

**SAFETY EVALUATION REPORT
WESTINGHOUSE ELECTRIC COMPANY, LLC APPLICATION
AND REQUEST FOR U.S. NUCLEAR REGULATORY COMMISSION
CONSENT TO THE INDIRECT TRANSFER OF CONTROL OF LICENSES**

LICENSE NUMBERS: SNM-1107, SNM-33, XCOM1014, XCOM1047, XCOM1072, XCOM1082, XCOM1093, XCOM1094, XCOM1102, XCOM1111, XCOM1113, XCOM1116, XCOM1170, XCOM1188, XCOM1219, XCOM1246, XCOM1249, XCOM1252, XCOM1255, XCOM1262, XCOM1298, XSNM3006, XSNM3034, XSNM3163, XSNM3264, XSNM3461, XSNM3702, XSNM3769, XR169, XR176, AND XR178.

DOCKET NUMBERS: 70-1151, 70-0036, 11004036, 11004358, 11004552, 11004670, 11004736, 11004752, 11004918, 11005042, 11005057, 11005536, 11005678, 11005908, 11006001, 11006014, 11006040, 11006060, 11006085, 11006217, 11004990, 11005031, 11005224, 11005357, 11006233, 11005472, 11006011, 11006216, 11005639, 11005030, AND 11005968.

LICENSEE: Westinghouse Electric Company, LLC.

BACKGROUND

By letter dated March 21, 2018 (Agencywide Documents Access and Management System [ADAMS] Accession Number ML18086B504), and supplemented by letters dated April 10, 2018 (ADAMS Accession Number ML18100B265), April 26, 2018 (ADAMS Accession Number ML18116A673), April 27, 2018 (ADAMS Accession Number ML18123A213), and May 24, 2018 (ADAMS Accession Number ML18144A994), Westinghouse Electric Company, LLC (Westinghouse) submitted an application in which it requested that the U.S. Nuclear Regulatory Commission (NRC) consent to the indirect transfer of control of its materials and export licenses. The application describes the indirect transfer of control of Westinghouse from Toshiba Corporation (Toshiba) to Brookfield WEC Holdings Inc. (WEC Holdings). WEC Holdings is ultimately owned and controlled by Brookfield Asset Management Inc. (BAM), a Canadian global alternative asset manager, through a series of intermediate holding companies and investment funds.

In accordance with Title 10 of the *Code of Federal Regulations* (10 CFR) Part 2, Subpart M, and Part 110, the NRC published a notice of receipt and consideration of the request for consent to transfer of the licenses in the *Federal Register* (83 FR 22294, May 14, 2018) and provided a notice of the opportunity to provide comments and to request a hearing with respect to the proposed indirect transfer of control of the licenses. The NRC did not receive any comments or requests for a hearing.

DISCUSSION

Section 184 of the Atomic Energy Act (the Act) and the regulations in 10 CFR 70.36 provide the requirements for an indirect transfer of control of licenses under Parts 70 and 110. The NRC staff evaluated the application using the guidance in NUREG-1556, Volume 15, "Guidance

About Changes of Control and About Bankruptcy Involving Byproduct, Source, or Special Nuclear Materials Licenses" (ADAMS Accession Number ML16181A003).

1. Description of the Transaction

Westinghouse is the holder of materials licenses for the use of special nuclear material (SNM) at the Columbia Fuel Fabrication Facility (CFFF) in Hopkins, South Carolina, and Hematite Fuel Fabrication Facility (Hematite) in Festus Township, Missouri, as well as 29 export licenses. Westinghouse is currently a wholly-owned subsidiary of Toshiba, a Japanese Corporation. On March 29, 2017, Westinghouse and its immediate parent, TSB Nuclear Energy Services Inc. (TSB Services), and other affiliated entities, filed petitions for bankruptcy protection in the United States Bankruptcy Court for the Southern District of New York (Bankruptcy Court). On January 12, 2018, Brookfield WEC Holdings LLC. (BWH), TSB Services, and Toshiba Nuclear Energy Holdings (UK) Limited entered into a Plan Funding Agreement that provides, among other things, for the acquisition by BWH of 100 percent ownership of TSB Services. This transaction is the basis of a Plan of Reorganization that Westinghouse submitted to the Bankruptcy Court. The Bankruptcy Court confirmed the Reorganization Plan on March 28, 2018. Brookfield WEC Holdings LLC., is a special purpose vehicle established under Delaware law and is ultimately controlled by BAM. Upon closing of the transaction, BWH will assign, and WEC Holdings will assume, the transaction documents and WEC Holdings will acquire Westinghouse. Like BWH, WEC Holdings is also ultimately controlled by BAM through a series of intermediate holding companies and investment funds. At the closing of this transaction, WEC Holdings will have acquired 100 percent ownership of TSB Services and, indirectly, Westinghouse. Westinghouse and TSB Services will then emerge from bankruptcy. This constitutes an indirect transfer of control of the NRC licenses held by Westinghouse because BAM will have control of Westinghouse.

The application states that there will not be any changes to the name of Westinghouse or any contact information pertaining to Westinghouse's licensed activities as a result of the transaction. WEC Holdings will inform the NRC if it becomes aware of any changes as part of this transaction.

The NRC staff reviewed the information provided by the licensee in its application, as supplemented, regarding the description of the transaction including organization charts, information about the parent companies, and the location of the parent and intermediate holding companies. The NRC staff finds the description of the transaction acceptable.

