

SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION  
INDIRECT LICENSE TRANSFER OF AEROTEST RADIOGRAPHY AND RESEARCH  
REACTOR DUE TO THE PROPOSED ACQUISITION OF AEROTEST OPERATIONS, INC.  
BY NUCLEAR LABYRINTH, LLC  
FACILITY OPERATING LICENSE NO. R-98  
DOCKET NO. 50-228

Enclosure 1 contains proprietary information which is in **BOLD**. Enclosure 2 is a public version which proprietary information is redacted and denoted in [      ].

1.0    INTRODUCTION

On May 30, 2012, Aerotest Operations, Inc. (Aerotest) and Nuclear Labyrinth, LLC (Nuclear Labyrinth) (together, the applicants) submitted an application for U.S. Nuclear Regulatory Commission (NRC) consent to an indirect transfer of operating license No. R-98 for the Aerotest Radiography and Research Reactor (ARRR) (Agencywide Documents Access and Management System (ADAMS) Accession Nos. ML12152A233 and ML12180A384). The NRC staff requested supplemental information on July 5, 2012 (ADAMS Accession Nos. ML121740317 and ML121740343) and received responses on July 19, 2012 (ADAMS Accession No. ML122021201). The NRC staff accepted the application for review on August 14, 2012 (ADAMS Accession No. ML12213A486). The NRC staff issued a request for additional information (RAI) relating to financial qualifications on September 14, 2012 (ADAMS Accession Nos. ML12242A460 and ML12242A479). The applicants responded on October 15, 2012 (ADAMS Accession No. ML12291A508), but did not adequately demonstrate financial assurance. On December 10, 2012, the NRC staff issued another RAI (ADAMS Accession Nos. ML12339A181 and ML12339A189), which was discussed in a public meeting on December 19, 2012 (ADAMS Accession No. ML13018A003). The purpose of the public meeting was to ensure that the applicants understood the financial assurance requirements for license transfer approval. The applicants responded to the RAI on January 10, 2013 (ADAMS Accession No. ML13015A395). The documents submitted by the applicants constitute the “application.”

Aerotest and Nuclear Labyrinth (transferee) requested that the NRC, pursuant to Section 184 of the Atomic Energy Act (AEA) of 1954, as amended, and Title 10 of the *Code of Federal Regulations* (10 CFR) Section 50.80, "Transfer of Licenses," consent to the proposed indirect transfer of control of Facility Operating License No. R-98 for the ARRR, which is a 250 kilowatt thermal (kW(t)) research reactor located in San Ramon, California. The license authorizes Aerotest to possess, use, and operate the ARRR. The transfer would result from a stock transfer whereby Nuclear Labyrinth would acquire all Aerotest stock from Autoliv ASP, Inc. (Autoliv) an indirect parent company of Aerotest.

## 2.0 BACKGROUND

Aerotest is the holder of the Facility Operating License for the ARRR under the provisions of 10 CFR 50.21(c) for research and development purposes. Aerotest is currently wholly owned by OEA Aerospace, Inc., which is wholly owned by OEA, Inc. OEA, Inc. was purchased by Autoliv on May 9, 2000. Autoliv is wholly owned by Autoliv, Inc. Autoliv, Inc. is incorporated in Delaware, with headquarters in Stockholm, Sweden. The majority of the Board of Directors and the Executive Officers of Autoliv, Inc. are non-U.S. citizens. The majority of Autoliv's outstanding stock is owned by non-U.S. citizens. As a result of the May 9, 2000, purchase, Autoliv, Inc. became, the ultimate indirect owner of Aerotest.

Autoliv and Nuclear Labyrinth have agreed to consummate a transaction whereby Nuclear Labyrinth will acquire Aerotest in a stock transaction. According to the application, Autoliv intends to transfer the stock in Aerotest to Nuclear Labyrinth; stock in the parent holding companies, OEA Aerospace, Inc., and OEA, Inc., will not be transferred.

