

**Presentation of
Viacom to NRC
Concerning Waltz Mill Site**

Docket No. 70-698

License No. SNM-770

Petition Review Board

U.S. Nuclear Regulatory Commission

Two White Flint North

Rockville, Maryland

February 20, 2003

Introductions

- Martin G. Malsch, Michael F. McBride, John W. Lawrence, Robert A. Noethiger for Viacom
- Mr. Richard K. Smith, Vice President - Environmental Remediation, who signed application to terminate TR-2 license, also present

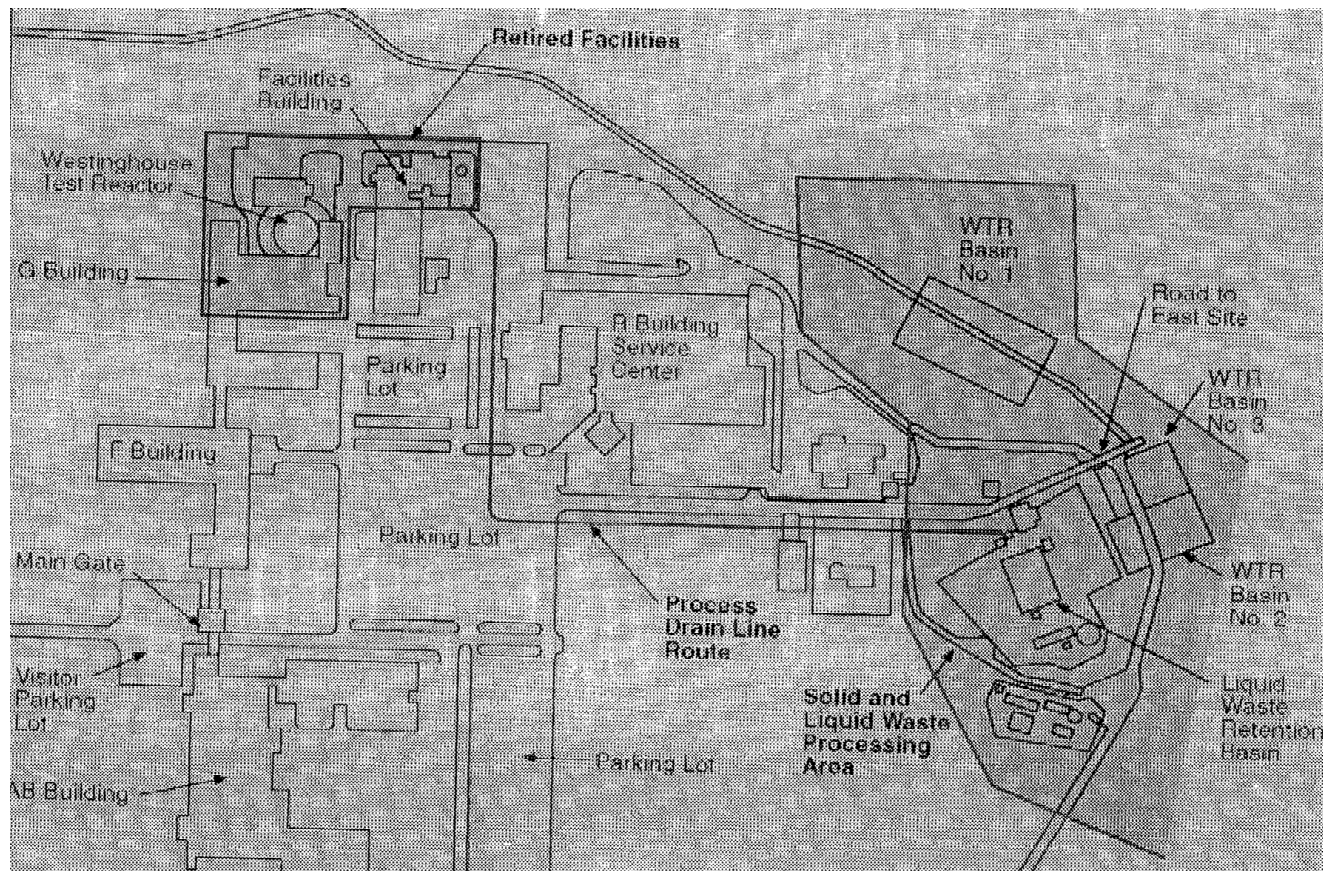
Background About the Parties

- The “old” Westinghouse Electric Corporation was the original licensee at the Waltz Mill Site, holding both the TR-2 and SNM-770 licenses
- Westinghouse Electric Corporation changed its name to CBS Corporation (“CBS”) in 1997
- Westinghouse Electric Company, LLC (“Westinghouse”), a newly created subsidiary of British Nuclear Fuels, plc, acquired CBS’ nuclear assets in 1999
- CBS was merged into Viacom Inc. in 2000

