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**SAFETY EVALUATION REPORT**  
Westinghouse Electric Company LLC

DOCKET: 70-1151  
LICENSE: SNM-1107  
LICENSEE: Westinghouse Electric Company, LLC  
SUBJECT: Alternate Means of Financial Assurance of Decommissioning — Letter Of Credit

1. BACKGROUND:

Nuclear facilities licensed under Title 10 of the *Code of Federal Regulations* (10 CFR) Part 70 are required to establish adequate financial assurance for decommissioning, decontamination, and reclamation, pursuant to 10 CFR 70.25, "Financial Assurance and Recordkeeping for Decommissioning."

In August 2011, the Westinghouse Electric Company LLC (Westinghouse) was authorized to use a parent company guarantee for financial assurance of decommissioning (Ref. 1). The parent company is the Toshiba Corporation (Toshiba). Appendix A, Section II.(C)(1) of 10 CFR Part 30, requires a licensee to annually pass a financial test to demonstrate its continued eligibility to use the parent company guarantee, and to submit documentation to the Commission within 90 days after the close of each succeeding fiscal year. At the request of Westinghouse, the staff at the U.S. Nuclear Regulatory Commission (NRC) approved a request to submit the documentation 120 days after the close of the fiscal year (Refs. 2 and 3).

Westinghouse submitted documents to demonstrate their continued eligibility to use the parent company guarantee by letter dated July 25, 2015 (Ref. 4). During their review, the NRC staff communicated expectations to Toshiba, by way of Westinghouse, to comply with 10 CFR Part 30, Appendix A, Section II.B; here, an opinion is required on off-balance sheet transactions and whether those transactions could materially adversely affect the ability of the parent company to pay for decommissioning costs. As the review of the parent company guarantee continued, Westinghouse informed the NRC staff that the required documentation of the opinion would not be forthcoming until the next fiscal year due to a publically-known internal investigation of accounting methods at Toshiba (Ref. 5).

When a licensee is unable to demonstrate continued eligibility to use the parent company guarantee, 10 CFR Part 30, Appendix A, Section II.C.2, requires a licensee to notify the Commission of its intent to establish alternate financial assurance within 90 days after the end of the fiscal year for which the year-end financial data show that the parent company no longer meets financial test requirements. The licensee must provide alternate financial assurance within 120 days after the end of the fiscal year.

By letter dated August 20, 2015, Westinghouse notified the NRC staff that a letter of credit would be used as an alternate form of financial assurance (Ref. 6). By letter dated

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December 2, 2015 (Ref. 7), Westinghouse responded to a request additional information from the NRC staff (Ref. 8).

2. REVIEW PROCESS

The NRC staff reviewed the subject submittal using the Standard Review Plan for financial assurance (Ref. 9) to determine compliance with applicable paragraphs of 10 CFR 70.25. In particular, the NRC staff used criteria specified on page 4-19, Checklist 6-A on page A-65, and Checklist 6-B on page A-66.

3. NRC STAFF REVIEW

3.1. Financial Instrument

3.1.1. Regulatory Requirements

10 CFR 70.25(e)(1)(v) requires an original instrument to cover the cost estimate for decommissioning.

10 CFR 70.25(f) requires that the financial instrument include the licensee's name, license number, and docket number; and the name, address, and other contact information of the issuer, and, if a trust is used, the trustee. Financial assurance for decommissioning must be provided by one or more methods stated in 10 CFR 70.25(f).

3.1.2. Licensee Submittal

By letter dated August 17, 2015 (Ref. 10), [REDACTED] sent an original a letter of credit, covering the cost estimate for decommissioning, through Westinghouse, to the NRC. By letter dated December 2, 2015 (Ref. 7), the letter of credit was amended. The financial institution issuing the letter of credit, [REDACTED], states that the letter of credit is for the Columbia Fuel Fabrication Facility and the Hematite Decommissioning Project, identifying the subject facilities by license number, docket number, and street address. The submission includes revised financial schedules for the previously approved standby trust agreement. Throughout the financial instrument the letter of credit is referred to as an irrevocable letter of credit. The letter of credit has specific expiration date.

