CCNPP3COLA PEmails

From: Laura Quinn
Sent: Wednesday, February 11, 2009 5:16 PM
To: Thomas Fredrichs; Michael Mazaika; Gerry Stirewalt; Richard Emch; Jay Lee; Harriet Nash; Daniel Mussatti; Seshagiri Tammara; George Cicotte; Sara Bernal; Edward Fuller; Henry Jones; Norma Garcia-Santos; John Cook; Eric Weiss; Allen Fetter; James Shepherd; Stan Echols; Parkhurst, Mary Ann
Cc: James Biggins; Adam Gendelman
Subject: FW: Environmental Staff Support for Prehearing Conference
Attachments: LB Order CCNPP3 2-10.pdf

All
Attached are the pre-hearing conference questions that were asked by the board. Please provide answers to any of the questions that apply to your discipline. Please send the answer to Jim Biggins and Adam Gendelman and cc myself and Tom Fredrichs.

From: Adam Gendelman
Sent: Wednesday, February 11, 2009 9:13 AM
To: Thomas Fredrichs
Cc: Laura Quinn; James Biggins; maryann.parkhurst@pnl.gov
Subject: Environmental Staff Support for Prehearing Conference

Tom,

Please forward the attached Board order with questions for the upcoming prehearing conference to the appropriate staff. We would like to discuss the Board's questions, and the upcoming hearing, this week if at all possible.

Thanks,

Adam Gendelman
Attorney
Office of the General Counsel
New Reactor Programs
U.S. Nuclear Regulatory Commission

Hearing Identifier: CalvertCliffs_Unit3Cola_Public_EX
Email Number: 669

Mail Envelope Properties (DC2088DF7F51A8499309AA4A35D0C1E01C9FDDEA77)

Subject: FW: Environmental Staff Support for Prehearing Conference
Sent Date: 2/11/2009 5:15:56 PM
Received Date: 2/11/2009 5:15:00 PM
From: Laura Quinn

Created By: Laura.Quinn@nrc.gov

Recipients:
"James Biggins" <James.Biggins@nrc.gov>
Tracking Status: None
"Adam Gendelman" <Adam.Gendelman@nrc.gov>
Tracking Status: None
"Thomas Fredrichs" <Thomas.Fredrichs@nrc.gov>
Tracking Status: None
"Michael Mazaika" <Michael.Mazaika@nrc.gov>
Tracking Status: None
"Gerry Stirewalt" <Gerry.Stirewalt@nrc.gov>
Tracking Status: None
"Richard Emch" <Richard.Emch@nrc.gov>
Tracking Status: None
"Jay Lee" <Jay.Lee@nrc.gov>
Tracking Status: None
"Harriet Nash" <Harriet.Nash@nrc.gov>
Tracking Status: None
"Daniel Mussatti" <Daniel.Mussatti@nrc.gov>
Tracking Status: None
"Seshagiri Tammara" <Seshagiri.Tammara@nrc.gov>
Tracking Status: None
"George Cicotte" <George.Cicotte@nrc.gov>
Tracking Status: None
"Sara Bernal" <Sara.Bernal@nrc.gov>
Tracking Status: None
"Edward Fuller" <Edward.Fuller@nrc.gov>
Tracking Status: None
"Henry Jones" <Henry.Jones@nrc.gov>
Tracking Status: None
"Norma Garcia-Santos" <Norma.Garcia-Santos@nrc.gov>
Tracking Status: None
"John Cook" <John.Cook@nrc.gov>
Tracking Status: None
"Eric Weiss" <Eric.Weiss@nrc.gov>
Tracking Status: None
"Allen Fetter" <Allen.Fetter@nrc.gov>
Tracking Status: None
"James Shepherd" <James.Shepherd@nrc.gov>
Tracking Status: None
"Stan Echols" <Stan.Echols@nrc.gov>
Tracking Status: None
"Parkhurst, Mary Ann" <maryann.parkhurst@pnl.gov>

Tracking Status: None

Post Office: HQCLSTR02.nrc.gov

Files	**Size**	**Date & Time**
MESSAGE	884	2/11/2009 5:15:00 PM
LB Order CCNPP3 2-10.pdf	107978	

