

July 20, 2015

NOTE

FROM: Christopher Ryder, Licensing Project Manager

SUBJECT: Summary of Conference Call: Continued Eligibility to Use the Parent Company Guarantee as Financial Assurance of Decommissioning

Date and Time

Friday, June 26, 2015, from 10:30 AM to 11:20 AM

Participants

NRC	Westinghouse
Christopher Ryder ^(a)	Michele Gutman ^(e)
Robert Johnson ^(b)	Douglas Weaver ^(f)
Christopher McKenney ^(c)	
Kenneth Kline ^(d)	
Leira Cuadrado ^(g)	

Notes

- a. Licensing Project Manager
- b. Chief, Fuel Manufacturing Branch, Division of Fuel Cycle Safety and Environmental Review, Office of Nuclear Material Safety and Safeguards
- c. Chief, Performance Assessment Branch, Division of Decommissioning, Uranium Recovery and Waste Programs, Office of Nuclear Material Safety and Safeguards
- d. Financial Technical Reviewer
- e. Deputy General Counsel
- f. Vice President, Nuclear Regulatory Affairs
- g. Acting Chief for June 29, 2015 through July 13, 2015, Chief, Fuel Manufacturing Branch, Division of Fuel Cycle Safety and Environmental Review, Office of Nuclear Material Safety and Safeguards

Background

The Westinghouse Electric Company LLC (Westinghouse) uses a parent company guarantee as a means of providing financial assurance for decommissioning. The parent company of Westinghouse is the Toshiba Corporation (Toshiba). As such, Title 10 of the *Code of Federal Regulations* (10 CFR) Part 30, Appendix A, Section II.C.1, requires that after an initial financial test, the parent company must annually pass a specified test and provide documentation of its continued eligibility to use the parent company guarantee to the Commission within 90 days after the close of each succeeding fiscal year (FY): Westinghouse was granted an exemption to the 90-day requirement, allowing the licensee to provide such documentation within 120 days after the close of the fiscal year. Given that the fiscal year ends on March 31st, required documents are due by July 29th.

The staff at the U.S. Nuclear Regulatory Commission (NRC) issued a Request for Additional information (RAI) (Ref. 1) during the review period of the financial assurance test for fiscal year 2014. The licensee response to the RAI was due on June 14, 2015. On May 29, 2015, the NRC staff inquired about the status of responding to the RAI. On June 5, 2015, Westinghouse informed the NRC staff that they would be unable to both respond to the RAI as requested and provide required documentation for fiscal year 2015 by July 29, 2015. As requested by the NRC staff, Westinghouse documented the delays by letter dated June 12, 2015, (Ref. 2).

As had been publically announced, Toshiba is conducting independent investigations into accounting methods of certain in-house Toshiba companies. After the internal investigation report is completed (expected in mid-July 2015), Toshiba will revise financial statements for the current and possibly past fiscal years. Toshiba informed Westinghouse that they will be unable to respond as requested by NRC. Given the internal investigation and revisions to financial statements, Toshiba accountants will not provide documents that may be revised.

The purpose of the conference call was to discuss options for Westinghouse to meet regulatory requirements of financial assurance to decommission both the Columbia Fuel Fabrication Facility (Docket 70-1151) and the Hematite facility (Docket 70-36). In doing so, the NRC staff did not give recommendations, or suggestions of consultations.

Discussion

Westinghouse *expects* that Toshiba will be able to provide documents by August 31, 2015. Allowing for Westinghouse to compile the documents, Westinghouse expects that they could respond to the RAI regarding the FY 2014 demonstration in September 2015, not as requested by June 14, 2015. For FY 2015, financial test documents are due by July 29, 2015; this required documentation will also be delayed. Toshiba held its annual stockholders meeting on June 24, 2015, in light of the publically-known circumstances; a special meeting will be held on September 15, 2015, to update the stockholders.

Part 30, Appendix A, Section II.B of 10 CFR requires an independent certified public accountant to compare and evaluate certain financial data of the parent company. The NRC staff uses, in part, the parent company's annual report and the report of the independent accountant to make a finding on 10 CFR Part 30, Appendix A, Section II. Westinghouse indicated it is unlikely that an independent accountant can provide a report until the accounting investigation at Toshiba is completed. The NRC staff will be unable to make a finding until the financial data can be verified.

Westinghouse stated that there is little risk of being unable to perform decommissioning work. As such, Westinghouse inquired about an exemption to the regulation requiring passage of the test. The NRC staff acknowledged 10 CFR Section 70.17, which states, in part, that the Commission is allowed to grant an exemption from regulatory requirements as it determines is authorized by law and is otherwise in the public interest. But while the NRC staff had, in the past, granted a similar exemption to a licensee, many difficulties resulted for both the licensee and the NRC over several years. Given the difficulty in seeing how an exemption would be in the interest of the public and past experience with the other licensee, the NRC staff would be reluctant to grant an exemption.

The NRC staff stated that, per 10 CFR Part 30, Appendix A, Section II.C.1, if the parent company no longer meets the requirements to pass the test, as given in Section II.A, the licensee must send notice to the Commission of its intent to establish alternate financial assurance as specified in the Commission's regulations. The notice must be sent by certified mail within 90 days after the end of the fiscal year for which the yearend financial data show that the parent company no longer meets the financial test requirements.¹ The licensee must provide alternate financial assurance within 120 days after the end of such fiscal year.²

¹ As such, the notification would be required by October 29th.

² As such, the alternate financial assurance is required by November 26th.

In addition to considering an exemption, Westinghouse will explore alternatives to provide financial assurance, such as a letter of credit or a surety bond. Westinghouse stated that a letter of credit would be expensive. The NRC staff stated that, if the alternative means of financial assurance is provided for a short interim, it likely would not be as costly compared to alternative financial assurance that is provided over a long term. Nonetheless, Westinghouse should explore alternatives, should they choose to go this route.

Closing Remarks

Westinghouse will keep the NRC staff informed.

References

1. Letter to M. Gutman, Westinghouse Electric Company, LLC, "Request For Additional Information: Westinghouse Annual Certification To Use The Parent Company Guarantee As Financial Assurance Of Decommissioning – Fiscal Year 2014 (Technical Assignment Control Number L33342)", April 30, 2015. ADAMS accession number ML15107A068.
2. Letter from M. Gutman, Westinghouse Electric Company, LLC, "Westinghouse Electric Company LLC Parent Company Guarantee – "Request for Additional Information (Technical Assignment Control Number L33343) Regarding Fiscal Year 2014 Submission" and Fiscal Year 2015 Submission", June 12, 2015. ADAMS accession number ML15177A014.