

August 14, 2017

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of)	
)	
AEROTEST OPERATIONS, INC.)	Docket Nos. 50-228-LT,
)	50-228-LR, &
(Aerotest Radiography and Research Reactor))	50-228-EA

JOINT MOTION TO TERMINATE PROCEEDINGS

INTRODUCTION

Pursuant to 10 C.F.R. § 2.323, the U.S. Nuclear Regulatory Commission (NRC) staff (Staff), Aerotest Operations, Inc. (Aerotest), and Nuclear Labyrinth, LLC (Nuclear Labyrinth) (collectively, the Parties) jointly file this motion requesting that the Commission terminate proceedings 50-228-LT, 50-228-LR, and 50-228-EA related to the Aerotest Radiography and Research Reactor (ARRR) because the matters at issue in these proceedings have been resolved.

BACKGROUND

Aerotest holds NRC Facility Operating License No. R-98 for the operation of the ARRR.¹ In May 2000, Aerotest, which was wholly owned by OEA Aerospace, Inc., which, in turn, was wholly owned by OEA, Inc., became wholly owned by Autoliv ASP, Inc. when Autoliv ASP, Inc. acquired all the outstanding shares of OEA, Inc.² Autoliv ASP, Inc. is wholly owned by Autoliv, Inc. Consequently, Autoliv, Inc. became the ultimate corporate parent of Aerotest. Autoliv, Inc.

¹ See Aerotest Operations, Inc., Docket No. 50-228, Aerotest Radiography and Research Reactor (ARRR), Amendment to Facility Operating License, Amendment No. 1, License No. R-98 (Oct. 22, 1974) (Agencywide Documents Access and Management System (ADAMS) Accession No. ML12214A481).

² See Letter from Michael S. Anderson, Autoliv, Inc., to David Mathews and Marvin Mendonca, NRC, Divestiture Plan Regarding Indirect Transfer of the Aerotest Radiography and Research Reactor (ARRR) (Jan. 29, 2004) (ADAMS Accession No. ML040340559).

is incorporated in Delaware, with headquarters in Stockholm, Sweden.³ The majority of the Autoliv, Inc. board of directors and executive officers are non-U.S. citizens and the majority of the Autoliv, Inc. outstanding stock is owned by non-U.S. citizens.⁴ Although the acquisition of OEA, Inc. by Autoliv ASP, Inc. amounted to an indirect transfer of control of the license for the ARRR, it was not the subject of an application for prior consent of the NRC as is required by 10 C.F.R. § 50.80 and, therefore, the NRC neither reviewed nor approved the transfer.⁵

On October 7, 2003, the Staff issued a letter to Aerotest and Autoliv ASP, Inc. following up on a September 11, 2003 telephone conversation.⁶ The Staff explained that Aerotest was potentially in violation of Section 104d. of the Atomic Energy Act of 1954, as amended (AEA), and 10 C.F.R. § 50.38, which prohibit foreign corporations from owning NRC licensees.⁷ Specifically, the Staff had found that Autoliv, Inc. was a foreign corporation for the purposes of the AEA and the Commission's regulations and that, therefore, its ultimate ownership of Aerotest was prohibited. The Staff directed Aerotest and Autoliv ASP, Inc. to develop a plan for full or partial divestiture to ensure that the ARRR was no longer wholly owned by Autoliv Inc.⁸

³ Safety Evaluation by the Office of Nuclear Reactor Regulation Related to Indirect License Transfer and Conforming Amendment to Facility Operating License No. R-98 for Aerotest Radiography and Research Reactor due to Proposed Acquisition of Aerotest Operations, Inc. by Nuclear Labyrinth, LLC, Docket No. 50-228, at 3 (Feb. 28, 2017) (ADAMS Accession Nos. ML16333A449 and ML16333A450 (proprietary)) (Second License Transfer SE).

⁴ *Id.*

⁵ Order Prohibiting Operation of Aerotest Radiography and Research Reactor (July 24, 2013) (ADAMS Accession No. ML13158A164); 78 Fed. Reg. 46,618 (Aug. 1, 2013).

⁶ Letter from David Mathews, NRC, to Michael S. Anderson, Autoliv, Inc., and Ray R. Tsukimura, Aerotest Operations, Inc., Divestiture Plan Regarding Indirect Transfer of the Aerotest Radiography and Research Reactor (ARRR) to Autoliv ASP, Inc., and Autoliv, Inc. (Oct. 7, 2003) (ADAMS Accession No. ML040430495).

⁷ *Id.*

⁸ *Id.*

By letter dated February 28, 2005, Aerotest applied for renewal of the ARRR operating license.⁹ On July 9, 2009, the Staff informed Aerotest that it had reviewed the license renewal application and determined that Aerotest had failed to satisfy the requirements of AEA Section 104d. and 10 C.F.R. § 50.38 regarding foreign ownership, control, or domination.¹⁰ Specifically, the Staff found that Aerotest was controlled or dominated by its ultimate corporate parent, Autoliv, Inc., which the Staff found was a foreign corporation for the purposes of the AEA and the Commission's regulations.¹¹ Therefore, the Staff proposed to deny the license renewal application.¹²

By letter dated January 7, 2010, Aerotest, Autoliv ASP, Inc., and X-Ray Industries, Inc. submitted a license transfer application to the NRC requesting that the NRC consent to the proposed sale of all of the stock in Aerotest from Autoliv ASP, Inc. to X-Ray Industries, Inc.¹³ On July 6, 2010, the NRC consented to the proposed transfer and provided until September 13, 2010 for the transfer to be consummated,¹⁴ which deadline was subsequently extended to October 15, 2010.¹⁵ However, the transfer was never consummated.

⁹ License Renewal Application for the Aerotest Radiography and Research Reactor (Feb. 28, 2005) (ADAMS Package Accession No. ML13120A434) (supplemented by letters dated May 5, 2008 and March 9, 2009 (ADAMS Accession Nos. ML103370137 and ML120900629, respectively)).

¹⁰ Letter from Eric J. Leeds, NRC, to Dario Brisighella, Aerotest Operations, Inc., Aerotest Operations, Inc. - Proposed Denial of Application for Renewal of Facility License No. R-98 (July 9, 2009) (ADAMS Accession No. ML090830578).

¹¹ *Id.*

¹² *Id.*

¹³ Letter from Robert Haemer, Aerotest Operations, Inc., to NRC, Aerotest Radiography and Research Reactor, Docket No. 50-228, Request for Extension to Consider the Proposed Denial of a Renewal Request, at 3 (Jan. 12, 2010) (ADAMS Accession No. ML100140375) (supplemented by letters dated Jan. 19, 2010, Feb. 2, 2010, Mar. 23, 2010, and Apr. 1, 2010 (ADAMS Accession Nos. ML100490068, ML100880295, ML100880338, and ML100980153, respectively)).

¹⁴ Order Approving Indirect Transfer of Facility Operating License and Conforming Amendment (July 6, 2010) (ADAMS Accession No. ML101380228); 75 Fed. Reg. 39,985, 39,986 (July 13, 2010).

¹⁵ Letter from Alexander Adams, Jr., NRC, to Dario Brisighella, Aerotest Operations, Inc., Aerotest Operations, Inc. - Order Extending the Effectiveness of the Approval of the Indirect Transfer of

By letter dated May 30, 2012, Aerotest and Nuclear Labyrinth (collectively, the Applicants) submitted to the NRC an application for NRC consent to the indirect transfer of Facility Operating License No. R-98 for the ARRR to Nuclear Labyrinth.¹⁶ The proposed indirect license transfer would make Nuclear Labyrinth, rather than Autoliv, Inc., the ultimate corporate parent of Aerotest.

On July 24, 2013, the Staff denied the Applicants' indirect license transfer application based on its determination that the Applicants had failed to satisfy the Commission's license transfer requirements pursuant to AEA Section 184 and 10 C.F.R. § 50.80.¹⁷ Specifically, the Staff had determined that neither Aerotest nor Nuclear Labyrinth had demonstrated possession or reasonable assurance of obtaining the funds necessary to cover estimated operations costs for the period of the license, and to cover the annual cost of fuel storage until the U.S. Department of Energy (DOE) accepts the fuel once the facility permanently ceases operations.¹⁸

Due to the Staff's denial of the Applicants' indirect license transfer application, Autoliv, Inc. remained the ultimate corporate parent of Aerotest. Therefore, also on July 24, 2013, the

Facility Operating License for Aerotest Operations, Inc., Aerotest Radiography and Research Reactor (Sept. 13, 2010) (ADAMS Accession No. ML102460245).

¹⁶ Application for Approval of Indirect Transfer of Control of License Pursuant to 10 C.F.R. § 50.80 (May 30, 2012) (ADAMS Accession Nos. ML12152A233, ML12180A384, and ML12152A234 (proprietary)) (supplemented by letters dated July 19, 2012, Oct. 15, 2012, and Jan. 10, 2013 (ADAMS Accession Nos. ML122021201 and ML122021202 (proprietary), ML12291A508 and ML122920159 (proprietary), and ML13015A395 and ML13015A397 (proprietary), respectively)). See also Summary of December 19, 2012, Meeting with Aerotest Operations, Inc., and Nuclear Labyrinth LLC, on the Request for Additional Information on the Proposed Indirect License Transfer Application of the Aerotest Radiography and Research Reactor (Jan. 18, 2013) (ADAMS Accession No. ML13018A003).

¹⁷ Aerotest Operations, Inc. - Denial of License Renewal, Denial of License Transfer, and Issuance of Order to Modify License No. R-98 to Prohibit Operation of the Aerotest Radiography and Research Reactor, Facility Operating License No. R-98 (July 24, 2013) (ADAMS Accession No. ML13120A598) (Denial Letter); 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 (Jul. 24, 2013) (ADAMS Accession Nos. ML13129A001 and ML13128A403 (proprietary)) (First License Transfer Safety Evaluation (SE)).

¹⁸ First License Transfer SE at 9, 11.

Staff denied Aerotest's application for the renewal of the ARRR license and issued Order EA-13-097, which prohibited Aerotest from operating the ARRR and required Aerotest to begin the process of decommissioning the ARRR.¹⁹ In these documents, the Staff stated that Autoliv, Inc. was a foreign corporation for the purposes of the AEA and the Commission's regulations and, as such, its continued ownership of Aerotest was in violation of AEA Section 104d. and 10 CFR 50.38.²⁰

On August 13, 2013, the Applicants jointly demanded a hearing on the denial of the indirect license transfer application and the denial of the license renewal application²¹ and jointly answered and demanded a hearing on Order EA-13-097.²²

On April 10, 2014, the Commission granted the Applicants' hearing demand on the denial of the indirect license transfer application and deferred consideration of the Applicants' hearing demands on the denial of the license renewal application and on Order EA-13-097 pending the completion of the license transfer matter.²³ The Commission chose this sequencing in part because the resolution of the license transfer matter may "render[] moot some (or even all) of the issues in" the license renewal and Order EA-13-097 matters.²⁴ The Commission directed the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel to

¹⁹ Denial Letter; Order Prohibiting Operation of Aerotest Radiography and Research Reactor (July 24, 2013) (ADAMS Accession No. ML13158A164); 78 Fed. Reg. 46,618, 46,620 (Aug. 1, 2013).

²⁰ *Id.*

²¹ 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).

²² 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).

²³ *Aerotest Operations, Inc.* (Aerotest Radiography and Research Reactor), CLI-14-05, 79 NRC 254, 255 (2014).

²⁴ *Id.* at 262.

appoint a single administrative judge to serve as Presiding Officer for the license transfer matter.²⁵

Upon being appointed, the Presiding Officer scheduled briefings²⁶ and then held an evidentiary hearing on August 12, 2014.²⁷ On September 5, 2014, the Presiding Officer certified to the Commission a record of all of the information that had been developed.²⁸ On December 23, 2015, after reviewing this record, the Commission remanded the license transfer application to the Staff for further consideration.²⁹ The Commission stated that the Applicants had submitted “potentially significant additional information at the hearing” and, therefore, directed the Staff to “(1) consider the additional information submitted by the [Applicants] at the hearing and (2) afford the [Applicants] an opportunity to supplement the [license transfer] application and submit any additional relevant information within a time frame established by the Staff.”³⁰ The Commission also stated that it continued to hold the license renewal and Order EA-13-097 matters in abeyance “pending the resolution of this license transfer matter.”³¹

On January 21, 2016, pursuant to the Commission ruling, the Staff sent a letter to the Applicants providing them an opportunity to supplement their license transfer application and submit any additional relevant information.³² The Applicants submitted supplements to their

²⁵ *Id.* at 265.

²⁶ Memorandum and Order (Initial Scheduling Order and Administrative Directives) (May 13, 2014) (unpublished) (ADAMS Accession No. ML14133A564).

²⁷ See Transcript of Oral Hearing in the matter of Aerotest Operations, Inc. (Aerotest Radiography and Research Reactor) (Aug. 12, 2014) (ADAMS Accession No. ML14225A710 (proprietary)).

²⁸ *Aerotest Operations, Inc.* (Aerotest Radiography and Research Reactor), LBP-14-10, 80 NRC 85 (2014).

²⁹ *Aerotest Operations, Inc.* (Aerotest Radiography and Research Reactor), CLI-15-26, 82 NRC 408, 412 (2015).

³⁰ *Id.*

³¹ *Id.* at 413.

³² Letter from Alexander Adams Jr., NRC, to Michael S. Anderson, Aerotest Operations, Inc. and Dr. David Slaughter, Nuclear Labyrinth LLC, Aerotest Operations Inc. and Nuclear Labyrinth LLC Request

license transfer application on April 21, 2016,³³ June 16, 2016,³⁴ August 22, 2016,³⁵ and October 10, 2016.³⁶

On September 23, 2016, the Staff published in the Federal Register a notice of opportunity to comment and request a hearing on the indirect license transfer application, as supplemented.³⁷ The NRC did not receive any comments or hearing requests in response to this publication.

On February 28, 2017, the Staff issued an order consenting, subject to certain conditions, to the indirect transfer of the ARRR license.³⁸ In part, the Staff found that, based on the application as well as the additional information submitted by the Applicants at and after the evidentiary hearing, Aerotest and Nuclear Labyrinth had provided information based on plausible assumptions and forecasts that met the requirements under 10 C.F.R. § 50.33(f) and, therefore, had satisfied the financial qualifications requirement.³⁹ The Staff also found that, with the inclusion of specific license conditions, the application, as supplemented, had satisfied 10

for Additional Information Re: Opportunity to Supplement 2012 License Transfer Application (Jan. 21, 2016) (ADAMS Accession No. ML16020A546).

³³ Response to Request for Additional Information Re: Opportunity to Supplement 2012 License Transfer Application (Apr. 21, 2016) (ADAMS Accession No. ML16117A259).

³⁴ Request for Proprietary Treatment for Supplemental Response to Request for Additional Information Re: Opportunity to Supplement 2012 License Transfer Application (redacted version dated June 16, 2016; original version dated May 27, 2016) (ADAMS Accession No. ML16176A221).

³⁵ Response to Request for Additional Information Re: Opportunity to Supplement 2012 License Transfer Application (Aug. 22, 2016) (ADAMS Accession No. ML16245A230).

³⁶ Response to Request for Additional Information Re: Opportunity to Supplement 2012 License Transfer Application (Oct. 10, 2016) (ADAMS Accession No. ML16294A250).

³⁷ Aerotest Operations, Inc.; Aerotest Radiography and Research Reactor; Consideration of Approval of Indirect License Transfer and Conforming Amendment, 81 Fed. Reg. 65,677 (Sept. 23, 2016).

³⁸ Order Approving Indirect Transfer of Facility Operating License and Conforming Amendment (Feb. 28, 2017) (ADAMS Accession No. ML16333A448); 82 Fed. Reg. 13,366 (Mar. 10, 2017).

³⁹ Second License Transfer SE at 11.

C.F.R. § 50.33(k) and 10 C.F.R. § 50.75 because it provided a reasonable cost estimate for decommissioning the ARRR, indicated the method to provide the funds for the decommissioning, and provided a description of adjusting the decommissioning cost estimate and funding level periodically, and thus provided reasonable assurance that funds will be available to decommission the ARRR.⁴⁰

The Staff also found that, as a result of the indirect license transfer, Aerotest's ultimate corporate parent would be Nuclear Labyrinth instead of Autoliv, Inc. Nuclear Labyrinth is incorporated in the State of Utah, headquartered in Sandy, Utah, and managed by its chief executive officer and sole owner, Dr. David M. Slaughter, who is a U.S. citizen.⁴¹ Based on this information, the Staff determined that Nuclear Labyrinth was not a foreign corporation for the purposes of the AEA and the Commission's regulations.⁴² The Staff also stated that the indirect license transfer application had provided the names and addresses of the members of Aerotest's board of directors and its principal officers and that all were U.S. citizens.⁴³ Therefore, the Staff concluded that, upon the consummation of the indirect license transfer, Aerotest would not be in violation of AEA Section 104d. and 10 C.F.R. § 50.38.⁴⁴

On July 17, 2017, the Applicants consummated the transfer of the ultimate ownership of Aerotest from Autoliv, Inc. to Nuclear Labyrinth.⁴⁵

⁴⁰ Second License Transfer SE at 14.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ Letter from Spyros A. Traiforos, NRC, to Dr. David M. Slaughter, Nuclear Labyrinth, Aerotest Operations, Inc., Issuance of Amendment No. 5 to Amended Facility Operating License No. R-98 to Make Conforming Changes Associated with the Indirect Transfer of the License to Nuclear Labyrinth LLC (July 17, 2017) (ADAMS Accession No. ML17138A310).

On August 8, 2017 and August 10, 2017, respectively, the Staff issued letters withdrawing its July 24, 2013 denial of Aerotest's application for the renewal of the ARRR license and withdrawing its July 24, 2013 Order EA-13-097, which prohibited Aerotest from operating the ARRR and required Aerotest to begin the process of decommissioning the ARRR.⁴⁶ The Staff explained that these withdrawals were appropriate because, due to the transfer of the ultimate ownership of Aerotest from Autoliv, Inc. to Nuclear Labyrinth, Aerotest was no longer in violation of AEA Section 104d. and 10 C.F.R. § 50.38 and thus the circumstances warranting the denial of Aerotest's license renewal application and the issuance of Order EA-13-097 were no longer present.⁴⁷

DISCUSSION

The Parties request that the Commission terminate proceedings 50-228-LT, 50-228-LR, and 50-228-EA because the matters at issue in these proceedings have been resolved.

Proceeding 50-228-LT is the Applicants' challenge to the Staff's denial of the Applicants' indirect license transfer application for the ARRR. This matter has been resolved by the Staff's approval of the ARRR indirect license transfer application, as supplemented.

Proceeding 50-228-LR is the Applicants' challenge to the Staff's denial of Aerotest's license renewal application for the ARRR. This matter has been resolved by the Staff's issuance of a letter withdrawing the Staff's denial of the ARRR license renewal application. The letter provided that the ARRR license renewal application is no longer denied, that the Staff will resume its review of the license renewal application as it existed on July 24, 2013, that the NRC

⁴⁶ Letter from Brian E. Holian, NRC, to Dr. David M. Slaughter, Aerotest Operations, Inc., Aerotest Radiography and Research Reactor—Withdrawal of Denial of License Renewal Application (Aug. 8, 2017) (ADAMS Accession No. ML17138A309) (Renewal Denial Withdrawal Letter); Letter from Patricia Holahan, NRC, to Dr. David M. Slaughter, Aerotest Operations, Inc., Aerotest Radiography and Research Reactor—Withdrawal of Order EA-13-097, "Order Prohibiting Operation of Aerotest Radiography and Research Reactor, Facility Operating License No. R-98" (Aug. 10, 2017) (ADAMS Accession No. ML17138A306) (Order Withdrawal Letter).

⁴⁷ Renewal Denial Withdrawal Letter at 3-4; Order Withdrawal Letter at 3-4.

will not deem the existing license to have expired until the license renewal application has been finally determined, and that the Staff will request additional information about the license renewal application, as necessary, and will make a final determination on the license renewal application.⁴⁸

Proceeding 50-228-EA is the Applicants' challenge to the Staff's Order EA-13-097, which prohibited Aerotest from operating the ARRR and required Aerotest to begin the process of decommissioning the ARRR. This matter has been resolved by the Staff's issuance of a letter withdrawing Order EA-13-097. The letter provided that Aerotest is no longer prohibited from operating the ARRR due to Order EA-13-097, that Facility Operating License No. R-98 is not modified by Order EA-13-097, that Aerotest shall operate the ARRR in accordance with the standards and requirements of the AEA, the Commission's rules and regulations set forth in 10 CFR Chapter I, and the terms of Facility Operating License No. R-98 and the technical specifications, as amended, and that Aerotest is no longer required to begin the process of decommissioning the ARRR due to Order EA-13-097.⁴⁹

CONCLUSION

As explained above, the Commission should grant this joint motion and terminate proceedings 50-228-LT, 50-228-LR, and 50-228-EA because the matters at issue in these proceedings have been resolved.

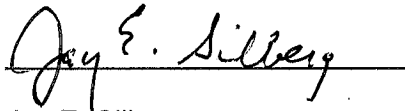
Respectfully submitted,

/Signed (electronically) by/

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⁴⁸ Renewal Denial Withdrawal Letter at 4.

⁴⁹ Order Withdrawal Letter at 4.

A handwritten signature in cursive script that reads "Jay E. Silberg". The signature is written in black ink and is positioned above a solid horizontal line.

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Dated at Rockville, Maryland
this 14th day of August, 2017

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of)	
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AEROTEST OPERATIONS, INC.)	Docket Nos. 50-228-LT,
)	50-228-LR, &
(Aerotest Radiography and Research Reactor))	50-228-EA

CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305, I hereby certify that copies of the foregoing "JOINT MOTION TO TERMINATE PROCEEDINGS," dated August 14, 2017, have been filed through the Electronic Information Exchange, the NRC's E-Filing System, in the above-captioned proceeding, this 14th day of August, 2017.

/Signed (electronically) by/

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Dated at Rockville, Maryland
this 14th day of August, 2017