Options

Priority:	Standard
Return Notification:	No
Reply Requested:	No
Sensitivity:	Normal
Expiration Date:	
Recipients Received:	

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Ronald M. Spritzer, Chairman
Dr. Gary S. Arnold
Dr. William W. Sager

In the Matter of CALVERT CLIFFS 3 NUCLEAR PROJECT, LLC, and UNISTAR NUCLEAR OPERATING SERVICES, LLC (Combined License Application for Calvert Cliffs Unit 3)	Docket No. 52-016-COL ASLBP No. 09-874-02-COL-BD01 February 10 , 2009

ORDER

(Providing Instructions and questions for February 20, 2009 Oral Argument)

This Order includes the detailed instructions concerning the February 20, 2009, oral argument that the Board stated in its Order of January 13, 2009, would be provided to the participants.

Allocation of Argument Time

Argument time will be allocated among the Petitioners, the NRC Staff, and the Applicants as set forth below. The State of Maryland, which we have permitted to participate in this proceeding as an interested State pursuant to 10 C.F.R. § 2.315(c), should as soon as reasonably possible advise the Board and others on the service list by letter whether it intends to participate in the argument and, if so, whether the State wants to present argument on specific issues, or would prefer instead to present a general statement of its views. If the State requests argument time, the Board will amend this Order to include appropriate argument time for the State to present its views.

On the issue of standing, which the Board will consider first, Petitioners shall have 10 minutes of argument time, and the NRC Staff and the Applicants shall each have 5 minutes of

argument time. The Petitioners may reserve up to 5 minutes of their allotted time for rebuttal. No other rebuttal will be permitted.

The Board will hear argument on all of Petitioners' contentions with the exception of Contention Six. The Board is not interested in hearing argument concerning Contention Six. Each of the other contentions will be considered separately. As to each contention concerning which the Board will hear argument, the Petitioners shall have 15 minutes of argument time, and the NRC Staff and the Applicants shall each have 10 minutes of argument time. The Petitioners may reserve up to 5 minutes of their allotted time for rebuttal. No other rebuttal will be permitted.

Substantive questions of interest to the Board

In general, the participants should not repeat arguments already presented in their written filings, but should instead focus on responding to the Board's questions. To assist the participants in preparing for the argument, the Board has developed the following list of questions. This list is not intended to be exclusive, and the Board expects to ask additional questions of the participants.

Standing

1. Do the Applicants agree that both the Commission and the Appeals Board have endorsed the proximity presumption? If so, given that licensing boards must follow the holdings of prior Commission and Appeals Board decisions, on what basis can this Board abandon the proximity presumption in favor of a stricter standard that the Applicant believes would be more consistent with "contemporaneous judicial concepts of standing"? Must not such a request for modification of controlling precedent be addressed to the Commission?

2. What is the NRC Staff's view of the issues mentioned in the preceding paragraph? If the NRC Staff believes the Board is at liberty to abandon the proximity presumption in favor of a stricter standard, does it believe the Board should do so?

Foreign Ownership

1. The Final Standard Review Plan on Foreign Ownership, Control, or Domination [64 Fed. Reg. 52,355 (Sept. 28, 1999)] sets forth procedures and considerations for the Staff in determining whether an entity is owned, controlled, or dominated by a foreign interest.

a. When does the Staff make the determination that an entity is or is not owned, controlled, or dominated by a foreign interest?

b. Does the Staff generate a report delineating its findings? If so, how might the Board access such a report? Assuming the Board were to admit the Contention, should it wait for the Staff report to be issued before making a decision on the merits of the contention?

2. UniStar, in a letter from its counsel, informed the Board that under a recent agreement an EdF subsidiary would obtain a 49.99% investment interest in a Constellation subsidiary.

a. What are the implications of this transaction (i.e. does this affect the safeguards Applicants claim they have in place)? How will the increase in investment interest affect domination or control of Calvert Cliffs Unit 3 (CC3)?

b. Will the NRC Staff's evaluation of the foreign ownership issue take into account this new information?

