Westinghouse

Michael T. Sweeney
Senior Vice President and
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Westinghouse Electric Company
1000 Westinghouse Drive
Cranberry Township, PA 16066
U.S.A.

February 29, 2012

Document Control Desk
Director, Office of Nuclear Material Safety and Safeguards
U.S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, Maryland 20852-2738

Re: Internal Restructuring –
Docket Number 70-1151 - Westinghouse Columbia Fuel Fabrication Facility
and Docket Number 70-36 – Hematite Decommissioning Project

Dear Sir or Madam:

The Westinghouse group of companies intends to implement an internal restructuring affecting two of its holding companies. Specifically, TSB Nuclear Energy Services Inc. ("TNES") intends to merge into TSB FA Nuclear Services Inc. ("TSB FA"), with TSB FA as the surviving company. TNES is currently the sole member of Westinghouse Electric Company LLC, the licensee. Following the merger, TSB FA would be the sole member of Westinghouse. Subsequent to the merger, the name of TSB FA may be changed. Organization charts showing the ownership structure before and after the intended merger are attached as Exhibit A.

Westinghouse does not consider this to be a change in control within the meaning of applicable NRC regulations. TNES and TSB FA are sister companies, and both are directly and wholly-owned subsidiaries of TSB Nuclear Energy USA Group Inc. All three of these companies, like Westinghouse itself, are and will remain majority-owned and controlled by Toshiba Corporation as described in the Commission's September 15, 2006 letter which approved the transfer of indirect control of Westinghouse from BNFL to Toshiba (copy attached as Exhibit B). All of these companies are, and will continue to be, operated as part of the Westinghouse Group of companies.

There will be no change to Westinghouse's operations, corporate structure, key operating personnel or licensed activities as a result of the merger. Westinghouse will remain a U.S. company and will continue to be headquartered in Cranberry Township, PA.

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Westinghouse will continue to be the holder of all facility licenses, approvals and certificates after the merger. Westinghouse will remain technically and financially qualified as the licensee and will continue to fulfill all responsibilities as the licensee. Current Westinghouse employees responsible for licensed materials and activities will continue to be responsible for such materials and activities after the merger.

The merger would not affect the organizational or operational structure described in the licenses, approvals and certificates. There would be no change in operating organizations, locations, facilities, equipment or procedures associated with the licensed activities; and no change in the use, possession, locations or storage of licensed materials as a result of the merger. Licensed activities of Westinghouse would continue in their current form without interruption of any kind resulting from the merger. No amendments to the licenses, approvals and certificates would be necessary in connection with this request for consent.

The merger does not require the review or approval of any other United States federal or state agency, nor any international regulatory authority. To avoid the administrative burden of filing mid-year tax returns, Westinghouse intends to make the merger effective as of the end of its fiscal year (March 31, 2012).

Should there be any questions regarding this letter or the merger described herein, please contact Michele Gutman of my staff at 412 374 5570.

