

In summary, the ASME Section XI, Appendix G, procedure was conservatively developed based on the level of knowledge existing in 1974 concerning reactor coolant pressure boundary materials and the estimated effects of operation. Since 1974, the level of knowledge about the fracture mechanics behavior of RCS materials has been greatly expanded, especially regarding the effects of radiation embrittlement and the understanding of fracture toughness properties under static and dynamic loading conditions. The NRC staff concurs that this increased knowledge permits relaxation of the ASME Section XI, Appendix G requirements by application of ASME Code Case N-641, while maintaining, pursuant to 10 CFR 50.12(a)(2)(ii), the underlying purpose of the ASME Code and the NRC regulations to ensure an acceptable margin of safety against brittle failure of the RPV.

The NRC staff has reviewed the exemption request submitted by the licensee and has concluded that an exemption should be granted to permit the licensee to utilize the provisions of ASME Code Case N-641 for the purpose of developing D. C. Cook Unit 2 RPV P-T limit curves.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present.

Special circumstances, pursuant to 10 CFR 50.12(a)(2)(ii), are present in that continued operation of D. C. Cook Unit 2 with the P-T curves developed in accordance with ASME Section XI, Appendix G, without the relief provided by ASME Code Case N-641 is not necessary to achieve the underlying purpose of Appendix G to 10 CFR part 50. Application of ASME Code Case N-641 in lieu of the requirements of ASME Code Section XI, Appendix G provides an acceptable alternative methodology which will continue to meet the underlying purpose of Appendix G to 10 CFR part 50. The underlying purpose of the regulations in Appendix G to 10 CFR part 50 is to provide an acceptable margin of safety against brittle failure of the RCS during any condition of normal operation to which the pressure boundary may be subjected over its service lifetime.

The NRC staff examined the licensee's rationale to support the exemption request, and agrees within the licensee's determination that an exemption would be required to approve the use of Code Case N-641. The NRC staff agree that the use of ASME Code Case N-641 would meet the underlying intent of Appendix G to 10 CFR part 50. The NRC staff concludes that the application of the technical provisions of ASME Code Case N-641 provided sufficient margin in the development of RPV P-T limit curves such that the underlying purpose of the regulations (Appendix G to 10 CFR part 50) continued to be met such that the specific conditions required by the regulations; *i.e.*, use of all provisions in Appendix G to Section XI of the ASME Code, were not necessary. Therefore, the NRC staff concludes that the exemption requested by the licensee is justified based on the special circumstances of 10 CFR part 50(a)(2)(ii), "[a]pplication of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule."

Based upon a consideration of the conservatism that is explicitly incorporated into the methodologies of Appendix G to 10 CFR part 50; Appendix G to Section XI of the ASME Code; and Regulatory Guide 1.99, Revision 2; the staff concludes that application of ASME Code Case N-641 as described would provide an adequate margin of safety against brittle failure of the RPV. This is also consistent with the determination that the staff has reached for other licensees under similar conditions based on the same considerations. Therefore, the NRC staff concludes that requesting the exemption under the special circumstances of 10 CFR 50.12(a)(2)(ii) is appropriate, and that the methodology of Code Case N-641 may be used to revise the P-T limits for the D. C. Cook Unit 2 RPV.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants the licensee an exemption from the requirements of 10 CFR 50.60 and 10 CFR part 50, Appendix G, to allow application of ASME Code Case N-641 in establishing TS requirements for the

reactor vessel pressure limits at low temperatures for D. C. Cook Unit 2.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (68 FR 13336).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 19th day of March 2003.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03-7340 Filed 3-26-03; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70-698; License No. SNM-770]

Westinghouse Electric Company, LLC, Waltz Mill Service Center, Madison, PA; Receipt of Request for Action

Notice is hereby given that by petition dated October 30, 2002, Viacom, Inc. (petitioner) has requested that the U.S. Nuclear Regulatory Commission (NRC) take action with regard to the Westinghouse Test Reactor and the Waltz Mill Service Center. The petitioner requests NRC to issue an Order to Westinghouse Electric Company LLC ("Westinghouse"), the holder of license SNM-770 on the Waltz Mill Service Center near Madison, PA, which would require Westinghouse to: (1) Provide certain radiological survey data to NRC which NRC has requested, and (2) accept under SNM-770 certain residual byproduct materials now held under Viacom license TR-2 and located at the former Westinghouse Test Reactor (WTR) facility at the Waltz Mill Site.

As the basis for this request, the petitioner states that Westinghouse's refusal to provide the survey data and to accept the residual byproduct materials now held under license TR-2 constitutes a violation of 10 CFR 50.5, Deliberate misconduct, which causes Viacom to be in violation of a license condition, the approved Decommissioning Plan (DP) for the WTR. The petitioner claims that granting the petition is necessary for compliance with both the DP and other commitments under SNM-770 and is needed to abate the violation of 10 CFR 50.5 to promote public health and safety by providing for safe completion of decommissioning of the WTR under the DP.

The request is being treated pursuant to 10 CFR 2.206 of the Commission's