Nuclear Labyrinth, with corporate offices located in Sandy, Utah, is a privately held Limited Liability Company (LLC), incorporated in the State of Utah. Nuclear Labyrinth is a newly-formed entity created to purchase the shares of Aerotest. As a result of the proposed transaction, Aerotest will become a wholly owned subsidiary of Nuclear Labyrinth. Aerotest will remain as the owner and operator, holding the license to operate the ARRR. Aerotest will continue in its current legal form.

The ARRR has been shut down since October 2010. The ARRR has damaged fuel elements and the applicants are evaluating the condition of the fuel elements to determine if the existing undamaged fuel elements are sufficient to produce the power needed to conduct commercial operation. The application stated that the ARRR is expected to be fully operational by September, 2013.

## 3.0 REGULATORY EVALUATION

The applicants' request for approval of the indirect transfer of control of the license for the ARRR, due to the proposed indirect transfer of ownership of Aerotest, is made under 10 CFR 50.80.

Section 50.80(a) of 10 CFR states that:

No license for a production or utilization facility [. . .] or any right thereunder, shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, unless the Commission gives its consent in writing.

In addition, the requirements of 10 CFR 50.80(b) and (c) apply. The Commission's regulation at 10 CFR 50.80(b) states that an application for a license transfer shall include as much information described in 10 CFR 50.33, "Contents of Applications; General Information," and 10 CFR 50.34, "Contents of Applications; Technical Information," with respect to the identity and technical and financial qualifications of the proposed transferee as would be required by those sections if the application were for an initial license.

Section 50.80(c) of 10 CFR states that:

[T]he Commission will approve an application for the transfer of a license if the Commission determines: (1) [t]hat the proposed transferee is qualified to be the holder of the license; and (2) [t]hat transfer of the license is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

#### 4.0 FINANCIAL QUALIFICATIONS

Section 50.33(f) of 10 CFR provides that each application shall state:

Except for an electric utility applicant for a license to operate a utilization facility of the type described in § CFR 50.21(b) or § 50.22, information sufficient to demonstrate to the Commission the financial qualification of the applicant to carry out, in accordance with the regulations in this chapter, the activities for which the permit or license is sought.

The NRC reviewed the financial projections for the reasonableness of estimated operating costs, the reasonableness of financial projections and underlying assumptions, and the sensitivity of plant revenue projections to determine if the Nuclear Labyrinth possesses or has reasonable assurance of obtaining the funds necessary to cover estimated operating costs for the period of the license.

#### 4.1 Aerotest Operations, Inc.

The ARRR is licensed under Section 104c. of the AEA, as a utilization facility useful in the conduct of research and development activities, as defined in 10 CFR 50.21(c):

A production or utilization facility, which is useful in the conduct of research and development activities of the types specified in section 31 of the Act, and which is not a facility of the type specified in paragraph (b) of this section or in § 50.22.

Section 50.2, "Definitions," of 10 CFR states, in part, that an electric utility is:

[A]ny entity that generates or distributes electricity and which recovers the cost of this electricity, either directly or indirectly, through rates established by the entity itself or by a separate regulatory authority.

The NRC staff determined that Aerotest does not qualify as an electric utility as defined in 10 CFR 50.2. Therefore, Aerotest must meet the financial qualification requirements for a non-electric utility, pursuant to 10 CFR 50.33(f)(2), which states that:

If the application is for an operating license, the applicant shall submit information that demonstrates the applicant possesses or has reasonable assurance of obtaining the funds necessary to cover estimated operation costs for the period of the license. The applicant shall submit estimates for total annual operating costs for each of the first five years of operation of the facility. The applicant shall also indicate the source(s) of funds to cover these costs.