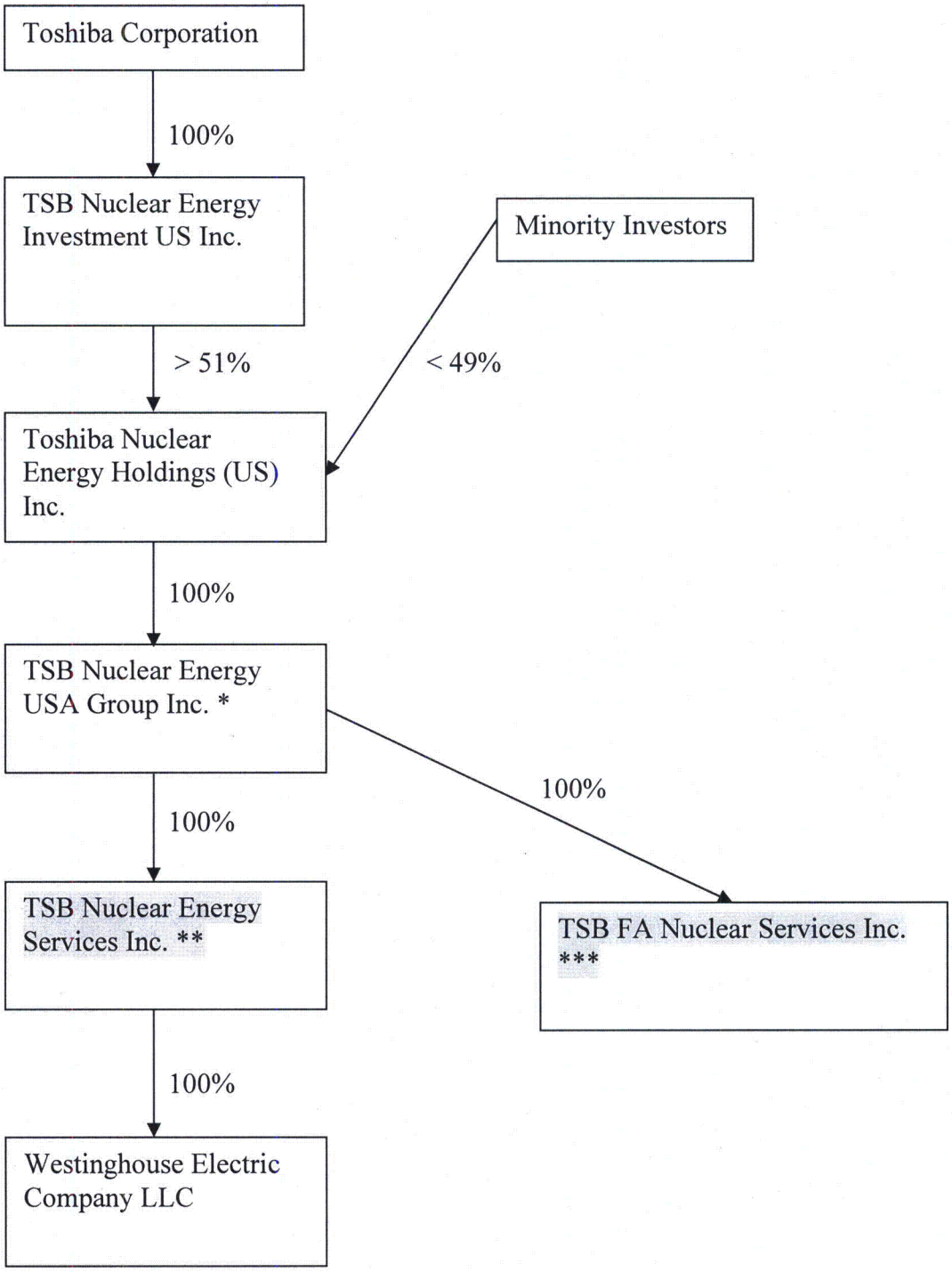
Very truly yours,

Michael T. Sweeney
Senior Vice President and General Counsel

Enclosures

Exhibit A

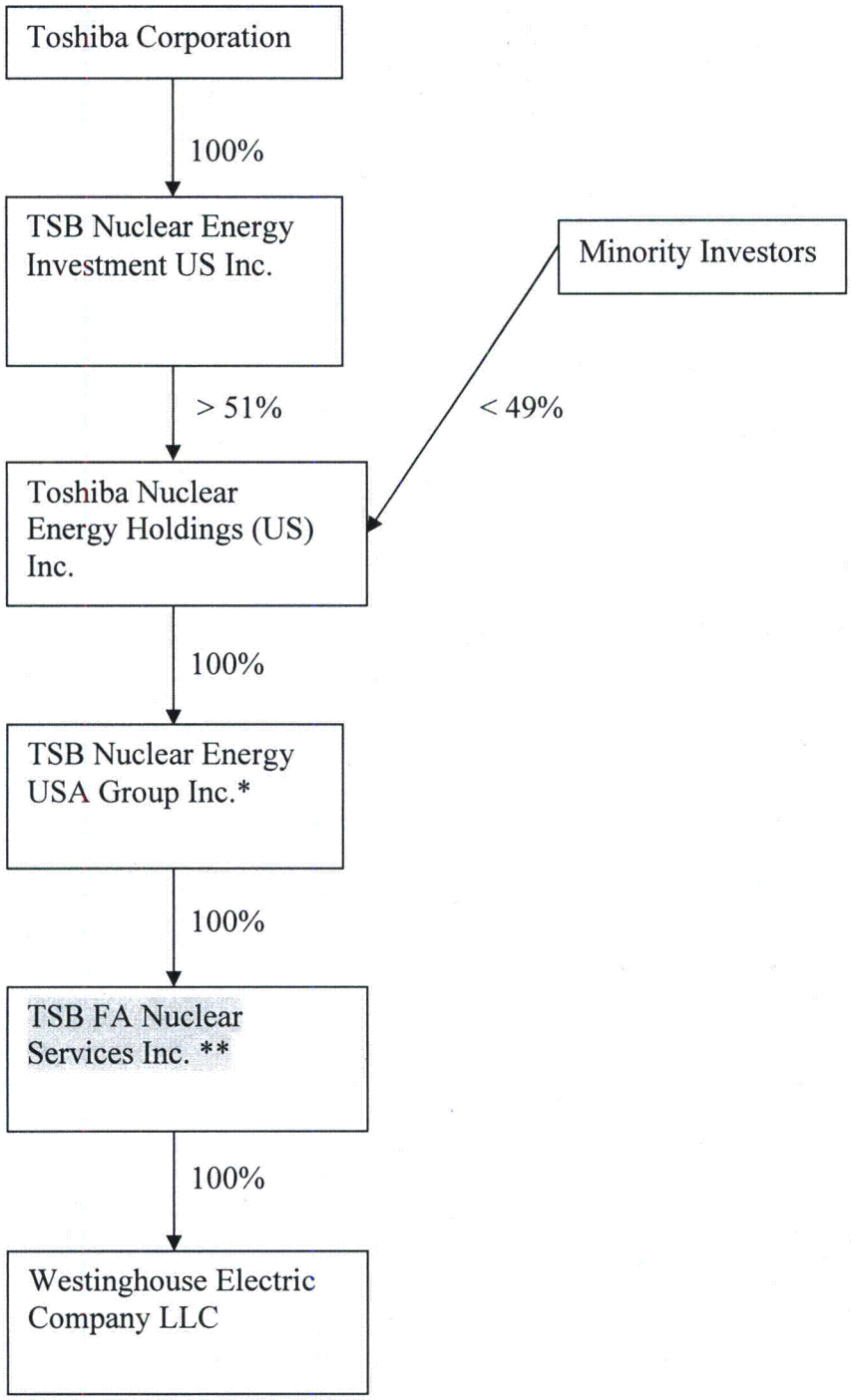
Current Structure:



* Formerly known as BNFL USA Group Inc.
** Formerly known as BNFL Nuclear Services Inc.
*** Formerly known as BNFL Inc.
Highlighting indicates companies to be merged.

Exhibit A

Post-Merger Structure:



* Formerly known as BNFL USA Group Inc.
** Formerly known as BNFL Inc.
Highlighting indicates surviving company from merger.

Exhibit B

September 15, 2006

Mr. B. G. Holmes, Manager
Environment, Health & Safety
Westinghouse Electric Company LLC
P. O. Box 355
Pittsburgh, PA 15230-0355

SUBJECT: U.S. NUCLEAR REGULATORY COMMISSION'S CONSENT TO INDIRECT CHANGE OF CONTROL WITH RESPECT TO MATERIALS LICENSES, QUALITY ASSURANCE PROGRAM APPROVALS, AND CERTIFICATES OF COMPLIANCE (TAC L31948)

Dear Mr. Holmes:

We have reviewed your application for consent to indirect change of control with respect to materials licenses, quality assurance program approvals, and certificates of compliance, dated April 21, 2006, and signed by F. Ramsey Coates, Senior Vice President and General Counsel, Westinghouse Electric Company LLC. This application for consent was supplemented by additional information dated June 19, 2006; an updated cost estimate for SNM-1107 dated July 13, 2006; changes in financial assurance amounts for Westinghouse licenses SNM-770, SNM-1107, and SNM-1460, transmitted by letter dated August 14, 2006; additional information dated August 16, 2006; a notice regarding the indirect change of control with respect to 10 CFR Part 110 export licenses dated September 5, 2006; and a further change in financial assurance amounts for Westinghouse license numbers SNM-33 and SNM-1107, also dated September 5, 2006.

