear Energy Holdings (UK) Ltd.; and
- a diagram detailing the corporate ownership of Westinghouse.

In order for Westinghouse to qualify for use of a PCG, its parent company, Toshiba, must satisfy the criteria found in 10 CFR Part 30, Appendix A, Section II.A.1 or A.2. Westinghouse's May 24, 2011, submittal intends to demonstrate compliance with 10 CFR Part 30, Appendix A, Section II.A.2 (the "Financial Test"). The Financial Test, in pertinent part, requires that Toshiba have:

- (i) A current rating for its most recent bond issuance of AAA, AA, A, or BBB as issued by Standard & Poor's or Aaa, Aa, A, or Baa as issued by Moody's; and
- (ii) Tangible net worth each at least six times the current decommissioning cost estimates for the total of all facilities or parts thereof; and
- (iii) Tangible net worth of at least \$10 million; and

(iv) Assets located in the United States amounting to at least 90 percent of the total assets or at least six times the current decommissioning cost estimates for the total of all facilities or parts thereof.

As part of the May 31, 2011, submittal, the CFO Letter included the documentation recommended by NUREG-1757, Volume 3, Appendix A.13.7, to demonstrate passage of the Financial Test. The Auditor's Special Report states that the independent auditor verified the figures in the CFO Letter with Toshiba's audited financial statements. The staff independently compared the figures stated in the CFO letter to the audited financial statements and found them to be consistent.

The Auditor's Special Report states that the current bond rating of the most recent unsecured bond issuance is BBB, as rated by Standard & Poor's. Therefore, Toshiba meets the requirement of 10 CFR Part 30, Appendix A, Section II.A.2(i). Toshiba's tangible net worth exceeds six times the sum of the current decommissioning cost estimate of the facilities covered by the revised PCG. Therefore, Toshiba meets the requirement of 10 CFR Part 30, Appendix A, Section II.A.2(ii). Toshiba's tangible net worth is at least \$10 million, therefore, Toshiba meets the requirement of 10 CFR Part 30, Appendix A, Section II.A.2(iii). Toshiba's assets located in the United States exceed six times the sum of the current decommissioning cost estimate of the facilities covered by the PCG. Therefore, Toshiba meets the requirement of 10 CFR Part 30, Appendix A, Section II.A.2(iv). Thus, Toshiba meets the requirements of the Financial Test.

10 CFR Part 30, Appendix A, Section III.A through D, describes the terms that are required in a PCG:

- A. The PCG will remain in force unless the guarantor sends notice of cancellation by certified mail to the licensee and the NRC. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the licensee and the NRC, as evidenced by the return receipts;
- B. If the licensee fails to provide alternate financial assurance as specified in the NRC's regulations within 90 days after receipt by the licensee and NRC of a notice of cancellation of the PCG from the guarantor, the guarantor will provide such alternative financial assurance in the name of the licensee;
- C. The PCG and financial test provisions must remain in effect until the Commission has terminated the license; and
- D. If a trust is established for decommissioning costs, the trustee and trust must be acceptable to the Commission. An acceptable trustee includes an appropriate State or Federal Government agency or an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

The staff compared the amount guaranteed by the May 24, 2011, revised PCG and finds that the amount guaranteed is equal to the sum of the approved CFFF and Hematite decommissioning cost estimates. The staff finds the language of the revised PCG submitted by cover letter dated May 31, 2011, to be consistent with language contained in NUREG-1757, Volume 3, Appendix A.13. Because the revised PCG is consistent with the recommended language contained in NUREG-1757, Volume 3, Appendix A.13, which the NRC staff has previously determined would comply with the NRC's regulatory requirements, the staff therefore

finds that the proposed PCG meets the requirements of 10 CFR Part 30, Appendix A, Section III.A, B and C.

The requirements of 10 CFR Part 30, Appendix A, Section III.D, regarding the STA, are also met. The trust is acceptable because the existing STA is consistent with NRC guidance contained in NUREG-1757, Volume 3, Appendix A.17, which the NRC staff has previously determined would comply with the NRC's regulatory requirements. The trustee is acceptable because it has the authority to act as trustee and is regulated by the Office of the Comptroller of the Currency, a Federal agency. Therefore, the requirements of 10 CFR Part 30, Appendix A, Section III.D are met.

NUREG-1757, Volume 3, Appendix A.13.3 recommends that the licensee demonstrate that the parent guarantor has majority control of the licensee. The staff reviewed the Affidavit regarding ownership of Westinghouse and finds that Westinghouse is majority controlled by Toshiba. The staff also compared the language of the CEO Letter, CFO Letter and Auditor's Special Report submitted by cover letter dated May 31, 2011, to the respective recommended language contained in NRC guidance NUREG-1757, Volume 3, Appendix A.13, and finds that they are consistent.