Also, 10 CFR 50.33(k)(1) requires that Aerotest provide information described in 10 CFR 50.75, "Reporting and Recordkeeping for Decommissioning Planning," demonstrating that there will be reasonable assurance that funds will be available to decommission the facility. Decommissioning funding assurance is discussed in Section 5.0 of this Safety Evaluation (SE).

The following is a summary of the projected income statement for Aerotest submitted in the January 10, 2013, letter. The first year projection is based on actual costs for 2011.

	[ ]				
	[ ]				
	[ ]	[ ]	[ ]	[ ]	[ ]
TOTAL REVENUE	[ ]	[ ]	[ ]	[ ]	[ ]
Total Operating Expense	[ ]	[ ]	[ ]	[ ]	[ ]
Operating Income	[ ]	[ ]	[ ]	[ ]	[ ]
Other Income & Taxes	[ ]	[( )]	[( )]	[( )]	[( )]
NET INCOME	[ ]	[ ]	[ ]	[ ]	[ ]

Aerotest's projected income statement shows that the anticipated revenues are from (task 1) neutron radiography, (task 2) nuclear science and engineering research, (task 3) training, and (task 4) neutron science and engineering research (without the use of ARRR). The NRC staff reviewed the historical financial statements for Aerotest and other factors to determine if the revenue projection is reasonable. The applicant submitted [ ] letters (and emails) of intent to demonstrate potential revenue sources. [ ] were received prior to the ARRR shutdown in 2010 and were determined to be too old to be considered in the revenue projection. [ ] expressed interest in using Aerotest if the facility were to return to operation and if the price were competitive. [ ] contained registrations and inquiries about training provided by Aerotest. [ ] were inquiries regarding Aerotest's services and pricing. Because the ARRR is not operational at this time, the letters of intent are speculative. Nonetheless, in this case because no actual revenue was reported in the application other than revenue related to training, NRC staff has relied on the letters of intent to estimate potential revenue in the event that the ARRR returns to full commercial operation in the future.

As stated in Section 2.0 of this SE, the ARRR has been shut down since October 2010 and Aerotest has no contracts committing individual customers to purchase testing services (Task 1). The application stated that Aerotest provided services based on customer orders and did not use long term contracts. The application indicated that the price for each radiograph is [ ]. Of the [ ] emails regarding Aerotest's services and pricing, most appeared to be one time work for [ ] radiographs. Since Aerotest does not use long term contracts, the potential revenue for Task 1 from two previous customers who expressed interested in using Aerotest services is uncertain. However, the NRC staff used historic data reported by the applicants to calculate potential revenue from these two customers because it is the only

information available. The application indicated that revenue from Aerotest's top ten customers in 2009 ranged from [ ] percent to [ ] percent of 2009 total revenue. One of the two customers who expressed interest in using Aerotest services was listed as one of the top 10 customers that had generated [ ] percent of 2009 total revenue (approximately [ ]). The other customer was not listed in the top ten customers in 2009. Therefore, the NRC staff believes the revenue generated by this customer in 2009, if any, was less than [ ] percent of the 2009 total revenue (approximately [ ]).

The application stated that grants and research funds will be sought for the research activities after the indirect license transfer occurs. The proforma included the total research revenue (task 2 and task 4) that may be provided by MSI/Photogenics, a potential customer, in the amount equal to the second year after the proposed indirect license transfer (year 2) ([ ]). However, no documentation was submitted with the application to provide verification of the amount, timing, or approval of research funding by MSI/Photogenics. Therefore, the research revenue projection is uncertain.

The application stated that the projected income for training (Task 3) is based on current annual earnings ([ ]). In reviewing the historical financial statements to verify this information, the NRC staff noted that Aerotest had sales of [ ] in 2011 when the ARRR was already shut down. The application did not specify if the 2011 sales was solely for training or if Aerotest still generates revenue in addition to the afore-mentioned training.