In accordance with 10 CFR Part 2, Subpart M, we placed a notice of receipt of your application on the U.S. Nuclear Regulatory Commission (NRC) web site at http://www.nrc.gov. We also published a notice of consideration of request for consent to transfer of materials licenses in the *Federal Register* (71 FR 36833-36834, June 28, 2006), and offered an opportunity to provide comments and to request a hearing with respect to licenses SNM-33 and SNM-1107. No comments or requests for hearing were received.

We understand that there will be no change to Westinghouse's operations, corporate structure, key operating personnel or licensed activities as a result of the indirect change of control. Westinghouse will continue to be the holder of the licenses, approvals, and certificates listed in Appendix A to the application for consent. No amendments to the licenses, approvals, and certificates are necessary in connection with the indirect change of control. Toshiba will maintain control of Westinghouse at all times after the closing through its ownership of at least 51% of a newly-created intermediate holding company called Toshiba Nuclear Energy Holdings (USA).

In accordance with the provisions of 10 CFR 70.36, we have determined that Westinghouse has provided full information related to the request for consent to indirect transfer of control, and hereby gives NRC consent to the transfer. NRC has concluded that the transfer of control

of the licenses, approvals, and certificates is in accordance with the provisions of Sections 57c, 63b, and 82c of the Atomic Energy Act, and hereby finds that consenting to the change of control is not inimical to the common defense and security, and does not constitute unreasonable risk to the health and safety of the public. The basis for our determination is discussed in the enclosure to this letter.

If you have questions concerning this letter, please contact Mary Adams, who can be reached at (301) 415-7249, or via e-mail, to MTA@nrc.gov.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC Web site at http://www.nrc.gov/reading-rm/adams.html (the Public Electronic Reading Room).

Sincerely,

/RA/

Gary S. Janosko, Chief
Fuel Cycle Facilities Branch
Division of Fuel Cycle Safety
and Safeguards
Office of Nuclear Material Safety
and Safeguards

Docket No.: 70-1151
License No.: SNM-1107

Docket No.: 70-1503
License No.: SNM-1460

Docket No.: 70-698
License No.: SNM-770

Docket No.: 70-36
License No.: SNM-33

Docket No.: 71-0708
Docket No.: 71-0090
Docket No.: 71-6400
Docket No.: 71-9239
Docket No.: 71-6078
Docket No.: 71-9272
Docket No.: 71-9274
Docket No.: 71-9292
Docket No.: 71-9297

Enclosure:
Basis for NRC Consent to Indirect
Change of Control with Respect to Materials
Licenses, Quality Assurance Program Approvals,
and Certificates of Compliance (TAC L31948)

cc: Lisa Campagna, Esq.
Barton Z. Cowan, Esq.
Mark D. Herlach, Esq.
William R. Holloway
Robert W. Warnemant

of the licenses, approvals, and certificates is in accordance with the provisions of Sections 57c, 63b, and 82c of the Atomic Energy Act, and hereby finds that consenting to the change of control is not inimical to the common defense and security, and does not constitute unreasonable risk to the health and safety of the public. The basis for our determination is discussed in the enclosure to this letter.

If you have questions concerning this letter, please contact Mary Adams, who can be reached at (301) 415-7249, or via e-mail, to MTA@nrc.gov.

