

May 26, 2009

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD**

In the Matter of

Docket No. 52-016

Calvert Cliffs-3 Nuclear Power Plant
Combined Construction and License Application

**JOINT INTERVENORS' ANSWER OPPOSING NRC STAFF'S
MOTION FOR SUMMARY DISPOSITION OF CONTENTION 2**

Pursuant to 10 C.F.R. §§ 2.323(c) and 2.1205(b) and the April 22, 2009 Memorandum and Order of the Atomic Safety and Licensing Board ("ASLB"), Joint Intervenors hereby submit their answer opposing the NRC Staff's Motion for Summary Disposition of Contention 2, filed May 15, 2009.

A moving party is to be granted summary disposition only "if the filings in the proceeding . . . together with the statements of the parties and the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." 10 C.F.R. § 2.710(d)(2). A licensing board ruling on a summary disposition motion "must view the record in the light most favorable to the party opposing such a motion" and deny the motion if the moving party fails to meet its burden." *Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), LBP-07-12, 66 NRC 113, 125 (2007) (quoting *Advanced Med. Sys. Inc.*, (One Factory Row, Geneva, Ohio 44041), CLI-93-22, 38 NRC 98, 102 (1993)).

There are no genuine issues as to any material fact in this case, as it is undisputed that the Applicant has not submitted the financial test for a parent company guarantee of decommissioning funds as required by 10 C.F.R. § 50.75(e)(iii)(B). See LBP-09-04, slip op. at 38 (April 22, 2009). However, the NRC Staff argues that it is entitled to summary judgment as a

matter of law because NRC regulations do not require a showing of compliance with the financial test at this stage of the proceeding.

As demonstrated in the legal briefs filed by Joint Intervenors in response to LBP-09-04, the NRC has incorrectly interpreted the NRC's decommissioning funding regulations. *See* Joint Intervenors' Brief Regarding Decommissioning Funding Questions Raised in LBP-09-04 (May 15, 2009), Joint Intervenors' Reply Briefing Regarding Decommissioning Funding Questions Raised in LBP-09-04 (May 26, 2009). In fact, the NRC's decommissioning funding regulations require that an application for a combined license must identify its choice of decommissioning funding mechanism and demonstrate compliance with any applicable financial test.

Therefore Joint Intervenors respectfully request that the Staff's motion be denied.

Signed (electronically) by
Diane Curran
Matthew D. Fraser
Harmon Curran Spielberg & Eisenberg, L.L.P.
1726 M St. NW, Suite 600
Washington, D.C. 20036
T: 202/328-3500
F: 202/328-6918

May 26, 2009

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD**

In the Matter of

Docket No. 52-016

Calvert Cliffs-3 Nuclear Power Plant
Combined Construction and License Application

CERTIFICATE OF SERVICE

I hereby certify that copies of "Joint Intervenors' Answer Opposing NRC Staff's Motion for Summary Disposition of Contention 2," dated May 26, 2009, were served on the following persons by Electronic Information Exchange on May 26, 2009:

Administrative Judge
Ronald M. Spritzer, Chair
Atomic Safety and Licensing Board Panel
Mail Stop: T-3F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: rms4@nrc.gov

Office of Commission Appellate
Adjudication
Mail Stop O-16C1
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail:OCAAmail@nrc.gov

Administrative Judge
Gary S. Arnold
Atomic Safety and Licensing Board Panel
Mail Stop: T-3F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: gxa1@nrc.gov

Office of the Secretary
ATTN: Docketing and Service
Mail Stop: O-16C1
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: HEARINGDOCKET@nrc.gov

Administrative Judge
William W. Sager
Atomic Safety and Licensing Board Panel
Mail Stop: T-3F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: wws1@nrc.gov

James P. Biggins
Susan H. Vrahoretis
Counsel for NRC Staff
U.S. Nuclear Regulatory Commission
Mail Stop O-15 D21
Washington, DC 20555-0001
E-mail: James.Biggins@nrc.gov
E-mail: Susan.Vrahoretis@nrc.gov

Carey W. Fleming, Esq.
UniStar Nuclear Energy, LLC
750 E. Pratt Street
Baltimore, MD 21202
E-mail: Carey.Fleming@constellation.com

David A. Repka, Esq.
Tyson R. Smith, Esq.
Emily J. Duncan, Esq.
Winston & Strawn LLP
1700 K St. NW
Washington, DC 20006
E-mail: drepka@winston.com
E-mail: trsmith@winston.com
E-mail: ejduncan@winston.com

Brent A. Bolea, Assistant Attorney General
M. Brent Hare, Assistant Attorney General
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
E-mail: BBolea@energy.state.md.us
E-mail: bhare@energy.state.md.us

Electronically signed by
Diane Curran
Matthew D. Fraser
Harmon, Curran, Spielberg & Eisenberg, L.L.P.
1726 M St. NW, Suite 600
Washington, D.C. 20036
T: 202/328-3500
F: 202/328-6918

May 26, 2009