The NRC staff determined that, in the event that Aerotest returns to full commercial operation and is able to generate all potential revenues listed in the above analysis, the total revenue will still be less than lowest projected annual operating costs ([ ]). Therefore, the NRC staff finds that the Aerotest does not have sources of funds to cover the total annual operating costs for each of the first five years of operations as required by 10 CFR 50.33.

The NRC staff also noted that Aerotest reported negative net income in 2009 (prior to the ARRR shutting down), as well as in 2010 and 2011 (the last year financial information was reported to the NRC).

The NRC staff has previously made only three findings of reasonable assurance of financial qualifications for nuclear power plants with a negative income statement as part of an indirect license transfer.

The first finding summarized in an SE dated April 11, 2008, addressed a negative net income statement for Vermont Yankee Nuclear Power Station (VY). The SE for that indirect transfer of control related to the restructuring of Entergy Corporation is available at ADAMS Accession No. ML080920596. The NRC staff found VY financially qualified, based in part on additional financial arrangements provided by Support Agreements put in place by Entergy Corporation, the parent company of VY, and access to a line of credit.

The second finding for direct and indirect transfers of control related to corporate restructuring and EDF Inc.'s acquisition of a 49.99-percent ownership interest in Constellation Energy

Nuclear Group, LLC (CENG) (ADAMS Accession No. ML093010003), addressed a negative net income statement for R.E. Ginna Nuclear Power Plant (Ginna) in an SE dated October 30, 2009. The NRC staff found Ginna financially qualified, based in part on additional financial arrangements provided by Support Agreements from Constellation Energy Group, Inc. and E.D.F. International SAS, and a Master Demand Note.

The third finding for the indirect transfer of control related to a merger between Exelon Corporation and Constellation Energy Group, Inc. (ADAMS Accession No. ML113560408), addressed a negative net income statement for Ginna in an SE dated February 15, 2012. The NRC staff found Ginna financially qualified, based in part on financial arrangements provided by several support agreements and a Master Demand Note.

In each case, the licensee had substantial revenues from long-term customers, and a large well financed parent company that provided additional financial support to the licensee to demonstrate that the licensee was financially qualified. Here, however, the ARRR is shut down and has no long-term customers, and, as discussed below, the proposed parent company, Nuclear Labyrinth, does not have the resources to provide adequate support agreements for the ARRR.

The applicants stated that Aerotest will commence decommissioning if it is unable to obtain customers sufficient to cover operational costs and it exhausts current available funds. This statement does not demonstrate reasonable assurance that the applicants are financially qualified for the period of the license.

Based on the totality of information, including the uncertainty of revenue generation and operational status of the ARRR, the NRC cannot make a finding that Aerotest possesses or has reasonable assurance of obtaining the funds necessary to cover estimated operation costs for the period of the license.

#### 4.2 Nuclear Labyrinth, LLC

Nuclear Labyrinth is a newly formed, U.S. based LLC located in Sandy, Utah, and incorporated in the State of Utah. According to the application, Nuclear Labyrinth, through its sole owner Dr. David Slaughter, provides education, training, and research in nuclear science and engineering.

Since Aerotest currently does not have sufficient revenue to cover the operation costs for the period of the license, Nuclear Labyrinth, as the proposed parent company, could provide funds to cover those costs. Therefore, the NRC staff analyzed the financial qualifications of Nuclear Labyrinth in order to determine whether such support could be provided and whether the proposed indirect transfer of control to Nuclear Labyrinth will adversely affect the financial qualifications of Aerotest.

The Commission's regulations under 10 CFR 50.33(f)(4) and (5) state that for a newly-formed entity:

- (4) Each application for a construction permit, operating license, or combined license submitted by a newly-formed entity organized for the primary purpose of constructing and/or operating a facility must also include information showing:
  - i. The legal and financial relationships it has or proposes to have with its stockholders or owners;
  - ii. The stockholders' or owners' financial ability to meet any contractual obligation to the entity which they have incurred or proposed to incur; and
  - iii. Any other information considered necessary by the Commission to enable it to determine the applicant's financial qualification.
- (5) The Commission may request an established entity or newly-formed entity to submit additional or more detailed information respecting its financial arrangements and status of funds if the Commission considers this information appropriate. This may include information regarding a licensee's ability to continue the conduct of the activities authorized by the license and to decommission the facility.