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Sincerely,
/RA/
Gary S. Janosko, Chief
Fuel Cycle Facilities Branch
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and Safeguards
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Docket No.: 70-1151
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cc: Lisa Campagna, Esq.
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BASIS FOR U.S. NUCLEAR REGULATORY COMMISSION CONSENT TO INDIRECT CHANGE OF CONTROL
WITH RESPECT TO MATERIALS LICENSES,
QUALITY ASSURANCE PROGRAM APPROVALS,
AND CERTIFICATES OF COMPLIANCE
FOR WESTINGHOUSE ELECTRIC COMPANY, LLC

I. INTRODUCTION

In a letter dated April 21, 2006, (ML061160195) Westinghouse provided an application for consent to indirect change of control with respect to materials licenses, quality assurance program approvals, and certificates of compliance and requested the U.S. Nuclear Regulatory Commission's (NRC) consent by an anticipated closing date in the third quarter of 2006. The filing and requested NRC consent was necessitated by the planned sale by British Nuclear Fuels plc (BNFL), the current parent company of Westinghouse, of its entire interest in Westinghouse to Toshiba. The application applies to four Westinghouse materials licenses, two Westinghouse transportation quality assurance program approvals, and seven Westinghouse certificates of compliance listed in Appendix A of the application for consent. NRC provided an acknowledgment letter dated May 25, 2006 (ML061380813).

In accordance with 10 CFR Part 2, Subpart M, NRC placed a notice of receipt of the application for consent on the NRC web site at http://www.nrc.gov. NRC also published a notice of consideration of request for consent to transfer of materials licenses in the *Federal Register* (71 FR 36833-36834, June 28, 2006) and offered an opportunity to provide comments and to request a hearing with respect to licenses SNM-33 and SNM-1107. No comments or requests for hearing were received.

In a letter dated June 19, 2006 (ML061720463) non public, Westinghouse provided an executed letter from Toshiba to the NRC, signed by Mr. Masao Niwano, Executive Officer and Corporate Executive Vice President of Toshiba. In the letter, Toshiba confirmed that it will abide by all constraints, conditions, requirements, representations, and commitments in Westinghouse's materials licenses, quality assurance program approvals and certificates of compliance and concurred in Westinghouse's application request. In the June 19, 2006 letter, Westinghouse confirmed that it will keep in place the existing Westinghouse letters of credit and associated standby trust agreement that are already on file and have been accepted by the NRC. Westinghouse's existing financial assurance mechanisms will continue to comply with all applicable NRC requirements and will continue to be in an amount necessary to fulfill Westinghouse's decommissioning financial assurance responsibilities for the facilities associated with the materials licenses for which such assurance is required.

II. REGULATORY REQUIREMENTS

Pursuant to Section 184 of the Atomic Energy Act, and 10 CFR §§ 30.34, 40.46, and 70.36, no license issued or granted pursuant to those regulations, nor any right under a license shall be transferred, assigned or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person, unless the Commission shall, after securing full information, find that the transfer is in accordance with the provisions of the Act and shall give its consent in writing. Therefore, control of licenses cannot be transferred

without the prior written consent of the Commission. Control over licensed activities is construed as the authority to decide when and how that license (licensed material and/or activities) will be used.

In the area of materials licensing, under Sections 57c, 63b, and 82c of the Atomic Energy Act, NRC must make a finding that issuance of the license for special nuclear material, source material, or byproduct material would not be "inimical to the common defense and security, and would not constitute unreasonable risk to the health and safety of the public." The Commission must make the same finding when consenting to a change of control.

III. DISCUSSION

NRC staff followed the guidance in Consolidated Guidance About Materials Licenses - Guidance About Changes of Control and About Bankruptcy Involving Byproduct, Source, or Special Nuclear Materials Licenses - Final Report (NUREG-1556, Vol. 15). Section 5 contains criteria applicable to applications for consent to change of control.

