

OFFICE OF NUCLEAR REACTOR REGULATION
REQUEST FOR ADDITIONAL INFORMATION
RE: APPLICATION FOR INDIRECT LICENSE TRANSFER OF
AEROTEST RADIOGRAPHY AND RESEARCH REACTOR
FACILITY OPERATING LICENSE NO. R-98
DOCKET NO. 50-228

By letter dated May 30, 2012 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML12180A384), as supplemented by letters dated July 19, 2012 (ADAMS Accession No. ML122021201) and October 15, 2012 (ADAMS Accession No. ML12291A508) (collectively, "the application"), pursuant to Section 184 of the Atomic Energy Act of 1954, as amended, and Title 10 of the *Code of Federal Regulations* (10 CFR) Section 50.80, "Transfer of Licenses," Aerotest Operations, Inc. (Aerotest), requested the U.S. Nuclear Regulatory Commission's (NRC) consent to the indirect transfer of control of the Facility Operating License No. R-98 for the Aerotest Radiography and Research Reactor (ARRR), due to the proposed acquisition of Aerotest by Nuclear Labyrinth, LLC (Nuclear Labyrinth).

During our review of your application, questions have arisen for which we require additional information and clarification. Please provide responses to the following requests for additional information within 30 days of the date of this letter.


1. Regulation 10 CFR 50.33(f)(2) states: "[T]he applicant shall submit information that demonstrates the applicant possesses or has reasonable assurance of obtaining the funds necessary to cover estimated operation costs for the period of the license. The applicant shall submit estimates for total annual operating costs for each of the first five years of operation of the facility. The applicant shall also indicate the source(s) of funds to cover these costs." In addition, 10 CFR 50.33(f)(4) states that a: "[N]ewly-formed entity organized for the primary purpose of constructing and/or operating a facility must also include information showing: (i) [t]he legal and financial relationships it has or proposes to have with its stockholders or owners; (ii) [t]he stockholders' or owners' financial ability to meet any contractual obligation to the entity which they have incurred or proposed to incur; and (iii) [a]ny other information considered necessary by the Commission to enable it to determine the applicant's financial qualification."

Your application states that [

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In your July 19, 2012, supplement to the application, it states, [

Enclosure 2

United States Nuclear Regulatory Commission Official Hearing Exhibit	
AEROTEST OPERATIONS, INC. (Aerotest Radiography and Research Reactor)	
ASLBP #: 14-931-01-LT-BD01	Identified: 8/12/2014
Docket #: 05000228	Withdrawn:
Exhibit #: NRC-024-00-BD01	Stricken:
Admitted: 8/12/2014	
Rejected:	
Other:	
	

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In your October 15, 2012, supplement to the application, it states that, "[A]erotest's previous customers have expressed an interest in purchasing services from Aerotest," and that "[t]hese customers need assurance that the facility will be returned to operation in a time frame that meets their business needs prior to contracting for services. Given the current status of the NRC review process, it is not possible to predict with any confidence a schedule when the facility might return to operational status."

It is further stated in your October 15, 2012, supplement to the application, that Aerotest will commence decommissioning if it is unable to obtain customers sufficient to offset operational costs and it exhausts its committed operational funds. This information is not sufficient to demonstrate reasonable assurance that you are financially qualified. The NRC bases its evaluation on the your ability to cover operational costs for the first five year period after approval of the indirect license transfer.

The NRC must determine if you are financially qualified prior to approving the indirect license transfer, per NRC requirements. The NRC has previously requested that you provide any applicable commitments, contracts, or letters of intent to the NRC staff for review. [

.] While letters of intent are not guaranteed sources of funds, they would assist the NRC in its financial qualifications review. As stated in the September 14, 2012, Request for Additional Information (RAI), [

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The NRC staff notes that financial support agreements are typically provided between parent companies and subsidiaries of commercial entities (i.e., X-Ray Industries and Aerotest entered into a financial support agreement during a previous indirect license transfer application review).

The NRC will be unable to find that you are financially qualified without information to demonstrate that you possess or have reasonable assurance of obtaining sources of funds.