Overview of Viacom's 10 CFR § 2.206 Petition

- 2.206 Petition filed by Viacom on October 30, 2002
- Applies to the Waltz Mill Site (near Madison, PA)
- Two NRC licenses apply to the Waltz Mill Site:
 - TR-2 (held by Viacom)
 - SNM-770 (held by Westinghouse)
- Requests NRC to issue an enforcement order against Westinghouse to require Westinghouse to:
 - Accept transfer of residual radioactive materials
 - Provide existing data regarding residual radioactivity

Waltz Mill Remediation Project



NRC Timeliness Rule

- 1994 Timeliness Rule unique considerations:
 - Continued use of the Waltz Mill Site
 - TR-2 and SNM-770 licenses
 - Waltz Mill Site on SDMP List
- Two plans were developed, both premised on the continued use of the Site until future termination of the SNM-770 license

SNM-770 Remediation Plan

- SNM-770 Remediation Plan, Nov. 27, 1996
 - “Retired facilities” and “soil areas”
 - Criteria (revised) based on ALARA
- “Westinghouse is not pursuing license termination and will continue to conduct licensed operations at this facility” (SNM-770 Plan at p. 1-1)
- SNM-770 Plan supplemented by August 1999 Revised Soil Plan and May 2000 Survey Plan
- NRC approved the SNM-770 Plan as supplemented
- Work is now complete, in Viacom’s opinion, and monitoring is continuing for the “process drain line”

Completion of the SNM-770 Plan

- With regard to the SNM-770 License, Westinghouse's Response (at p. 3) raised the issue of the completion of the SNM-770 Remediation Plan
- Viacom does not object to consideration of whether the SNM-770 Remediation Plan has been completed in this 2.206 proceeding, and believes it would be most efficient if it were
- NRC is already familiar with the status of the completion of both the SNM-770 Remediation Plan and the TR-2 Final Decommissioning Plan

TR-2 Decommissioning Plan

- TR-2 Final Decommissioning Plan, July 31, 1997, as supplemented on March 20 and July 30, 1998
 - Removal of portions of shut-down reactor
 - Termination of Part 50 portion of license
 - Transfer of residual materials to SNM-770
 - Criteria did NOT include unrestricted release
- NRC approved the TR-2 Plan on Sept. 30, 1998
- Rev. 1, January 2000, approved by Viacom and Westinghouse pursuant to 10 CFR § 50.59
- Work is now complete (data and transfer required)

Relationship Between the Parties

- CBS' sale of nuclear assets to Westinghouse was pursuant to a 1998 Asset Purchase Agreement with rights assigned to Westinghouse
- At most operating sites Westinghouse became the sole licensee after NRC-approved license transfers
- The approach was followed at the Waltz Mill Site, with one exception involving the TR-2 License, because Westinghouse, being foreign-owned, could not hold the TR-2 License

Parties' Relationship – cont'd (2)

- With regard to TR-2, CBS (now Viacom) retained the license and agreed with Westinghouse to decommission the Test Reactor in accordance with the TR-2 Final Decommissioning Plan as approved by the NRC
- CBS (now Viacom) also agreed with Westinghouse to remediate “retired facilities” at Waltz Mill as required by plans to be approved by NRC
- NRC's approval of the license transfer made clear that the licensee retained responsibility for decommissioning and financial assurance

Parties' Relationship – cont'd (3)

- Viacom's 2.206 Petition does not rely on any aspect of the parties' Asset Purchase Agreement or require NRC to construe any aspect of that Agreement
- Westinghouse's Response (at pp. 5 and 8) seeks to re-characterize Viacom's decommissioning responsibilities as extending to what it calls "legacy contamination," and thereby attempts to draw NRC into the parties' commercial dispute

Viacom's 2.206 Petition

- Petition requests that NRC order Westinghouse to accept the transfer of residual radioactive materials from the Test Reactor
- Petition also requests that NRC order Westinghouse to provide the existing data on residual radioactive materials requested by NRC
- Petition relies exclusively on NRC requirements and Westinghouse's commitments to NRC
- Viacom is not asking NRC to decide the commercial disputes

