

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

| | | |
|---------------------------|---|-------------------|
| In the Matter of |) | |
| |) | |
| Aerotest Operations, Inc. |) | Docket No. 50-228 |
| |) | |
| (Aerotest Radiography and |) | |
| Research Reactor) |) | |

NRC STAFF RESPONSE TO JOINT ANSWER TO AND DEMAND FOR HEARING ON ORDER
PROHIBITING OPERATION OF AEROTEST RADIOGRAPHY AND RESEARCH REACTOR
FACILITY OPERATING LICENSE NO. R-98

On July 24, 2013, the NRC Staff (Staff) issued to Aerotest Operations, Inc. (Aerotest) an Order Prohibiting Operation of Aerotest Radiography and Research Reactor (ARRR).¹ The Order provided Aerotest, and any other person adversely affected by the Order, the opportunity to request a hearing within 20 days of publication in the *Federal Register*.² On August 13, 2013, Aerotest and Nuclear Labyrinth LLC, filed a joint answer and request for hearing.³

¹ Letter from Eric J. Leeds to Michael Anderson (July 24, 2013) (Agencywide Documents Access and Management System (ADAMS) Accession No. ML13120A598) with enclosed Order Prohibiting Operation of Aerotest Radiography and Research Reactor, 78 Fed. Reg. 46,618 (Aug. 1, 2013) (ADAMS Accession No. ML13158A164). By the same letter, the Staff denied Aerotest's license renewal application as well as its request for license transfer to Nuclear Labyrinth LLC.

² 78 Fed. Reg. at 46,618.

³ Joint Answer to and Demand for Hearing on Order Prohibiting Operation of Aerotest Radiography and Research Reactor Facility Operating License No. R-98 (Aug. 13, 2013) (ADAMS Accession No. ML13226A412) (Joint Answer). Aerotest and Nuclear Labyrinth also filed a joint demand for hearing with respect to the denial of the application for license renewal and request for license transfer. See Joint Demand for Hearing on Denial of License Renewal and Indirect License Transfer Regarding Aerotest Radiography and Research Reactor Facility Operating License No. R-98 (Aug. 13, 2013). (ADAMS Accession No. ML13226A407).

The Staff hereby files its response and states that it does not oppose the joint demand for hearing.⁴ In accordance with 10 C.F.R. § 2.202(a)(3), a licensee or any other person adversely affected by an order has a right to demand a hearing on all or part of the order within twenty (20) days. In evaluating standing, the Commission has

long applied "contemporaneous judicial concepts of standing." This is true with respect to the requirement for a "concrete and particularized injury that is fairly traceable to the challenged action and is likely to be redressed by a favorable decision," where the injury is "to an interest arguably within the zone of interests protected by the governing statute."⁵

Since Aerotest is the licensee to whom the Order was issued, it is entitled to a hearing on the Order. Nuclear Labyrinth argues in the Joint Answer that it has a right to demand a hearing on the Order because its interests will be adversely affected by issuance of the Order. See Joint Answer at 2-4. According to Nuclear Labyrinth, the specific interest that will be harmed is its interest in owning and operating the ARRR "if the requested license transfer is granted by the NRC." Nuclear Labyrinth argues that this interest would be harmed by the Order because the Order: changes the license from a license authorizing operation of the ARRR to a possession only license; requires that the ARRR be maintained in shutdown condition; prohibits

⁴ Aerotest and Nuclear Labyrinth raise arguments in their Joint Answer on the Order related to the license transfer and license renewal. The Staff notes that the Order prohibiting operation of the ARRR was solely based on Aerotest's continuing violation of Section 104d. of the Atomic Energy Act of 1954, as amended, and 10 C.F.R. § 50.38, which prohibit foreign ownership, control, or domination. Thus, that violation and the issuance of the Order delimit the scope of the hearing. The NRC Staff's determination regarding reasonable assurance of Nuclear Labyrinth's financial qualifications related to the license transfer was contained in a Safety Evaluation issued on July 24, 2013 (ADAMS Accession No. ML13129A001), and the determination not to renew Aerotest's license was contained in the letter accompanying that Safety Evaluation (ADAMS Accession No. ML13120A598). Aerotest and Nuclear Labyrinth demanded hearings on those denials. To the extent that the Joint Answer and demand for hearing on the Order contain arguments related to the license transfer and license renewal which are not related to foreign ownership, control or domination, those issues are outside of the scope of this proceeding.

⁵ *Calvert Cliffs 3 Nuclear Project, LLC and Unistar Nuclear Operating Services, LLC* (Combined License Application for Calvert Cliffs, Unit 3), CLI-09-20, 70 NRC 911, 915-916 (2009) (citing *Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Unit 1), CLI-93-21, 38 NRC 87, 92 (1993); *Lujan v. Defenders of Wildlife*, 112 S.Ct. 2130, 2136 (1992)).

the use of certain special nuclear and byproduct material; and sets the stage to begin decommissioning the ARRR. *Id.* at 4.

As mentioned above, the NRC has denied the request for license transfer, and Aerotest and Nuclear Labyrinth have filed a joint demand for hearing on that denial. *See supra* at note 3. Therefore, Nuclear Labyrinth presently has an interest in the ARRR, despite the NRC's denial. Since Nuclear Labyrinth has an interest in this proceeding due to its application for the license transfer, the Staff does not object to Nuclear Labyrinth's standing in this proceeding.

Respectfully submitted,

/signed (electronically by)/

Joseph S. Gilman
Counsel for the NRC Staff

Dated at Rockville, MD
This the 27th day of August, 2013

BEFORE THE COMMISSION

CERTIFICATE OF SERVICE

Dated at Rockville, Maryland
this 27th day of August, 2013.