Based on the information you provided in the application, the NRC needs the following additional information to complete its review:

- a) Provide any additional source(s) of funds that have not been previously disclosed to the NRC to cover the projected operating costs for the first five years of operation of the facility.
- b) Provide a draft financial support agreement between Nuclear Labyrinth and Aerotest sufficient to cover operations and maintenance costs for a period of 6 months. In addition, provide evidence of Nuclear Labyrinth's ability to provide the amount stated in the financial support agreement.

- 2) Pursuant to 10 CFR 50.33(f)(2), the applicant shall submit estimates for total annual operating costs for each of the first five years of operation of the facility.

In your May 30, 2012, submittal, under Section V, "Financial Qualifications," it states that Attachment 6 reflects the initial year income estimate after completion of the transaction and Attachment 7 is the projected income statement for Aerotest for the first five years after completion the completion of the transaction. However, in your October 15, 2012, supplement to the application, it states that the initial year income estimate in Attachment 6 and the five year plan projected income statement in Attachment 7 of the application reflect financial information beginning in the second year after the license is transferred. The NRC's regulation under 10 CFR 50.33(f)(2) requires an applicant to submit the financial information for the first five years after the license is transferred, regardless of the operating status of the reactor.

In addition, the application states that the first year estimate is based on detailed accounting of seven previous years of operation (2003-2009).

Based on the information you provided in the application, please provide the following information, pursuant to 10 CFR 50.33:

- a) Update and provide Attachments 6 and 7 to include information required pursuant to 10 CFR 50.33(f)(2) (i.e., the annual operating cost for each of the first five years).
 - b) Provide financial statements, with favorable auditor opinion, to support estimated operating costs listed in Attachments (6) and (7).
- 3) The NRC's regulation under 10 CFR 50.75(f)(5) states that: "If necessary, the cost estimate, for power and non-power reactors, shall also include plans for adjusting levels of funds assured for decommissioning to demonstrate that a reasonable level of assurance will be provided that funds will be available when needed to cover the cost of decommissioning." In your October 15, 2012, supplement to the application, you state that, "Nuclear Labyrinth will maintain a [] line of credit from a Federally Insured Bank to be used in the event that future updates to the cost estimate or fund performance reveal a shortfall in the fund balance." The NRC notes that a new rule (76 FR 35526, dated June 17, 2011) that will be effective on December 17, 2012, eliminates the line of credit option from 50.75(e)(1)(iii)(A).

Please provide the following additional information, pursuant to 10 CFR 50.75(d) regarding decommissioning funding assurance:

- a) Identify the method to be used by Nuclear Labyrinth to adjust levels of funds assured for decommissioning.
- b) Provide evidence that Nuclear Labyrinth will establish the method stated in a).

- 4) The NRC's regulation under 10 CFR 50.33(f)(5) states: "The Commission may request an established entity or newly-formed entity to submit additional or more detailed information respecting its financial arrangements and status of funds if the Commission considers this information appropriate. This may include information regarding a licensee's ability to continue the conduct of the activities authorized by the license and to decommission the facility."

In your application under Section II, "Statement of Purpose of the Transfer and Nature of the Transaction Making the Transfer Necessary or Desirable," it states that all liabilities regarding the management, storage, removal and disposal of the nuclear fuel located at the facility would be transferred to Nuclear Labyrinth. In your October 15, 2012, supplement to the application, the applicants stated that Autoliv will transfer [] to Nuclear Labyrinth for fuel casks, packaging, transportation, and disposal fees.

In Attachment (8) of your application, "EnergySolutions ARRR Decommissioning Cost Study," it is stated that decommissioning is not completed until fuel is removed from the site which is currently projected to be sometime after 2055. In your application you state that Nuclear Labyrinth will assume all financial liabilities, the NRC needs additional assurance that Nuclear Labyrinth has the ability to cover all costs associated with fuel management until fuel is removed from the site.