2.206 Petition – cont'd (2)

- Viacom took its duties and responsibilities as an NRC licensee seriously when this dispute arose, and especially after the NRC issued its Sept. 6, 2002 Inspection Report, to respond as requested
- Petition filed because Westinghouse has not complied with the request of NRC (and Viacom) for data, and because Westinghouse is now unwilling to accept regulatory responsibility for radioactive materials *in situ* at the TR-2 facility
- Westinghouse's Response (at p. 37) expresses its disagreement with NRC's inspection findings

Transfer of Radioactive Materials

- Westinghouse committed to NRC to accept the transfer of residual radioactive materials covered by the TR-2 License
- Transfer of residual radioactive materials is required to complete the TR-2 Plan
- Westinghouse now refuses to accept the transfer

Providing NRC With Data

- Viacom attempted to avoid this proceeding by asking Westinghouse for the existing data that Region I requested of Viacom on Sept. 6, 2002
- Westinghouse refused, claiming:
 - Submitting such data would be “misleading”
 - Viacom owes Westinghouse \$3 million
- The existing data cannot be misleading as it was previously generated by Westinghouse
- Westinghouse generated the data at Viacom’s expense, and now seeks to limit its use

Providing Data – cont’d (2)

- Westinghouse’s Response (at p. 37 n.50) offers to “freely provide” the data to the Commission and Viacom, but to date Westinghouse has not done so, apparently because, even though Viacom has requested it, allegedly NRC has not asked for it
- Viacom believes the data Westinghouse is now withholding will support its assertion that the decommissioning of the Test Reactor is complete, and thus the TR-2 License can be terminated, and that the Commission’s restricted-use criteria have been met

Management Directive 8.11

- At this stage, all the Board needs to decide is whether Viacom has filed a valid 2.206 Petition, which it clearly has, based on the above
- This hearing is not the time or place to decide the merits of Viacom's Petition or Westinghouse's arguments in opposition
- Focus today -- whether Viacom's Petition properly falls under 10 CFR § 2.206 -- requires that Management Directive 8.11 be applied
 - Viacom's Petition clearly satisfies all 4 criteria

Criterion 1

- MD 8.11, Criterion 1 -- Does the Petition contain a request for enforcement action?
- YES. On its face Viacom's petition requests NRC to issue an order against Westinghouse:
 - Compelling it to provide *in situ* test data
 - Compelling it to accept materials transfer
- Westinghouse refuses to do either, and so enforcement action is needed
- The Petition is not prohibited by AEA Section 221

Criterion 2

- MD 8.11, Criterion 2 – Are the supporting facts credible and sufficient to warrant further inquiry?
- YES. The Petition has as its bases:
 - TR-2 Final Decommissioning Plan (Pet. Ex. 1)
 - SNM-770 License Condition 26 (Pet. Ex. 6)
 - License renewal commitments (Pet. Ex. 7)
 - NRC Safety Evaluation Report (Pet. Ex. 8)
 - 10 CFR 50.5 (Deliberate Misconduct Rule)

Criterion 2 – cont'd (2)

- Westinghouse does not challenge the validity of any of these documents or deny that they contain enforceable obligations
- NRC Region I inspection report dated Sept. 6, 2002 (Pet. Ex. 2)
- While there may be no “immediate threat” to public health and safety as Viacom acknowledged, NRC has long recognized that compliance with decommissioning plans presents a substantial question of public health and safety
 - 10 CFR § 50.109(a)(4)(ii)
 - 53 Fed. Reg. 24,018 (June 27, 1988)

Criterion 2 – cont'd (3)

- Viacom is requesting that NRC enforce the governing requirements, and thus the Petition does not constitute a private action to enforce the AEA
- Viacom only seeks NRC to apply its requirements without regard to parties' contractual obligations, and does not ask NRC to decide what those obligations are
- Doctrine of primary jurisdiction necessitates NRC ruling on matters within its expertise, even if the ruling impacts the parties' commercial disputes
 - U.S. v. Western Pacific Railroad Company, 352 U.S. 59, 63-64 (1956)
 - See Consolidated Rail Corp. v. I.C.C., 646 F.2d 642, 650 (D.C. Cir. 1981)