Section 5.1, Description of Transaction, states that the application should contain a complete, clear description of the transaction. In the application for consent, Westinghouse described the transaction. The current parent company of Westinghouse, British Nuclear Fuels plc (BNFL), plans to sell its entire interest in Westinghouse to Toshiba Corporation (Toshiba). BNFL currently owns, indirectly through wholly-owned intermediate subsidiaries, 100% of the membership interest in Westinghouse. The sale of Westinghouse will be accomplished, in part, by BNFL's selling to Toshiba the shares of BNFL USA Group, Inc. ("BNFL USA"), BNFL's wholly-owned holding company through which it operates in the U. S. and through which it owns Westinghouse. Toshiba intends to hold its ownership interest in BNFL USA and thus, indirectly, Westinghouse, through a newly created intermediate holding company, Toshiba Nuclear Energy Holdings (USA), of which it will be the majority and controlling owner (51% or more). Toshiba currently is in discussions with potential minority owners of Toshiba Nuclear Energy Holdings (USA) and, if applicable, will issue shares in Toshiba Nuclear Energy Holdings (USA) to such minority owners. However, Toshiba will maintain indirect control of Westinghouse at all times after the closing through its ownership of at least 51% of a newly-created intermediate holding company called Toshiba Nuclear Energy Holdings (USA). This will result in the indirect transfer of control of Westinghouse from BNFL to Toshiba.

There will be no change to the name of the licensee. Westinghouse will continue to be the holder of the licenses, approvals, and certificates listed in the application.

In the April 21, 2006, application, Westinghouse identified two contacts for the Westinghouse licenses, approvals, and certificates and for information regarding the application. Westinghouse also provided a contact for information regarding Toshiba.

The NRC finds that the applicant has provided a complete, and clear description of the transaction, and that the information is adequate to support the NRC's consent to the indirect change of control.

Section 5.2, Changes of Personnel, states that changes in personnel must be documented, reviewed, and approved. Current Westinghouse employees responsible for licensed materials and facilities will continue to be responsible for such materials and facilities after the closing

date and the indirect change of control. There will be no changes in Westinghouse personnel or management having direct responsibility for, and control of, licensed activities. There will be no changes in personnel who are listed in the licenses, approvals, and certificates or referred to in the supporting documentation as a result of the transaction. There will be no changes in personnel responsible for radiation safety or use of licensed material in the licenses, approvals, and certificates possessed by Westinghouse. There will be no new individuals listed in the NRC licenses.

The NRC finds that the applicant has adequately documented, reviewed, and approved all changes in personnel, and that the information is adequate to support the NRC's consent to the indirect change of control

Section 5.3, Changes of Location, Equipment & Procedures, states that the application must include a complete description of any planned changes in location, facilities, equipment, or procedures. There will be no changes to Westinghouse's headquarters or operational organization, location, facilities, equipment or procedures related to the licenses, approvals, and certificates possessed by Westinghouse. There will be no changes in the use, possession, location, or storage of the licensed material as a result of the indirect change of control.

The NRC finds that the applicant has adequately described all planned changes in location, facilities, equipment, or procedures, and that the information is adequate to support the NRC's consent to the indirect change of control.

Section 5.4, Surveillance Records, states that licensees must submit a review of the status of all applicable surveillance requirements and records. This should include an indication of whether the surveillance program is current and if it will be current at the time of transfer. The indirect change of control under the transaction will have no effect on Westinghouse's surveillance records. All licensed activities of Westinghouse, including all required surveillance including leak tests, physical inventories, and ventilation measurements, will continue on an ongoing basis without interruption. All surveillance items and records will continue to be maintained in their existing state and in accordance with applicable requirements at the time of the indirect change of control of Westinghouse from BNFL to Toshiba.

The NRC finds that the applicant has adequately provided a review of the status of all applicable surveillance requirements and records, and that the information is adequate to support the NRC's consent to the indirect change of control.

Section 5.5, Decommissioning and Related Records Transfers, states that NRC regulations require that licensees arrange for the transfer and maintenance of records important to the safe and effective decommissioning of facilities involved in licensed activities. NRC also requires a description of the status of the licensed facility with regard to ambient radiation levels and fixed and/or removable contamination as a result of NRC-licensed activities. The parties must confirm, in writing, that they accept full responsibility for the decommissioning of the site, including any contaminated facilities and equipment. The indirect change of control will have no effect on Westinghouse's decommissioning records. The transaction will not involve the physical relocation of any records, and all records concerning the safe and effective decommissioning of Westinghouse's facilities will remain with Westinghouse. On the closing

date, the status of the licensed facilities, including but not limited to the status of decontamination and decommissioning activities, will be identical to their status prior to the closing date.

