



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
BALTIMORE DISTRICT, U.S. ARMY CORPS OF ENGINEERS
P.O. BOX 1715
BALTIMORE, MD 21203-1715

RULES AND DIRECTIVES
BRANCH
USNRC

2008 APR 15 PM 2:54

APR 11 2008

Operations Division

RECEIVED

Mr. Michael Lesar
Chief, Rules and Directives Branch
Division of Administrative Services
Mailstop T6-D59
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

8/14/08
73 FR 8719
③

Dear Mr. Lesar:

This is in reference to U.S. Army Corps of Engineers (Corps) permit pre-application consultation, NAB-2007-08123-M05 (Constellation Energy), concerning the U.S. Nuclear Regulatory Commission's (NRC) Public Scoping Meeting held on March 19, 2008, regarding the NRC's intent to prepare an Environmental Impact Statement (EIS) for the Calvert Cliffs Unit 3 Combined License Application (COL). UniStar Nuclear, LLC and Constellation propose the construction of an AREVA U.S. Evolutionary Power Reactor (EPR), known as Calvert Cliffs Nuclear Power Plant Unit 3. The proposed project is located in the Chesapeake Bay and unnamed tributaries to the Chesapeake Bay, forested nontidal wetlands, Johns Creek and Goldstein Branch and their unnamed tributaries at Unistar's Calvert Cliffs site near Lusby, Calvert County, Maryland.

The Corps is responsible for making decisions pursuant to Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act. It is our understanding that the NRC final rule governing Limited Work Authorizations (LWA) for Nuclear Power Plants (10 CFR Parts 2, 50, 51, 52, and 100) allows certain construction activities on production and utilization facilities to commence before a construction permit or combined license is issued. We believe that because our authority to regulate work in jurisdictional waters of the U.S., including wetlands, is a smaller component of the overall project, that the NRC has greater Federal control, responsibility and expertise for evaluating the effects of this proposed action on the environment, and therefore it is appropriate that the NRC be the lead agency for compliance with the National Environmental Policy Act (NEPA) for the proposed action. It would be inappropriate for the Corps to segment the limited infrastructure components associated with the overall Calvert Cliffs Nuclear Power Plant Unit 3 expansion where the NRC possesses the expertise in determining the environmental consequences associated with the proposed construction of the AREVA EPR and has the ultimate approval/disapproval authority for the proposal. However, given our responsibility for regulating work which is proposed for the LWA and/or license, we request to serve as a cooperating agency in the preparation of the EIS for the Calvert Cliffs Nuclear Power Plant Unit 3 project.

SOUSI Review Complete
Temp Note = ADM-013

FREDS = ADM-03
Adm = T. Fredricks (TRF)
L. Quinn (LMB1)

The Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1501.6 and 1508.8) define and address agency roles to facilitate cooperation and compliance under NEPA. Cooperating agencies are encouraged to participate in the NEPA process early on and provide information and environmental analyses for which they have special expertise to the lead agency, in this case the NRC. The benefits of cooperating agency participation in the preparation of documentation and analyses include avoiding duplication with other Federal, State and local procedures as well as enhancing the ability of the agencies to adopt environmental documents for making decisions. The Corps has the responsibility and authority to regulate portions of the proposal that affect waters of the U.S., including jurisdictional wetlands, and has the expertise necessary to assist the NRC with meeting its statutory requirements. Therefore, in accordance with the CEQ regulations we are requesting to be designated as a cooperating agency for the EIS for this project.

We would appreciate your inviting us to provide comments during the development of the EIS, and we look forward to working with you as a cooperating agency.

Sincerely,

Margaret E. Gaffney-Smith
Margaret E. Gaffney-Smith
Chief, Regulatory Branch

Cc:

Mr. Thomas L. Fredrichs
Environmental Projects Branch 2
Division of Site and Environmental Reviews
Office of New Reactors
Mailstop T6-D59
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001