Financial Qualifications

Columbia Fuel Fabrication Facility and Hematite are subject to the financial qualification requirements in 10 CFR 70.23(a)(5). The application states that although Westinghouse is currently in bankruptcy, after the closing of the subject transaction, Westinghouse will continue to be financially qualified to carry out licensed activities. Exhibit D of the application provides both Westinghouse's projected opening balance sheet upon emergence from bankruptcy and the Columbia Fuel Consolidated Income Statement, which lists Westinghouse's actual income for FY 2016 and FY 2017, and projected income for FY 2018 to FY 2022. The documentation shows that Westinghouse's business activities at CFFF are net cash positive and are projected to generate an operating profit through 2022. The NRC staff reviewed these financial statements from Westinghouse and concluded that the licensee provided the necessary financial

information for the NRC to make a finding that the licensee will continue to appear to be financially qualified with respect to CFFF. Hematite is in the decommissioning process, and as such, the NRC staff reviewed and approved the Decommissioning Funding Plan. This included reviewing Westinghouse's decommissioning trust fund to confirm that it contains funds equal to the decommissioning cost estimate. Based on the results of its review, the NRC staff determined that Westinghouse appears to be financially qualified to carry out its decommissioning activities with respect to Hematite. Based on the financial information provided by the licensee in its application as supplemented, including CFFF financial statements and decommissioning financial assurance for the Hematite site, the NRC staff finds that Westinghouse appears to be financially qualified to engage in the proposed activities in accordance with 10 CFR 70.23(a)(5).

Foreign Ownership, Control, or Influence

Westinghouse does not require access to classified information under 10 CFR Part 95. Consequently, there is no need for Westinghouse to be granted a facility clearance, which would require a foreign ownership, control, or influence review. Should Westinghouse have a need to access classified information in the future, then it would be required to obtain a facility clearance under 10 CFR Part 95. The application states that WEC Holdings agrees to maintain the same mitigation measures regarding access to sensitive information by foreign nationals that Toshiba has in place as it relates to Westinghouse's activities.

2. Changes of Personnel

The application states that there are no anticipated changes in personnel or management having direct operational responsibility for, and control of, licensed activities as a result of the transaction. There are no changes anticipated in personnel responsible for radiation safety or use of licensed material.

3. Changes of Location, Equipment, and Procedures

The application states that there are no anticipated changes in the organization, locations, facilities, equipment, or procedures that relate to the licensed program for any of the licenses. There are currently no changes anticipated in the use, possession, location, or storage of the licensed material as a result of the transaction.

4. Surveillance Records

The application states that all surveillance items and records for the licenses will continue to be maintained in their existing state and in accordance with applicable requirements.

5. Decommissioning and Related Records Transfers

The application states that the transaction will have no effect on any decommissioning records, and that all records concerning the safe and effective decommissioning of Westinghouse's facilities will remain with Westinghouse. The application also states that Westinghouse will remain responsible for the current status and future decommissioning of all licensed facilities. Further, the most recently approved decommissioning cost estimate (ADAMS Accession Number ML16277A591) for Westinghouse is currently

covered by a fully funded trust fund (ADAMS Accession Number ML17019A396). Westinghouse has indicated that there will be no changes to its record keeping procedures or to the location of any of its records as a result of the transfer. The NRC staff finds that the licensee's financial assurance and record keeping for decommissioning is in accordance with the requirements of 10 CFR 70.25.

6. Transferee's Commitment to Abide by the Transferor's Commitments

The application states that Westinghouse will continue to abide by all constraints, conditions, requirements, representations, and commitments of its licenses. Brookfield Asset Management Inc., as the ultimate parent of Westinghouse, committed to not cause Westinghouse to violate any constraints, conditions, requirements, representations, or commitments in any Westinghouse NRC license. The NRC staff finds this commitment acceptable.

ENVIRONMENTAL REVIEW

Under 10 CFR 51.21, all NRC licensing actions require an environmental assessment except those that are identified in 10 CFR 51.20(b) as requiring an environmental impact statement and those identified in 10 CFR 51.22(c) as categorical exclusions. The NRC approval of the Westinghouse indirect transfer request falls within a category of actions that the Commission has declared to be a categorical exclusion, since this action does not individually or cumulatively have a significant effect on the human environment. Specifically, approval for the direct or indirect transfer of any license issued by the NRC and any associated amendments to that license required to reflect the approval of a direct or indirect transfer of an NRC license, is categorically excluded from the need for an environmental assessment under 10 CFR 51.22(c)(21). In addition, pursuant to 10 CFR 51.1 and 51.10, the regulations in 10 CFR Part 51 do not apply to export licensing matters within the scope of 10 CFR Part 110. Therefore, an environmental assessment is not required for this action.

CONCLUSION

Based on the findings described above, the NRC staff concludes that the proposed indirect transfer of control of Westinghouse's materials and export licenses is in accordance with the Act, and the NRC may therefore approve the transfer. In addition, the NRC staff concludes that the proposed Westinghouse corporate structure and indirect transfer will not be inimical to the common defense and security, or to the health and safety of the public. The NRC staff has reasonable assurance that the licensed materials will continue to be used and the facilities will continue to be operated in accordance with the NRC's regulations and in a manner that ensures the common defense and security and the public health and safety. Therefore, based on the NRC staff's findings and conclusions described above, Westinghouse's request for NRC consent to the indirect transfer of its licenses should be approved.

PRINCIPAL CONTRIBUTORS:

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