The letter of credit is signed by a vice president and assistant vice president at the [REDACTED] [REDACTED] through a [REDACTED] of [REDACTED]. The letter of credit is dated.

[REDACTED] issued the signed original letter of credit to the beneficiary, which, in this case, is the NRC. Westinghouse received a copy of the letter of credit, not a signed duplicate of the Letter.

In the letter of credit, [REDACTED] acknowledges that the letter is issued in accordance with regulations within the authority of the NRC, pursuant to the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974. [REDACTED] acknowledges 10 CFR

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Part 30, Part 40, and Part 70, to provide assurance of funds for decommissioning.

█ commits to immediately informing both NRC and Westinghouse of any notice received, or action filed, alleging insolvency or bankruptcy or any violation of regulatory requirements that could result in the charter or business license of the bank being suspended or revoked.

Section 19 of the previously-approved Standby Trust Agreement is about interpretation and severability.

### 3.1.3. NRC Staff Evaluation

Prior to using the parent company guarantee, Westinghouse had been using a letter of credit as a surety method to comply with 10 CFR 70.25(f)(2).

The letter of credit identifies both the CFFF and the Hematite license number, and docket number. Though the letter of credit is signed by an authorizing agent of the █ of █, Westinghouse provided evidence as a letter dated November 2, 2015 (Ref. 11), ensuring that the agent is authorized to act on the behalf any █ in the United States. In the context of the letter of credit, the date of the signatures is associated with, or taken to be the date of the letter. █ does not date the signature independent of the document date.

At first, the letter of credit lacked sufficient information for the NRC staff to contact █ in the event of a demand for payment. Subsequently, by letter dated December 2, 2015, (Ref. 7) Westinghouse submitted an amended letter of credit with sufficient information to contact █.

The Standby Trust Agreement includes revised financial schedules. Schedule A is the amount of funds to decommission the CFFF and the Hematite facilities. Schedule B is evidence of financial assurance. Schedule C is information about the Trustee, █.

The letter of credit states the regulatory obligation of Westinghouse as the reason for the letter of credit. █ will give notice to both NRC and Westinghouse of insolvency or violation of banking requirements that could compromise the assurance to provide the subject funds. A bounding phrase states that the █ will inform both NRC and Westinghouse when, for *any reason*, the bank is unable to meet the obligations of the letter of credit.

### 3.1.4. NRC Finding

The NRC staff finds that the licensee meets the requirement of 10 CFR 70.25(f) requires in that the financial instruments includes the required identifying information.

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3.2. Renewing Surety Method

3.2.1. Regulatory Requirements

10 CFR 70.25(f)(2)(i) requires the surety method or insurance to be open-ended or, if written for a specified term, such as five years, must be renewed automatically unless 90 days or more prior to the renewal date, the insurer notifies the Commission, the beneficiary, and the licensee of its intention not to renew. The surety method or insurance must also provide that the full face amount be paid to the beneficiary automatically prior to the expiration without proof of forfeiture if the licensee fails to provide a replacement acceptable to the Commission within 30 days after receipt of notification of cancellation.

3.2.2. Licensee Submittal

The letter of credit issued by [REDACTED] states that it is effective on July 29, 2015, and expires on January 29, 2016, but automatically renews for a period of six months at the expiration date. [REDACTED] will notify both NRC and Westinghouse, by courier or certified mail, at least 90 days before the current expiration date, of a cancellation. [REDACTED] states that if Westinghouse is unable to secure alternative financial assurance 30 days after the cancellation notice, NRC may draw upon the full value of the letter of credit.

By the revised Schedule A of the standby trust agreement, Westinghouse assures that a total of \$ [REDACTED] will be available for decommissioning both the CFFF and the Hematite facility; of this amount, \$ [REDACTED] is for the CFFF and \$ [REDACTED] is for the Hematite facility.

As stated in the letter of credit, a draft may be made under two conditions. First, the draft makes reference to the letter of credit number. Second, the signed and dated statement quotes a statement from the letter of credit certifying that payment is being made pursuant regulations under the authority of the U.S. Nuclear Regulatory Commission.

