CCNPP3COLA NPEmails

From: Perdue, Barbie [Barbara.Perdue@unistarnuclear.com]
Sent: Friday, May 30, 2008 5:20 PM
To: asnyder@mde.state.md.us; gsetzer@mde.state.md.us; eghigiarelli@mde.state.md.us; John Rycyna; Thomas Fredrichs; carl.j.lorenz@usace.army.mil
Cc: Price, John (UniStar); Lutchenkov, Dimitri; Decker, Lisa
Subject: UN#08-017-Constellation - Letter to US Army Corps_053008
Attachments: UN#08-017-Constellation - Letter to US Army Corps_053008.pdf

Attached is the subject correspondence dated May 30, 2008.

Barbie Perdue
UniStar Nuclear Energy
410.470.5528 - office
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Sent Date: 5/30/2008 5:19:36 PM
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From: Perdue, Barbie

Created By: Barbara.Perdue@unistarnuclear.com

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Tracking Status: None
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Recipients Received:

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UniStar
NUCLEAR ENERGY

May 30, 2008

Ms. Kathy B. Anderson
Biologist and Project Manager
U.S. Army Corps of Engineers – Baltimore District
10 S. Howard Street
Baltimore, Maryland 21201

UN#08-017

Subject: Joint Federal/State Application of Calvert Cliffs 3 Nuclear Project, LLC and UniStar Nuclear Operating Services, LLC, Calvert Cliffs Nuclear Power Plant Site, Lusby, Calvert County, Maryland, USACE Tracking No. NAB-2007-08123-M05

Dear Ms. Anderson:

I am writing on behalf of (i) Calvert Cliffs 3 Nuclear Project, LLC (CC3), a special purpose entity subsidiary of UniStar Nuclear Energy, LLC (UniStar) created for the purpose of owning the proposed new nuclear plant (Calvert 3), and (ii) UniStar Nuclear Operating Services, LLC (UNO), the proposed operator of Calvert 3 (collectively, the Co-Applicants). This letter supplements the Joint Federal/State Application for the Alteration of Any Floodplain, Waterway, Tidal or Nontidal Wetland in Maryland filed by the Co-Applicants at the Maryland Department of the Environment on May 16, 2008.

The Co-Applicants are seeking a Maryland Nontidal Wetlands Permit and an individual U.S. Army Corps of Engineers (USACE) permit pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbor Act[1] and respectfully request that this letter be added to the administrative record for the above-referenced application and project number (NAB-2007-08123-M05).

A UniStar parent company, Constellation Energy Nuclear Group, LLC,[2] and UNO have also submitted an application to the U.S. Nuclear Regulatory Commission (NRC) for authorization to construct and operate Calvert 3 adjacent to the existing Calvert Cliffs Nuclear Power Plant. There will be a full Environmental Impact Statement (EIS) relating to the proposed Calvert 3, the preparation of which will be led by the NRC. UniStar does not expect a decision by the NRC on its application before March 2011.

As you may know, the NRC recently revised its regulations to clarify the scope of its jurisdiction over preliminary and non-radiological health and safety related activities at proposed reactor sites. Specifically, the NRC has determined that certain activities are not "construction" within the meaning of its statute, are outside of that agency's regulatory authority, and thus do not require NRC authorization. Those preliminary activities include clearing, excavation, site preparation, building of roads, dredging, procurement of components of the proposed facility, etc. 10 CFR 50.10(a)(2).

UniStar and UNO have applied for a Certificate of Public Convenience and Necessity from the Maryland Public Service Commission that would authorize construction of the facility (as defined by Maryland law), including the activities described above, for which NRC authorization is not required. In order to achieve the full benefits of the Energy Policy Act of 2005 – which are vital to the feasibility of the project – the Co-Applicants would need to begin these activities by the end of 2008. This authorization is essential in order to have the site ready for commencement of NRC-authorized, safety-related construction activities in April 2011. If these activities begin as planned, the plant could be operational by 2015.