Since Nuclear Labyrinth is a newly-formed entity, it does not have historical financial statements to submit to the NRC to demonstrate its financial ability to meet any contractual obligation to the entity which it has incurred or proposes to incur. Nuclear Labyrinth submitted a pro forma balance sheet reflecting its assets, liabilities, and shareholders' equity. The pro forma balance sheet for Nuclear Labyrinth shows current assets of [ ], which includes [ ] in cash and cash equivalents.

In addition, the NRC staff considered contracts in assessing Nuclear Labyrinth's financial qualifications since contracts may provide supporting documentation for revenue and cost projections. Autoliv and Nuclear Labyrinth have [ ]

]

Furthermore, the NRC staff reviewed the information in the application regarding Aerotest's financial qualifications and considers a Support Agreement between Nuclear Labyrinth and Aerotest as an essential factor in assessing Aerotest's financial qualifications following the proposed indirect license transfer. A public meeting was held with Nuclear Labyrinth and Aerotest on December 19, 2012, and the staff requested a Support Agreement to cover operations and maintenance costs for a period of 6 months. Nuclear Labyrinth later submitted a



draft Support Agreement to guarantee that the funds received from Autoliv to support the first 12 months of operation will be used for the operation and maintenance of the facility. Thus, Nuclear Labyrinth did not provide any additional sources of funds to cover the operation costs after the proposed indirect license transfer other than the funds provided by Autoliv. The regulation at 10 CFR 50.33(f)(2) requires the applicant to provide sources of funds to cover the total annual operating costs for each of the first five years of operation, and Nuclear Labyrinth has only provided assurance to cover the operating costs for the first year of operation. Therefore, Nuclear Labyrinth does not meet the regulation at 10 CFR 50.33(f)(2).

#### 4.3 Conclusion on Financial Qualifications

The NRC staff reviewed pro forma projected financial statements (projected net income statement for Aerotest and projected balance sheet for Nuclear Labyrinth), and also evaluated the financial condition of Nuclear Labyrinth, which will be the ultimate owner of Aerotest following the proposed indirect license transfer, as it relates to its obligations and the Support Agreement. Based on the foregoing analysis, the NRC staff has determined that neither Aerotest nor Nuclear Labyrinth meets the financial qualification requirements under 10 CFR 50.33(f) because they have not demonstrated that they possess or have reasonable assurance of obtaining the funds necessary to cover estimated operating costs for the period of the license.

#### 5.0 DECOMMISSIONING FUNDING

The NRC has determined that the requirements to provide reasonable assurance of decommissioning funding are necessary to ensure adequate protection of public health and safety. The regulation at 10 CFR 50.33(k) requires that an applicant for an operating license for a production or utilization facility must provide reasonable assurance that funds will be available to decommission the facility. The regulations at 10 CFR 50.75(d) requires that each nonpower reactor applicant for or holder of an operating license shall submit a decommissioning report which contains a cost estimate for decommissioning the facility, an indication of the funding method(s) to be used to provide funding assurance for decommissioning, and a description of the means of adjusting the cost estimate and associated funding level periodically over the life of the facility. The acceptable methods for providing financial assurance for decommissioning are specified in 10 CFR 50.75(e)(1).