In the letter of credit, no credit is taken for earnings on any financial assurance mechanism. The amount of the guarantee is the estimated cost of decommissioning.

3.2.3. NRC Staff Evaluation

The NRC staff determined that the letter of credit is open-ended because it automatically renews unless a definition action is taken by [REDACTED] to cancel the letter. The letter of credit contains a specific expiration date. The letter of credit is for a limited, stated amount. [REDACTED] has an obligation to pay the beneficiary only upon presentation of a draft that is specified in the letter of credit.

By the current approved Decommissioning Funding Plan (DFP) of the CFFF dated June 8, 2012 (Ref. 12), the estimated cost of decommissioning, without a 25% contingency factor is \$ [REDACTED]. A 25% contingency factor amounts to \$ [REDACTED]. The total estimated cost of decommissioning is \$ [REDACTED]. By the DFP of the Hematite facility dated July 10, 2009 (Ref. 13), the estimated cost of decommissioning is \$ [REDACTED]. This estimated cost

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includes a 25% contingency factor. From the DFP of both the CFFF and the Hematite facility, the total cost of decommissioning is \$ [REDACTED]. The letter of credit is \$ [REDACTED]. Thus, the letter of credit is in an amount that is at least as great as the cost of decommissioning that is estimates by Westinghouse.

[REDACTED] commits to informing Westinghouse and the NRC of intentions to cancel the letter of credit 90 days or more prior to the renewal date. If Westinghouse is unable to establish an alternate means of financial assurance within 30 days of the cancellation notice, [REDACTED] commits to allowing NRC to draw upon the letter of credit for the full value.

### 3.2.4. NRC Finding

The NRC staff finds that the licensee meets the requirement of 10 CFR 70.25(f)(2)(i) by having a surety method that automatically renews, has commitments to notify both Westinghouse and NRC, and allows NRC to draw on the letter of credit for the full amount prior to the expiration date.

### 3.3. Commission as a Beneficiary

#### 3.3.1. Regulatory Requirements

10 CFR 70.25(f)(2)(ii) requires surety method or insurance to be payable to a trust established for decommissioning costs. The trustee and the 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.

#### 3.3.2. Licensee Submittal

[REDACTED] states that when the letter of credit is drawn on, [REDACTED] will honor the draft within 30 days. The amount of the draft will be deposited in a Standby Trust Fund that has been established with [REDACTED]. An account number of Westinghouse is stated.

The Westinghouse submittal (Ref. 6) includes an amended Standby Trust Agreement, referring to the original Standby Trust Agreement (Ref. 14). The Trustee is [REDACTED]. The beneficiary of the Standby Trust Agreement is the U.S. Nuclear Regulatory Commission.

#### 3.3.3. NRC Staff Evaluation

The NRC staff determined that the letter of credit is payable to a trust established for decommissioning costs. The trustee, [REDACTED], and trust, had been previously approved by the NRC staff.

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3.3.4. NRC Finding

The NRC staff finds that the licensee meets the requirement of 10 CFR 70.25(f)(2)(ii) surety method (i.e., letter of credit), issued by a regulated institute which is payable to a Standby Trust Agreement.

3.4. Duration of the Surety Method

3.4.1. Regulatory Requirements

10 CFR 70.25(f)(2)(iii) requires that the surety method or insurance remain in effect until the Commission has terminated the license.

3.4.2. Licensee Submittal

The letter of credit provided to the NRC is entitled irrevocable letter of credit and is automatically renewed unless 90 days or more prior to the renewal date the issuer notifies of its intention not to renew and full amount will be paid to the beneficiary if licensee fails to provide a replacement acceptable to the Commission within 30 days after notification of cancellation. The NRC holds the signed original letter of credit.

3.4.3. NRC Staff Evaluation

██████████ sent the letter of credit, through Westinghouse, to the NRC. Previous, in 2011, when Westinghouse had been approved to use the parent company guarantee as the surety method, thus making the letter of credit unnecessary, the NRC staff returned the letter of credit to ██████████ (Ref. 15). Currently, until such time as Westinghouse is approved to use another means of financial assurance, NRC would retain the subject letter of credit. When another form of satisfactory financial assurance is in place and approved by NRC or the licenses are terminated, the signed original letter of credit would be returned.