3. What is the time frame for the application to be updated to reflect changes in the ownership of the entities that will own and operate CC3? How should the Board handle this contention if it is admitted: proceed with litigation, with the expectation that additional changes in ownership will occur; or hold it in abeyance, with the expectation that an amended contention on the same subject will be filed at a later date?

Decommissioning

1. When must the financial tests set forth in 10 CFR 50.75 (e)(1)(iii)(B) and Appendix A to Part 30 be met – when the application is filed, or when the financial assurance is provided? If the latter, may a petitioner challenge the adequacy of the financial assurance when it is provided?

2. What is Joint Petitioners' legal authority for asserting that a licensing board may require an applicant to adopt a particular method of decommissioning funding? Is that not the applicant's choice, with the NRC's role limited to determining whether the applicant's choice is consistent with the agency's requirements for that method of funding?

Cumulative Impact of Nuclear Power Plants on the Chesapeake Bay

1. Petitioners contend that the Environmental Report must analyze the cumulative effect of all existing and proposed nuclear power plants within the Chesapeake Bay watershed. Why should the cumulative impacts analysis focus upon the cumulative impact of one specific industry? Shouldn't it instead analyze the incremental impact of CC3 when added to all other past, present, and reasonably foreseeable future actions that may affect the health of the Bay? See 40 C.F.R. § 1508.7. Guidance provided by the Council on Environmental Quality explains that

> [a]gencies are not required to list or analyze the effects of individual past actions unless such information is necessary to describe the cumulative effect of all past actions combined. Agencies retain substantial discretion as to the extent of such inquiry and the appropriate level of explanation. Marsh v. Oregon Natural Resources Council, 490 U.S. 360, 376-77 (1989). Generally, agencies can conduct an adequate cumulative effects analysis by focusing on the current aggregate effects of past actions without delving into the historical details of individual past actions.

See President's Council on Environmental Quality, Guidance on the Consideration of Past Actions in Cumulative Effects Analysis (June 24, 2005) at 2, available at http://ceq.hss.doe.gov/nepa/regs/guidance.html. Why shouldn't we follow the CEQ Guidance in this case?

2. Petitioners stress the decline of the Chesapeake Bay. Do Petitioners contend that nuclear power plants in the Chesapeake Bay watershed are causing a specific problem that is contributing to the decline of the Bay? If so, what is that specific problem, and what evidence in the record before the Board can Petitioners point to that supports their argument?

3. Petitioners argue that the Environmental Report should have analyzed the cumulative impact of CC3 and other proposed new reactors within the Chesapeake Bay watershed for which combined operating license applications are also pending before the NRC. On the subject of the cumulative impact of proposed new projects, the Supreme Court stated in Kleppe v. Sierra Club, 427 U.S. 390, 410 (1976), that “when several proposals for . . . actions that will have cumulative or synergistic environmental impact upon a region are pending concurrently before an agency, their environmental consequences must be considered together.” (Emphasis added). What is the evidence that the currently proposed new reactors within the Chesapeake Bay watershed “will have” a cumulative or synergistic environmental impact upon the Chesapeake Bay? Does the Environmental Report provide the NRC Staff with sufficient information to make this determination?

Dominion Cove Liquified Natural Gas Facility

1. What is the pedigree of the PPRP study? To what extent has it undergone expert participation, peer review, public input, etc.? To what extent can the adequacy of the PPRP study be challenged in evaluation of the present application?

2. The PPRP study refers to "total loss of an LNG tanker" (section 4.4), "Total loss of ship's tank" (Scenarios SH-ER-T, SH-ER-TP, SH-AB-L) and "Catastrophic loss of tanker" as SH-ER-T in Table 5.6. What is the difference? Was there a study of the effects of loss of all tanks on a tanker? Is the probability of such an event too low to evaluate?

3. The discussion of toxic gases states that there is no toxicity limit for natural gas. The contention mentions both natural gas and combustion products. Can natural gas combustion products be toxic?

4. Contention 4 includes the statement:

> The applicant's ER and the PPRP Study both omit analyses that size and spread of the flammable vapor cloud affects LNG pool fire size and duration, with heat flux greater than 350kW/m^2 given "worst case conditions" for an LNG spill over water that could be different from the assumptions made for a "worst case conditions" that would occur on a nuclear power plant since only CCNPP has the unique siting of DCPLNG with an offshore unloading pier within its hazard inclusion zone.