Based on the information provided in your application, provide the following additional information, pursuant to 10 CFR 50.33(f):

- a) Provide itemized estimated annual fuel storage costs, including but not limited to: health physicists, security, overhead cost, insurance, etc, until 2055 and information to demonstrate Nuclear Labyrinth's financial ability to provide funding for fuel storage. Alternatively, if the fuel storage responsibility will be transferred to a different entity, provide information to demonstrate the viability of this option.
- b) State whether the estimated cost of [] includes management costs for new fuel to be purchased. If not, update the estimate to include the management cost and the sources of funds to cover the new estimate.
- 5) The NRC's regulation under 10 CFR 50.75(f)(5) states: "The Commission may request an established entity or newly-formed entity to submit additional or more detailed information respecting its financial arrangements and status of funds if the Commission considers this information appropriate. This may include information regarding a licensee's ability to continue the conduct of the activities authorized by the license and to decommission the facility."

In your October 15, 2012, supplement to the application, it is indicated that any limitations as a result of the fuel elements removed from service are unknown at this time and that Aerotest is performing reviews and analyses, which could identify the limitations. You also stated that the transaction will not close until the facility is fully operational. At the time of this request, it is not yet known when the facility will be fully operational. In addition, the risk of future fuel damage and the related impact on operating costs has not been evaluated.

The NRC issues transfer orders with a defined time period for the license transfer to be consummated.

Based on the information provided in the application, please provide the following additional information, pursuant to 10 CFR 50.33(f):

- a) Provide a date on when the reactor is expected to return to a fully operational condition.
 - b) Estimate the number of fuel elements that need to be replaced in the future and the associated cost.
- 6) Section 103d of the Atomic Energy Act of 1954, as amended, states: "No license may be issued to an alien or any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation or a foreign government. In any event, no license may be issued to any person within the United States if, in the opinion of the Commission, the issuance of a license to such person would be inimical to the common defense and security or to the health and safety of the public." In addition, Section 104d of the Atomic Energy Act of 1954, as amended, states: "No license may be issued to any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation or a foreign government. In any event, no license may be issued to any person within the United States if, in the opinion of the Commission, the issuance of a license to such person would be inimical to the common defense and security or to the health and safety of the public."

Regulation 10 CFR 50.38 implements this statutory prohibition, providing that: "Any person who is a citizen, national, or agent of a foreign country, or any corporation, or other entity which the Commission knows or has reason to believe is owned, controlled, or dominated by an alien, a foreign corporation, or an foreign government, shall be ineligible to apply for and obtain a license."

In your July, 19, 2012, supplement to the application, you provided a Funding Agreement between Autoliv and Nuclear Labyrinth. [

]. In addition, [

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In addition, in your October 15, 2012, supplement to the application, it states that Autoliv will provide additional funding to cover fuel management and further, you revised the amount of decommissioning funding that Autoliv will provide. [

,] the NRC needs to conduct an additional review to determine whether the applicants will be subject to foreign ownership, control, and domination.

Based on the information provided in your application, please provide the following additional information, pursuant to 10 CFR 50.33(f):

- a) Provide an updated Funding Agreement to include all funds to be provided by Autoliv at the closing, as well as a revised []].

- b) Provide information on how the applicants will ensure that the financial support from Autoliv does not result in any foreign control over nuclear safety, security or reliability issues.
- 7) By letter dated July 5, 2012, the NRC staff requested that Aerotest and Nuclear Labyrinth supplement the application for indirect transfer by providing additional information. In particular, it was stated in RAI 6, that, "Attachment 10, Conforming Amendments, is based on a previous application for license transfer that was never approved. Submit Attachment 10 using the current license and technical specifications, marked up to clearly show all insertions, deletions and revisions."

You provided in your response to the NRC staff RAI dated July 19, 2012, an Attachment 2, "Conforming Amendments," containing a revised License Amendment and Technical Specifications. In reviewing your response, the NRC staff observed that the submitted License Amendment was No. 2, while the current license of record is Amendment No. 4. As a result, the proposed conforming license amendment does not contain the changes made in Amendment Nos. 2, 3 and 4. Examples include the lack of reference to the Physical Security Plan in Section 2.C introduced through Amendment 3.

Please provide a proposed license amendment and technical specifications, based on your current license, marked up to clearly show all insertions, deletions and revisions.