3.4.4. NRC Finding

The NRC staff finds that the licensee meets the requirement of 10 CFR 70.25(f)(2)(iii) in that the surety method remains in effect until another form of satisfactory financial assurance is in place and approved by NRC or the licenses are terminated.

4. CONCLUSION

Based on the preceding review, using the model template and checklists of the Standard Review Plan, of the letter of credit, as supplemented, the NRC staff concludes there is reasonable assurance Westinghouse has adequate decommissioning financial assurance in place to cover the previously approved decommissioning cost estimate for SNM-1107. Hence, approval of the letter of credit will not constitute an undue risk to public

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health and safety. The NRC staff finds that the letter of credit submittal meets the requirements of 10 CFR 70.25. The NRC staff determined that the letter of credit, as an alternate means of financial assurance, should be approved.

5. PRINCIPAL CONTRIBUTORS

Christopher Ryder..... Licensing Project Manager  
Kenneth Kline ..... Technical Reviewer, Financial Assurance

REFERENCES

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2. Letter To A. B. Kuperminc, Westinghouse Electric Company LLC, "Approval Of Westinghouse Exemption From Title 10 Of The Code Of Federal Regulations Part 30, Appendix A, Section li.C.1 (Technical Assignment Control Number L33303)", June 19, 2014. Adams Accession Number ML14114a534
3. Letter to N. Parr, Westinghouse Electric Company LLC, "Amendment 18 – Exemption From 10 CFR Part 30, Appendix A, Section li.C.1; Exemption From 10 CFR, Part 20.1703(C)(5); Change In The Calibration Interval Of Portable Radiation Survey Instrumentation; Increase In Possession Limits; Approval Of Physical Security Plan, Revision 45; Change In Principal Officers; Removal Of Completed License Conditions (Technical Assignment Control Number L33353)", November 2, 2015. ADAMS accession number ML15125A279.
4. Letter from M. Gutman, Westinghouse Electric Company LLC, "Westinghouse Electric Company LLC Decommissioning Financial Assurance Parent Guarantee", July 25, 2014. ADAMS accession number ML14212A649.
5. Letter from M. Gutman, Westinghouse Electric Company LLC, "Westinghouse Electric Company LLC Parent Guarantee - Request for Additional Information (Technical Assignment Control Number L33343) Regarding Fiscal Year 2014 Submission" and Fiscal Year 2015 Submission", June 12, 2015. ADAMS accession number ML15177A014.
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10. [REDACTED], "letter of credit for Financial Assurance for Westinghouse Electric Company LLC Facilities License SNM-1107, Docket Number 70-1151 and SNM-33, Docket Number 70-000036", August 17, 2015. ADAMS accession number ML15244B315.
11. Letter from M. Gutman, Westinghouse Electric Company LLC, "Response to Request for Additional Information: letter of credit and Standby Trust Agreement (Technical Assignment Control Number: L33342)", December 2, 2015. ADAMS accession number ML15343A033.
12. D. Precht, Westinghouse Electric Company LLC, "Westinghouse Columbia Fuel Fabrication Facility Decommissioning Funding Plan", June 8, 2012. ADAMS accession number ML121650753.
13. Attachment 1 to HEM-09-75-P - Updated Westinghouse Hematite Decommissioning Funding Plan, DO-09-001, "Hematite Decommissioning Funding Plan", July 10, 2009. ADAMS accession number ML091950064.
14. J. Rizzi, Westinghouse Electric Company LLC, "Submittal of Original and Copies of Amended Standby Trust Amendment and Certificate of Financial Assurance for SNM-1107", February 11, 2011. ADAMS accession number ML110800567.
15. Letter from R. Johnson, U.S. Nuclear Regulatory Commission, "Early Cancellation Of Standby Letters Of Credit Nos. [REDACTED] And [REDACTED]", August 29, 2011. ADAMS accession number ML112411470.