What is this sentence trying to say?

5. Petitioners should identify the regulations they contend require the specific information that, according to Contention Four, should have been included in the Application.

Cumulative effect of water intake pumps upon Chesapeake Bay biota

1. What do Petitioners mean whey they refer to "mechanical stress to Chesapeake Bay biota"? How do water intake pumps for the Calvert Cliffs units and the LNG tankers generate such mechanical stress? How is this mechanical stress injurious to the bay biota? Is there any evidence in the record before the Board to support this theory?

2. Is there any evidence before the Board that identifies what, if any, organisms (including but not limited to endangered species) are being harmed by the mechanical stress of water intake pumps on the Chesapeake Bay?

Low-Level Radioactive Waste Management

1. Two licensing boards have admitted contentions similar to that presented here, which alleged that the applicants failed to explain how the partial closure of the Barnwell, South Carolina facility on June 30, 2008 would affect their plans for the management of Class B and C low-level radioactive waste (LLRW). Tennessee Valley Authority (Bellefonte Nuclear Power Plant Units 3 and 4), LBP-08-16, 68 NRC __, __ (slip op. at 59) (Sept. 12, 2008); Virginia Electric and Power Company (North Anna Unit 3), LBP-08-15, 68 NRC __, __-__ (slip op. at

21-38) (Aug. 15, 2008). In this case, doesn't the ER also assume, in its discussion of radioactive waste management, that Class B and C waste will be sent to an off-site disposal facility after some limited period of on-site storage? Would not changing that assumption require changes in the ER?

2. Assuming that no off-site disposal facility for Class B and C waste is available when CC3 commences operations, for what length of time could CC3 operate without increasing its planned storage capacity for Class B and C waste or modifying its waste management procedures? Does the ER at any point address the new or additional measures Unistar would take to manage Class B and C waste on-site in the event no off-site disposal facility is available when CC3 commences operations?

3. Petitioners state that Contention Seven "raises a challenge to the generic assumptions and conclusions in Table S-3." Petition at 47 n.7. Petitioners should review North Anna COL, LBP-08-15, 68 NRC at __-__ (slip op. at 25-26), and advise the Board at argument whether they still believe Contention Seven must be construed as a challenge to Table S-3.

New or Amended Contentions based on Application Revision 3

If new or amended contentions based on Application Revision 3 have been filed before the February 20 argument, the Board will discuss with the parties' representatives the schedule for any procedural or substantive responses to the new or amended contentions. If no such contentions have been filed by the argument date, Petitioners should advise the Board whether they intend to file new or amended contentions based on Revision 3. The Board has not set a schedule for filing new or amended contentions. However, the Board will regard any new or amended contentions based on Revision 3 filed more than 60 days after Revision 3 became publicly available as non-timely contentions subject to the requirements of 10 C.F.R. § 2.309(c).

Other matters

As previously indicated, the Board would like to finish the argument by 3 PM. However, the Board has reserved the hearing room until 5 PM, and the parties should be prepared to remain until 5 PM if necessary to conclude the oral argument.

The argument is not an evidentiary hearing, and the participants therefore do not need to introduce evidence during the argument. The participants should advise the Board and the other participants in advance if they plan to refer to any type of visual aid during the argument. No material that is not already in the record before the Board should be used as a visual aid.

All persons attending the hearing should enter at the security desk in the Two White Flint North building, bring at least one form of photo identification, and arrive early enough to pass through security screening. Everyone whose name appears on the service list has been pre-registered with security. Any member of the public who is not on the service list will have to register at the security desk. Attendees should not bring any unnecessary hand-carried items such as packages, backpacks, or other items that might need to be examined individually. Neither signs nor demonstrations will be permitted in the hearing room.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD[1]

/RA/

Ronald M. Spritzer, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
February 10, 2009