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1 Previous authorizations include NABOP-P112 for the existing intake area and NABOP-P135 for the barge facilities.

2 Formerly known as Constellation Generation Group, LLC.

Meeting this timeline is especially important because the Maryland Public Service Commission has recently found that there is a demonstrated future need for additional base-load electric capacity in the region that includes the State of Maryland. This nuclear power plant would provide 1,600 megawatts of baseload power, an important component of the region's overall energy needs. If the Co-Applicants cannot begin these preliminary activities outside the NRC's jurisdiction until NRC approval of the project is obtained, the project and the power it would produce for the region would be significantly delayed.

The Co-Applicants recognize that the USACE authorizations are federal actions that require compliance with the National Environmental Policy Act. However, the preliminary site activities for which the Co-Applicants seek the USACE authorizations are outside the jurisdiction of the NRC, and constitute a small part of the much larger project that will subsequently be reviewed by the NRC. Specifically, the clearing, grading and dredging activities are only a small fraction of the multi-billion dollar cost of the entire project. Any preliminary activities conducted by the Co-Applicants would be included by the NRC as part of its cumulative impact analysis, and addressed when evaluating the environmental impacts of construction and operation of the proposed nuclear power plant. 72 Fed. Reg. 52,427 (October 9, 2007). The Co-Applicants acknowledge that they would be conducting such preliminary activities at their own risk and that their ability to construct and operate the proposed Calvert 3 nuclear plant will depend on receiving authorization from the NRC. In addition, the Co-Applicants commit to redress and/or provide mitigation to address any adverse environmental impacts in the event an NRC license is not obtained.

The Co-Applicants believe that this request is comparable to and governed by the authority of *North Carolina v. City of Virginia Beach,* 951 F.2d 596 (1991). In that case, Virginia Beach obtained approval from the USACE to build portions of a pipeline that were outside the jurisdiction of the Federal Energy Regulatory Commission (FERC), acknowledging that it would subsequently seek FERC authorization for the larger project and that a full EIS for the larger project would be required. In that case, the United States Court of Appeals for the 4th Circuit reversed an injunction against the planned, preliminary work. The Fourth Circuit noted that Virginia Beach planned:

> to perform relatively minor work on aspects of the pipeline outside FERC's jurisdiction that will save precious time and money if the project is approved. . .. . To argue that any work wherever planned in connection with the project should be enjoined because it unduly influences FERC's decision-making reaches far too broadly to justify the extraordinary writ of injunction. . . .

951 F.2d at 602.

Similar to *Virginia Beach*, the Co-Applicants seek approval to conduct preliminary site preparation activities that the NRC has determined are outside the scope of its jurisdiction. The Co-Applicants seek USACE authorization and specifically request that the USACE conduct its own NEPA compliance review with respect to the authorizations sought. The Co-Applicants believe that the impacts described in their Joint Application are relatively minor and may be eligible for a Finding of No Significant Impact. The Co-Applicants urge the USACE to undertake and fulfill the NEPA requirements associated with this preliminary work so as to allow this work to begin and "save precious time" in the years that precede the conclusion of the NRC review and EIS associated with the jurisdictional actions of the NRC. In urging USACE to proceed in this fashion, we believe that our commitment to redress any adverse impacts and restore the area should the NRC, in the future, determine not to issue the requested license, alleviates any concerns regarding prematurely influencing future action, foreclosing meaningful consideration of alternatives and impermissible segmentation.

Respectfully,

for John E. Price
Regulatory Affairs, COLA Coordinator

cc: Mr. C. Jeff Lorenz, Assistant District Counsel
Mr. Adam Snyder, Assistant Attorney General
Mr. Gary T. Setzer, Wetlands & Waterways Program
Mr. Elder A. Ghigarelli, Jr., Coastal Zone Consistency Division
Mr. John Rycyna, NRC
Mr. Thomas L. Fredrichs, NRC