Relying upon the revised PCG dated May 24, 2011, supporting documentation dated May 31, 2011, and the May 5, 2011, response to RAI, the staff finds that Toshiba meets the requirements of the Financial Test set forth in 10 CFR Part 30, Appendix A, Section II.A.2(i)-(iv), the PCG, CEO Letter, CFO Letter and Auditor's Special Report are consistent with NRC guidance, and that the PCG meets the requirements of 10 CFR Part 30, Appendix A, Section III.A through D.

Staff Review of Certification of Financial Assurance and Amendments No.1 and No. 2 to Westinghouse Standby Trust Agreement

In its review, the staff relied on the regulations set forth in 10 CFR 30.35, Appendix A to Part 30, 40.36, and 70.25, as well as NRC guidance contained in NUREG-1757, Volume 3, Appendix A.2 and Appendix A.17.

A Certification is required by 10 CFR 30.35(e), 40.36(d), and 70.25(e). On February 15, 2011 (ML110800572), Westinghouse submitted a Certification. The submittal also included Amendment No. 1 to its existing STA, which revises Schedule A and Schedule B of the existing STA. Schedule A lists the NRC license numbers, corresponding name and address of the licensee, corresponding address of licensed activity, and the corresponding cost estimate for decommissioning. Schedule B lists the financial assurance instruments that are payable to the STA. The staff reviewed the February 15, 2011, submittal and found that the revisions to Schedule A were acceptable; however, in order for staff to complete its review, additional information was needed with respect to the Certification and revised Schedule B. On April 15, 2011 (ML11020276), the staff issued an RAI to Westinghouse.

On May 13, 2011, Westinghouse submitted a revised Certification and Amendment No. 2 to its STA. The staff finds the revised Certification states that financial assurance is provided in an amount equal to the sum of the approved CFFF and Hematite decommissioning cost estimates. The staff finds the language of the revised Certification is consistent with the recommended language contained in NRC guidance NUREG-1757, Volume 3, Appendix A.2 and is in accord with the requirements of 10 CFR 30.35(e), 40.36(d), and 70.25(e).

Schedule B to Westinghouse's STA is updated by the revised Amendment No. 2 and lists the correct LOC identification numbers and corresponding dollar amounts. In its May 31, 2011, submittal, Westinghouse committed to revising the STA to reflect the new financial instrument, the PCG, when the PCG is approved. As described in Section 2.1 above, the existing STA is acceptable because it meets the requirements of 10 CFR Part 30, Appendix A, Section III.D and is consistent with NUREG-1757, Volume 3, Appendix A.17. Amendment No. 1 and 2 are acceptable because they revise the existing STA to reflect current information with respect to the dollar amounts of the approved cost estimates, stated in Schedule A, and the dollar amounts of the financial instruments, stated in Schedule B. The amendments neither revise the other provisions of the existing STA nor change the trustee. Therefore, Amendment No. 1 and 2 to the STA are acceptable.

On the basis of the staff's review, the staff finds the revised STA and the revised Certification meet the requirements of 10 CFR 30.35, Appendix A to Part 30, 40.36, and 70.25 and are therefore acceptable.

ENVIRONMENTAL REVIEW

The NRC staff has determined that the requested action, the approval of Westinghouse's request to change its method of financial assurance to a PCG, belongs to a category of actions that are eligible for categorical exclusion under 10 CFR Part 51.22(c)(10)(i). Accordingly, the NRC staff is not required to perform an environmental review of this action under the National Environmental Policy Act of 1969, as amended.

CONCLUSION

On the basis of the staff's review, as discussed above, Westinghouse has demonstrated that (1) the financial condition of its parent company, Toshiba, meets the requirements of 10 CFR Part 30, Appendix A; (2) the amount guaranteed by the PCG is equal to the sum of the approved cost estimates for the CFFF and Hematite; (3) the language of the PCG, CFO letter, CEO Letter, Auditor's special report submitted by cover letter dated May 31, 2011, are consistent with NRC guidance; (4) the revised Certification is consistent with NRC guidance; and (5) Amendment No. 1 and Amendment No. 2 to the STA are acceptable. Therefore, the staff finds that Westinghouse's May 24, 2011, revised PCG and supporting documentation, revised Certification, and Amendment No. 1 and Amendment No. 2 to the STA are acceptable and are, therefore, approved.

PRINCIPAL CONTRIBUTORS

Christopher Ryder, Licensing Project Manager, Fuel Manufacturing Branch, Fuel Facility Licensing Directorate, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards

Roman Przygodzki, Technical Reviewer, Special Projects Branch, Decommissioning and Uranium Recovery, Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs