

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

Kristine L. Svinicki, Chairman  
Jeff Baran  
Stephen G. Burns

In the Matter of

AEROTEST OPERATIONS, INC.

(Aerotest Radiography and Research Reactor)

Docket Nos. 50-228-LR,  
50-228-LT, &  
50-228-EA

**CLI-17-11**

**MEMORANDUM AND ORDER**

Today we address a motion jointly filed by the NRC Staff, Aerotest Operations, Inc., and Nuclear Labyrinth, LLC to terminate the three captioned proceedings.<sup>1</sup> The procedural history of these matters has been recounted in detail in previous decisions, and we do not repeat it here.<sup>2</sup> In short, Aerotest and Nuclear Labyrinth sought hearings on three Staff actions: (1) the denial of Aerotest and Nuclear Labyrinth's application for an indirect transfer of the facility operating license for the Aerotest Radiography and Research Reactor (ARRR) from Aerotest to Nuclear Labyrinth; (2) the denial of Aerotest's application to renew the facility

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<sup>1</sup> *Joint Motion to Terminate Proceedings* (Aug. 14, 2017) (Joint Motion).

<sup>2</sup> See CLI-15-26, 82 NRC 408 (2015); CLI-14-5, 79 NRC 254 (2014).

operating license for the ARRR; and (3) an enforcement order prohibiting operation of the ARRR.<sup>3</sup>

The Staff denied the license transfer application after it determined that neither Aerotest nor Nuclear Labyrinth had demonstrated possession of or reasonable assurance of obtaining the funds necessary to cover estimated operating costs for the term of the ARRR license.<sup>4</sup> Absent the transfer to Nuclear Labyrinth, Aerotest could not cure its noncompliance with the foreign ownership provisions of section 104d. of the Atomic Energy Act of 1954, as amended, and our implementing regulation, 10 C.F.R. § 50.38.<sup>5</sup> Accordingly, the Staff denied the license renewal application and issued the associated enforcement order prohibiting operation of the ARRR and directing Aerotest to begin the decommissioning process.<sup>6</sup>

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<sup>3</sup> *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); *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); see *Order Prohibiting Operation of Aerotest Radiography and Research Reactor*, 78 Fed. Reg. 46,618 (Aug. 1, 2013) (Order Prohibiting Operation).

<sup>4</sup> 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 (July 24, 2013), at 9 (ADAMS accession no. ML13129A001).

<sup>5</sup> The noncompliance stemmed from the May 2000 acquisition of Aerotest by Autoliv ASP, Inc., a wholly-owned subsidiary of Autoliv, Inc., the majority of whose stock was held by non-U.S. citizens and the majority of whose board of directors and executive officers were likewise non-U.S. citizens. See Joint Motion at 1-2; Letter from Eric. J. Leeds, NRC, to Michael Anderson, Aerotest, "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 (TAC Nos. ME8811 and MC9596)" (July 24, 2013), at 1-2 (ML13120A598) (Denial Letter). The transfer of ownership to Autoliv occurred without prior NRC review and approval.

<sup>6</sup> Denial Letter at 1-2; Order Prohibiting Operation, 78 Fed. Reg. at 46,620.

We granted a hearing on the Staff's denial of the license transfer application and held in abeyance the hearing demands on the license renewal and enforcement order.<sup>7</sup> The Chief Administrative Judge of the Atomic Safety and Licensing Board Panel served as Presiding Officer for the license transfer hearing.<sup>8</sup>

Aerotest and Nuclear Labyrinth presented new information at the hearing to satisfy the agency's financial qualifications requirements.<sup>9</sup> Upon consideration of the hearing record,<sup>10</sup> we remanded the license transfer application to the Staff, directing the Staff to consider Aerotest and Nuclear Labyrinth's new information and to afford them "an opportunity to supplement the application and submit any additional relevant information within a time frame established by the Staff."<sup>11</sup> On remand, the Staff determined that the application, as supplemented over the course of several months, met the requirements for license transfer, including the financial qualifications requirements.<sup>12</sup> The Staff therefore consented to the license transfer subject to

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<sup>7</sup> CLI-14-5, 79 NRC at 265.

<sup>8</sup> *Id.*; see 10 C.F.R. § 2.1319(a).

<sup>9</sup> See CLI-15-26, 82 NRC at 411.

<sup>10</sup> See 10 C.F.R. § 2.1319(f) (providing that the presiding officer's jurisdiction terminates upon certification of the hearing record to the Commission); LBP-14-10, 80 NRC 85, 85-124 (2014).

<sup>11</sup> CLI-15-26, 82 NRC at 412.

<sup>12</sup> See 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 (Feb. 28, 2017), at 2, 11, 15 (ML16333A449). The Staff issued a fresh notice of opportunity to comment or request a hearing on the license transfer application; no comments or hearing requests were filed. Aerotest Operations, Inc.; Aerotest Radiography and Research Reactor; Consideration of Approval of Indirect License Transfer and Conforming Amendment, 81 Fed. Reg. 65,677, 65,679 (Sept. 23, 2016).

certain conditions.<sup>13</sup> Shortly after completion of the transfer of ownership to Nuclear Labyrinth,<sup>14</sup> the Staff withdrew its denial of the license renewal application and withdrew its enforcement order.<sup>15</sup> The Staff has resumed its review of the license renewal application.<sup>16</sup>

The Staff, Aerotest, and Nuclear Labyrinth now seek to terminate these proceedings because the matters at issue have been resolved.<sup>17</sup> In view of the Staff's approval of the now-completed transfer of the ARRR license to Nuclear Labyrinth, the Staff's withdrawal of its denial of the license renewal application, and the Staff's withdrawal of the related enforcement order, we *grant* the joint motion and *terminate* the captioned proceedings.

IT IS SO ORDERED.

For the Commission

**NRC SEAL**

/RA/

Annette L. Vietti-Cook  
Secretary of the Commission

Dated at Rockville, Maryland,  
this 30<sup>th</sup> day of October, 2017.

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<sup>13</sup> See In the Matter of Aerotest Operations, Inc.; Aerotest Radiography and Research Reactor; Order Approving Indirect Transfer of Facility Operating License and Conforming Amendment, 82 Fed. Reg. 13,366 (Mar. 10, 2017).

<sup>14</sup> See Letter from Spyros A. Traiforos, NRC, to Dr. David M. Slaughter, Nuclear Labyrinth, LLC (July 17, 2017), at 1-2 (ML17138A310) (amending license with conforming administrative changes associated with the approved license transfer).

<sup>15</sup> Letter from Patricia Holahan, NRC, to Dr. David M. Slaughter, Aerotest Operations, Inc. (Aug. 10, 2017), at 3-4 (ML17138A306); Letter from Brian E. Holian, NRC, to Dr. David M. Slaughter, Aerotest Operations, Inc. (Aug. 8, 2017), at 3-4 (ML17138A309) (Letter Withdrawing Denial of License Renewal Application).

<sup>16</sup> See Letter Withdrawing Denial of License Renewal Application at 4; Joint Motion at 9-10.

<sup>17</sup> See Joint Motion at 9-10.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **COMMISSION MEMORANDUM AND ORDER CLI-17-11** have been served upon the following persons by Electronic Information Exchange.

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Aerotest Operations, Inc., Docket No. 50-228-LT  
**COMMISSION MEMORANDUM AND ORDER CLI-17-11**

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[Original signed by Brian Newell ]  
Office of the Secretary of the Commission

Dated at Rockville, Maryland  
this 30<sup>th</sup> day of October, 2017