The application included a decommissioning cost estimate, developed by EnergySolutions for the ARRR for [REDACTED], in 2011 dollars, which assumed that the decommissioning method to be used is DECON. According to the application, the decommissioning cost estimate was determined by comparing the ARRR facility size and complexity against cost estimates for other non-power reactor facilities. The decommissioning cost estimate summarized costs by labor, waste disposal, other (i.e., energy, equipment, and supplies, etc.) and included a 25 percent contingency factor. The NRC staff notes that the contingency factor is required to address unforeseeable elements of cost within the defined scope. In reviewing the decommissioning cost estimate submitted by Aerotest, the NRC staff took into consideration experience at other facilities with similar construction and operational history, and concludes that the

decommissioning cost estimate for the ARRR facility is not unreasonable. Following the proposed transaction, Aerotest will provide funding for decommissioning through a combination of financial assurance mechanisms, as stated below, as allowed at 10 CFR 50.75(e)(1)(vi).

As stated in the application, at the closing of the stock transaction, Nuclear Labyrinth will obtain [ ] in cash from Autoliv, which will be immediately contributed to the nuclear decommissioning trust. This amount is the estimated decommissioning cost in 2012 dollars. This amount in assets will be used to establish a trust fund as allowed by 10 CFR 50.75(e)(1)(ii), which states that:

[P]repayment may be in the form of a trust, escrow account, or Government fund with payment by, certificate of deposit, deposit of government or other securities or other method acceptable to the NRC.

The NRC staff finds that there is reasonable assurance that funds will be available for decommissioning pursuant to 10 CFR 50.75(d).

The application indicated that Nuclear Labyrinth will provide additional [ ] of financial assurance in the form of a letter of credit, allowed by 10 CFR 50.75(e)(1)(iii)(A), which states that "[a] surety method may be in the form of a surety bond or letter of credit." The applicants provided this letter of credit and a plan to adjust the funding level on a biannual basis, based on updated decommissioning cost estimates by outside experts, to satisfy the regulation under 10 CFR 50.75 (f), which states that:

If necessary, the cost estimate, for power and non-power reactors, shall also include plans for adjusting levels of funds assured for decommissioning to demonstrate that a reasonable level of assurance will be provided that funds will be available when needed to cover the cost of decommissioning.

However, the application stated that the standby letter of credit indicated that the credit can be established within 30 days of license transfer. The NRC would require the letter of credit to be established at the time of, or before, the transfer.

The application provided additional information regarding spent fuel. The application stated that, when the decommissioning is commenced, the ARRR may need to be in SAFSTOR until the DOE accepts the fuel. The application included sources of funds for spent fuel management, transportation, and disposal. The following is a summary of costs associated with nuclear fuel:

Cask use, transportation, and disposal	[ ]
Fuel canister for damaged fuel	[ ]
Total	[ ]

Annual cost for fuel storage:

FTE (Labor)	[	]
Maintenance and supply	[	]
Training	[	]
NRC fees	[	]
Total annual cost	[	]

As stated in Section 4.2, Autoliv and Nuclear Labyrinth have [ ], for the estimated fuel disposal fees. In section 4.1 of the application, it was indicated that the annual cost associated with the fuel storage ([ ]) will be covered by fees by Aerotest services, and that the cost is included in the total operation expense in the projected income statement for Aerotest.

Based on the above analysis, the NRC staff cannot determine that there will be sufficient funds to cover the annual cost of fuel storage until the DOE accepts the fuel, which is expected to occur in 2055 or later (42 or more years of storage), even if the decommissioning funding amount plus [ ] letter of credit are sufficient to cover the cost of decommissioning.

#### 6.0 FOREIGN OWNERSHIP, CONTROL, OR DOMINATION

Section 104.d of the Act, states:

No license may be issued to any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation or a foreign government. In any event, no license may be issued to any person within the United States if, in the opinion of the Commission, the issuance of a license to such person would be inimical to the common defense and security or to the health and safety of the public. Section 50.38 of 10 CFR implements this statutory prohibition, providing that:

Any person who is a citizen, national, or agent of a foreign country, or any corporation, or other entity which the Commission knows or has reason to believe is owned, controlled, or dominated by an alien, a foreign corporation, or an foreign government, shall be ineligible to apply for and obtain a license.