Criterion 3

- MD 8.11, Criterion 3 – Any other NRC proceeding in which Viacom is a party and through which Viacom's concerns could be addressed?
- NO. Although Viacom has also filed a related Application to terminate the Part 50 portion of its TR-2 License, the Petition seeks to enforce requirements involving the TR-2 Final Decommissioning Plan
- Westinghouse attempts to confuse this proceeding by seeking to consolidate the Application and the Petition, and then requests the NRC to deny both in favor of the parties' ongoing arbitration proceedings

Criterion 3 – cont'd (2)

- The Application is properly before NRC and no arbitration proceeding can order an NRC license to be terminated
- Westinghouse's argument with regard to the removal of part or all of the biological shield is in response to the Application, and thus should be resolved in the Application proceeding, not here
- MD 8.11 (at pp. 11-12) provides that requests to deny license applications must be dealt with in on-going license proceedings, not within the 2.206 process

Criterion 3 – cont'd (3)

- Petition does not request NRC to take sides in the parties on-going commercial dispute
- Just as NRC's approval of the license transfers on March 10, 1999 expressly declined to adopt the parties' contractual obligations as a basis for decommissioning, NRC need not consider the same in this proceeding
- Westinghouse cannot be allowed to use the parties' on-going commercial dispute as a basis for excusing its violations of NRC requirements

Criterion 4

- MD 8.11, Criterion 4 – Does the Petition raise issues that have already been the subject of NRC Staff review and evaluation?
- NO. NRC's Inspection Report of Sept. 6, 2002 agrees with Viacom's position that decommissioning has been complete except for the receipt of data from and transfer of materials to Westinghouse – the Petition seeks to compel those two requirements

Application to Terminate the Part 50 Portion of the TR-2 License

- Westinghouse's Response (at pp. 20-21, 33) seeks to consolidate the Termination Application with the 2.206 Petition; thus some discussion of the Termination Application is appropriate here
- The Termination Application is the culmination of years of work to decontaminate the Test Reactor
- The facilities essential to an operating reactor are gone, including the reactor vessel and portions of the biological shield associated with the Reactor

Termination Application - cont'd (2)

- Viacom believes the data Westinghouse is now withholding will support its assertion that the decommissioning of the Test Reactor is complete, and thus the TR-2 License can be terminated, and that the Commission's restricted-use criteria have been met
- Westinghouse's Response (at pp. 24-26) now claims that partial removal of the biological shield is not enough, and thus that it will not accept the transfer of residual radioactive materials

Termination Application – cont'd (3)

- Westinghouse is obligated to accept transfer of residual radioactive materials after Viacom has removed the Test Reactor components identified in the TR-2 Plan
- Three components were identified for removal:
 - Reactor vessel
 - Reactor vessel internals
 - Biological shield
- Westinghouse and Viacom disagree over whether the entire biological shield has to be removed

Termination Application – cont'd (4)

- Original TR-2 Plan (Rev. 0, July 1997) identified two options for removal of the biological shield
- Option 1 (at page 2-6) is described as “removing the majority of the biological shield”
- Option 2 (at page 2-9) states that “the remaining contaminated portions could be either cut away or decontaminated in place”

Termination Application – cont'd (5)

- Westinghouse's Environmental Report (March 20, 1998) supporting the TR-2 Plan states four times (at pp. 2, 6, 8, and 12) that removal of “portions of the biological shield” is all that is required for license termination and transfer to SNM-770
- The Environmental Report also states (at p. 2) that a portion of the biological shield will be transferred to SNM-770

Termination Application – cont'd (6)

- Revised TR-2 Plan (Rev. 1, Jan. 2000) confirms (at p. 2-1) that “decommissioning, as described in this Plan, will be accomplished by removal and disposal of portions of the biological shield”
- NRC Region I Inspection Report dated Sept. 6, 2002 recognizes that only portions of the biological shield have been removed, and concludes that all required removals are complete

Termination Application – cont'd (7)

- When the “old” Westinghouse was the licensee for both the TR-2 and SNM-770 Licenses, removal of only part of the biological shield was fine
- Now that the “new” Westinghouse holds only the SNM-770 License, all of the biological shield must be removed even though the facts have not changed

Termination Application – cont'd (8)

- Since the pressure vessel and its internals have been removed, the Test Reactor is no longer a utilization facility
- Thus, the presence of a portion of the biological shield below the vessel is irrelevant to the completion of the TR-2 Decommissioning Plan

Conclusion

- Viacom has filed a valid 2.206 Petition, which meets all of the criteria of MD 8.11
- NRC must, sooner or later, decide the matters at issue in the 2.206 Petition, and thus should decide them now