The indirect change of control will not affect Westinghouse's continued compliance with requirements for financial assurance for decommissioning. Westinghouse reviewed and, where necessary, revised its decommissioning cost estimates to reflect the costs as of the time of the transfer. Westinghouse will remain responsible for the current status and future decommissioning and cleanup of all licensed facilities that are the subject of the request for consent to indirect change of control. Westinghouse currently has in place financial instruments, complying with the regulations specified in 10 CFR 30.35, 40.36, and 70.25 to meet the NRC's decommissioning financial assurance for which it bears responsibility. Westinghouse provides decommissioning financial assurance to meet the NRC's requirements in the form of standby trust letters of credit and an associated standby trust agreement, which are on file with the Commission.

Westinghouse, or Toshiba on behalf of Westinghouse, will continue this same structure for providing decommissioning financial assurance following the indirect change of control. Westinghouse will keep in place the existing Westinghouse letters of credit and associated standby trust agreement that are already on file and have been accepted by the NRC following the indirect change of control. Westinghouse's existing financial assurance mechanisms will continue to comply with all applicable NRC requirements and will continue to be in an amount necessary to fulfill Westinghouse's decommissioning financial assurance responsibilities for the facilities associated with the materials licenses for which such assurance is required.

The NRC finds that the applicant has adequately: (1) arranged for the transfer and maintenance of records important to the safe and effective decommissioning of facilities involved in licensed activities; (2) provided a description of the status of the licensed facility with regard to ambient radiation levels and fixed and/or removable contamination as a result of NRC-licensed activities; and (3) confirmed, in writing, that the parties accept full responsibility for the decommissioning of the site, including any contaminated facilities and equipment, and that the information is adequate to support the NRC's consent to the indirect change of control.

Section 5.6, Transferee's Commitment to Abide by the Transferor's Commitments, states that the transferee must either: (1) submit a commitment to abide by all constraints, license conditions, requirements, representations, and commitments identified in and attributed to the existing license; or (2) provide a description of its own program to comply with the license and all applicable regulations. In the June 19, 2006, letter, Westinghouse provided an executed letter from Toshiba to the NRC, signed by Mr. Masao Niwano, Executive Officer and Corporate Executive Vice President of Toshiba. In the letter, Toshiba confirms that it will abide by all constraints, conditions, requirements, representations, and commitments in Westinghouse's materials licenses, quality assurance program approvals and certificates of compliance and concurs in Westinghouse's application request.

The NRC finds that the transferee has provided an adequate commitment to abide by all constraints, license conditions, requirements, representations, and commitments identified in and attributed to the existing licenses, and that the information is adequate to support the NRC's consent to the indirect change of control.

VI. ENVIRONMENTAL REVIEW

In accordance with 10 CFR 51.22(c)(21), approvals of direct or indirect transfers of any license issued by NRC and any associated amendments of licenses required to reflect the approval of a direct or indirect transfer of an NRC license are actions which belong to a category of actions which the Commission has declared to be a categorical exclusion. Therefore, in accordance with 10 CFR 51.22(b), neither an Environmental Assessment nor an Environmental Impact Statement is required for this action.

V. CONCLUSION:

NRC staff has reviewed Westinghouse's application for consent to indirect change of control with respect to materials licenses, quality assurance program approvals, and certificates of compliance; Toshiba's concurrence in the application; and Westinghouse's commitment to keep in place existing decommissioning financial assurance mechanisms. NRC has concluded that the transfer of control of the licenses, approvals, and certificates is in accordance with the provisions of Sections 57c, 63b, and 82c of the Atomic Energy Act, and hereby finds that consenting to the change of control is not inimical to the common defense and security, and does not constitute unreasonable risk to the health and safety of the public.

PRINCIPAL CONTRIBUTORS
Mary Adams, NMSS/FCSS
Thomas Fredrichs, NMSS/DWMEP
Jason Zorn, OGC