Because the current ultimate parent company, Autoliv, Inc., is foreign owned, and owns 100 percent of Aerotest, the NRC concluded that Aerotest is not in compliance with Section 104d. of the AEA and the regulations at 10 CFR 50.38.

Following the proposed indirect license transfer, Aerotest, the licensee, will be owned by the new parent company, Nuclear Labyrinth. Nuclear Labyrinth is a U.S. based LLC located in Sandy, Utah, and incorporated in the State of Utah. In addition, the applicant provided the names, addresses and citizenship of the owner, officers, and directors of Nuclear Labyrinth, the proposed parent company of the licensee. According to the application, Nuclear Labyrinth and

Aerotest will not be owned, controlled or dominated by an alien, a foreign corporation, or a foreign government after the proposed indirect license transfer.

[ ], the NRC needs to conduct an additional review of the financial documents, including but not limited to support agreements, to determine whether the applicants will be subject to foreign ownership, control, and domination. In the December 2012 public meeting, the applicants stated that Autoliv, Inc. will not exercise control over Nuclear Labyrinth or Aerotest after the transfer of license and fund. A Funding Agreement was submitted to the NRC, but no specific provisions were included to negate Autoliv, Inc.'s control over NRC regulated activities of the ARRR. The Funding Agreement must include specific provisions, acceptable to the NRC, to negate Autoliv, Inc. control, if any, over NRC regulated activities by Aerotest after the transfer. Further, in order to ensure that Autoliv, Inc. does not exercise control over Aerotest, the license should contain a condition that no changes may be made to the funding agreement, including the negation provisions, without the prior notification and consent of NRC.

#### 7.0 NUCLEAR INSURANCE AND INDEMNITY

The provisions of the Price-Anderson Act (Section 170 of the AEA) and the Commission's regulations at 10 CFR Part 140 require that a licensee provide insurance for the facility. Since the proposed indirect license transfer will not result in any direct license transfers or change in licensee, the current indemnity agreements will remain unchanged. All insurance requirements will continue to apply to the current licensee.

#### 8.0 PUBLIC COMMENTS

The NRC received a comment from Mr. Mark Sokolow of the Law Office of Mark Sokolow, on January 7, 2013. The comment addresses the Notice of Consideration of Indirect Transfer and Conforming Amendment, NRC-2012-0286, ADAMS Accession No. ML12307A290. The NRC considered the public comment in evaluating the license transfer decision. This section summarizes the comment received and provides the NRC's responses to that comment.

The commenter made six statements which are discussed below.

1. *Statement.* The proposed action should be delayed until additional information is provided to the public. The commenter stated the need for Transparency and Open Government. In terms of transparency, he emphasized the need to harness new technologies to put information about their operations and decisions online and readily available to the public. He stated that Federal guidelines focused on whether the "disseminated information is being presented in an accurate, clear, complete and unbiased manner. This involves whether the information is being presented within a proper context."

*NRC Response.* NRC is committed to openness and transparency and has already made available to the public all non-proprietary information related to the license transfer application. One of the NRC stated values on the NRC website, <http://www.nrc.gov/about-nrc/values.html> is Openness. "Nuclear regulation is the public's business, and it must be transacted publicly and candidly. The public must be informed about and have the opportunity to participate in the regulatory processes as required by law. Open channels of communication must be maintained with Congress, other government agencies, licensees, and the public, as well as with the international nuclear community."

To ensure public availability of documents, the NRC has established, among other things, the Agencywide Documents Access and Management System as the official recordkeeping system, through which the NRC provides access to collections of publicly available documents, including filed applications.

2. *Statement.* The commenter stated that "You should be providing a summary as to why it is necessary for these intercompany transfers to take place."