---

[1] Copies of this Order were sent this date by the agency's E-Filing system to the counsel/representatives for: (1) Joint Petitioners Nuclear Information and Resource Services, Beyond Nuclear, Public Citizen Energy Program, and Southern Maryland Citizens Alliance for Renewable Energy Solutions; (2) UniStar Nuclear Operating Services, LLC and Calvert Cliffs-3 Nuclear Project, LLC; (3) NRC Staff; and (4) State of Maryland.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
CALVERT CLIFFS 3 NUCLEAR PROJECT, LLC.	)	
AND UNISTAR NUCLEAR OPERATING	)	
SERVICES, LLC	)	Docket No. 52-016-COL
	)	
(Calvert Cliffs 3 Nuclear Project, LLC)	)	
	)	
(Combined License)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB "ORDER (PROVIDING INSTRUCTIONS AND QUESTIONS FOR FEBRUARY 20, 2009 ORAL ARGUMENT)" have been served upon the following persons by Electronic Information Exchange.

U.S. Nuclear Regulatory Commission
Office of Commission Appellate
Adjudication
Mail Stop O-16C1
Washington, DC 20555-0001

E-mail: ocaamail@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the Secretary of the Commission
Mail Stop O-16C1
Washington, DC 20555-0001

Hearing Docket
E-mail: hearingdocket@nrc.gov

Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Mail Stop - T-3 F23
Washington, DC 20555-0001

Administrative Judge
Ronald M. Spritzer, Chair
E-mail: rms4@nrc.gov

Administrative Judge
Gary S. Arnold
E-mail: gxa1@nrc.gov

Administrative Judge
William W. Sager
E-mail: wws1@nrc.gov

Megan Wright, Law Clerk
E-mail: mxw6@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop - O-15 D21
Washington, DC 20555-0001

Kathryn Winsberg, Esq.
Sara Brock, Esq.
James Biggins, Esq.
Adam Gendelman, Esq.
Joseph Gilman, Paralegal
E-mail: klw@nrc.gov
seb2@nrc.gov
jpb4@nrc.gov
asg3@nrc.gov
jsg1@nrc.gov

OGG Mail Center: ogcmailcenter@nrc.gov

UniStar Nuclear Energy, LLC
750 E. Pratt Street
Baltimore, MD 21202
Carey W. Flemming, Esq.
Counsel for the Applicant
E-mail: carey.fleming@constellation.com

Winston & Strawn, LLP
1700 K Street, N.W.
Washington, DC 20006-3817
David A. Repka, Esq.
Tyson R. Smith, Esq.
Emily J. Duncan, Esq.
William A. Horin, Esq.
E-mail: DRepka@winston.com
trsmith@winston.com
ejduncan@winston.com
whorin@winston.com

State of Maryland
Office of the Attorney General
Maryland Energy Administration and
Power Plant Research Program of the
Department of Natural Resources
1623 Forest Drive, Suite 300
Annapolis, Maryland 21403
Brent A. Bolea, Assistant Attorney General
M. Brent Hare, Assistant Attorney General
E-mail: BBolea@energy.state.md.us
bhare@energy.state.md.us

Morgan, Lewis & Bockius, LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004
Jonathan M. Rund, Esq.
E-mail: jrund@morganlewis.com

William Johnston
3458 Holland Cliffs Road
Huntingtown, MD 20639
E-mail: wj3@comcast.net

Cathy Garger
10602 Ashford Way
Woodstock, MD 21163
E-mail: savorsuccesslady3@yahoo.com

Nuclear Information Resource Service
6390 Carroll Avenue, #340
Takoma Park, MD 20912
Michael Mariotte, Executive Director
E-mail: nirsnet@nirs.org

Beyond Nuclear
6930 Carroll Avenue Suite 400
Takoma Park, MD 20912
Paul Gunter, Director
E-mail: paul@beyondnuclear.org

Public Citizen
215 Pennsylvania Ave, SE
Washington, DC 20003
Allison Fisher, Organizer- Energy Program
E-mail: afisher@citizen.org

Southern MD CARES
P.O. Box 354
Solomons, MD 20688
June Sevilla, Spokesperson
E-mail: gmakeda@chesapeake.net

[Original signed by Linda D. Lewis]
Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 10th day of February 2009