*NRC Response.* There are no intercompany transfers proposed. The proposed indirect transfer of ownership will resolve the foreign ownership issue at Aerotest. The ultimate parent of Aerotest is Autoliv, Inc., which is a company located in Sweden and operated by a board of directors and executive board, the majority of which are non-U.S citizens. As a result, Aerotest is in violation of the provisions of Section 104d. of the Atomic Energy Act of 1954, as amended, and NRC's regulation, 10 CFR 50.38, "Ineligibility of Certain Applicants." The proposed purchaser of Aerotest, Nuclear Labyrinth, is a company owned and operated by a U.S. citizen.

3. *Statement.* The commenter stated "It really looks like Aerotest is trying to reduce its liability and assign it to a subsidiary."

*NRC Response.* The proposed transfer of Aerotest is to an entity which is unrelated to the current owner, and not a subsidiary of the current owner. In order for the license transfer to be approved, the new owner must demonstrate it meets the financial requirements contained in 10 CFR 50.33(f). In this case, Nuclear Labyrinth, as the buyer, must demonstrate financial assurance in order to get approval for the transfer. Specifically, the applicant should possess or have reasonable assurance of obtaining the funds necessary to cover estimated operation costs for the period of the license. In addition, the applicant must demonstrate that there will be reasonable assurance that funds will be available to operate and decommission the facility. The NRC only approves transfers for which it can determine the financial assurance requirements are met.

4. *Statement.* The commenter asked, "Is this subsidiary capitalized?"

*NRC Response.* Assessing financial assurance is the subject of this safety evaluation.

5. *Statement.* Who are the principals or shareholders in the company?

*NRC Response.* According to the license transfer application, Dr. David Slaughter is the principal and lone shareholder of Nuclear Labyrinth.

6. *Statement.* Are there any security concerns and have they been addressed?

*NRC Response.* The transfer application does not request a change in the Physical Security Plan (PSP). Any decreases to the effectiveness of PSP must be approved by the NRC in advance per 10 CFR 50.54(p).

## 9.0 CONCLUSION

The NRC staff finds that the proposed indirect transfer of control of the license for the ARRR will adversely affect the financial qualifications of Aerotest as holder of the ARRR license.

The NRC finds that neither Aerotest nor Nuclear Labyrinth have demonstrated that they possess or have reasonable assurance of obtaining the funds to cover facility operating costs for the first five years. The majority of available funds identified in the application are provided by Autoliv, and Aerotest does not have a sustainable business because of the status of the ARRR. At the time of this evaluation, the ARRR is not operating and the application indicated the ARRR is expected to be fully operational by September 2013. However, the NRC cannot rely on this start date to make a finding because of the fuel damage issue that is currently being evaluated by the applicants. In addition, Aerotest does not have committed customers and it has not submitted sufficient evidence that it will be able to generate sufficient revenue to cover the operation costs for the period of the license. Nuclear Labyrinth, a newly formed entity, does not have sufficient current assets to support Aerotest if revenue generated is not sufficient to cover operation costs.

Regarding decommissioning funding assurance, the applicants satisfy the requirement under 10 CFR 50.75 based on the information provided in the application. Nuclear Labyrinth states that it plans on obtaining a [ ] letter of credit to cover potential funding short falls. The NRC notes that Nuclear Labyrinth does not have other sources of funds if decommissioning costs exceed the funds Autoliv is providing plus the [ ] letter of credit.

The applicants have failed to demonstrate their ability to cover the operating costs for the ARRR. Since Aerotest does not have the funds necessary to cover operational costs, it must rely on the parent company, Nuclear Labyrinth, to provide the funds to ensure the safe operation of the ARRR. However, Nuclear Labyrinth does not have the resources necessary to provide adequate funds to operate the ARRR.

After evaluating all the factors listed above, including the uncertainty of the facility's current and future operations, uncertainty about the revenue projections, and inadequate sources of funds by Aerotest and Nuclear Labyrinth; the NRC staff finds that Nuclear Labyrinth has failed to demonstrate that it is financially qualified per 10 CFR 50.33.

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