

June 4, 2009

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

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In the Matter of

Docket No. 52-016

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

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**JOINT INTERVENORS' RESPONSE TO UNISTAR'S  
ASSERTION THAT CONTENTION 2 IS MOOT**

Pursuant to the Atomic Safety and Licensing Board's ("ASLB's") Order of May 28, 2009, Joint Intervenors hereby respond to UniStar's assertion that Contention 2 is moot because Unistar's combined license application ("COLA") has provided information sufficient to satisfy the financial test criteria for decommissioning funding assurance that are found in Appendix A to 10 C.F.R. Part 30. Applicants' Response to Motion for Summary Disposition of Contention 2 at 3-4 (May 26, 2009) ("Applicant's Response").

UniStar relies for its argument on a June 18, 2007 letter to the U.S. Nuclear Regulatory Commission ("NRC") from John R. Collins, Constellation's Chief Financial Officer, which is included as Appendix A-6 to Revision 0 of UniStar's COLA and is also referenced in Revisions 2, 3 and 4. According to the letter, UniStar meets the financial test because the 2007 tangible net worth of its parent corporation, Constellation Energy, was approximately \$4.7 billion and its total U.S. assets were valued at about \$21.8 billion. In comparison with the estimated decommissioning cost of \$378 million for Calvert Cliffs Unit 2, UniStar claims that Constellation Energy's net worth and assets are sufficient to satisfy the standard for a parent company guarantee.

UniStar's June 2007 Letter does not render Contention 2 moot because the letter has become outdated in four significant respects.

First, while UniStar initially relied exclusively on a parent company guarantee for decommissioning funding assurance in Revisions 0 through 2 of its application, it is no longer clear whether or to what extent UniStar intends to rely on a parent company guarantee. In Revision 3, submitted in August 2008, UniStar states that it intends to use "a parent company guarantee and/or letter of credit, in combination with ongoing contributions to an external sinking fund." *See* COLA Rev. 3 at 1-18. Rev. 4, which was submitted in March of 2009, contains identical language to Rev. 3. *Id.* at 1-17. Thus, it is now unclear whether UniStar intends to rely on a parent company guarantee or a letter of credit, and it is also unclear to what extent UniStar intends to rely on either of those decommissioning funding mechanisms in combination with an external sinking fund. For the reasons discussed in Contention 2, Joint Intervenors do not believe that either a parent company guarantee *or* an external sinking fund would satisfy NRC regulations, and that therefore UniStar must finance decommissioning through the prepayment method. Therefore the concerns of Contention 2 are not satisfied by the June 2007 Letter.

In fact, Section 50.75(e)(vi) of the regulations suggests that for merchant nuclear power plants that rely on a combination of parent company guarantee and external sinking funds, such as Calvert Cliffs, the NRC will not take a formulaic approach to its review of the decommissioning funding mechanism, but will instead evaluate the circumstances of each case to determine whether "the total amount of funds estimated to be necessary for decommissioning is assured." *See also* Final Rule, Financial Assurance Requirements for Decommissioning Nuclear Power Reactors, 63 Fed. Reg. 50,465, 50,469 (September 22, 1998) ("For licensees that

will not be able to collect funds through [state-regulated rates and fees and other mandatory charges] after industry restructuring, up-front assurance is necessary to ensure that reasonable financial assurance is provided for all decommissioning obligations.”)

Second, to the extent that UniStar intends to rely on a parent company guarantee, the June 2007 Letter does not demonstrate satisfaction of the criteria in Appendix A to 10 C.F.R. Part 30, because it reflects Constellation Energy’s financial condition before it entered an economic crisis in 2008, not its current financial condition. As discussed in Contention 2, in the fall of 2008 Constellation Energy was facing bankruptcy and was about to sell a majority of the company for \$4.7 billion. While UniStar has revised its COLA four times since submitting the June 2007 Letter, it has never updated the information in the letter to address the question of how the drastic change in Constellation Energy’s financial circumstances have affected its ability to satisfy the financial test in Appendix A to Part 30. The facts that UniStar (a) has now added EDF as an additional parent guarantor and (b) plans to supplement the parent company with an external sinking fund strongly suggest that UniStar itself no longer believes it can satisfy the financial test in the regulations.

Third, as discussed in Contention 2, Constellation is not only a company in financial distress, but it has significant decommissioning funding obligations for several other nuclear reactors besides Calvert Cliffs. While the financial test in Part 30 requires an applicant to take into account “the amount of decommissioning funds being assured by a parent company guarantee for the total of *all* reactor units or parts thereof” (10 C.F.R. Part 30, Appendix A, § II(A)(2)(ii) and (iv), emphasis added), the June 2007 addresses only Constellation’s decommissioning obligations with respect to Calvert Cliffs Units 3 and 4.

Finally, in Revs. 3 and 4, UniStar claims that the June 2007 Letter shows that “Constellation Energy Group and EDF meet the financial test criteria” in Appendix A to Part 30. Rev. 3 at 1-19, Rev. 4 at 1-18. But the June 2007 Letter does not address EDF’s financial circumstances at all, and only discusses only the financial circumstances of Constellation Energy. Therefore it is outdated. If UniStar chooses to rely on a parent company guarantee, it should provide information sufficient to show the amount of money expected from each parent guarantor and that the parent corporation satisfies the test in Appendix A to Part 30.

Accordingly, Contention 2 is not moot.

Respectfully submitted,

*Electronically signed by*  
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**CERTIFICATE OF SERVICE**

I hereby certify that on June 4, 2009, copies of "Joint Intervenors' Response to UniStar's Assertion that Contention 2 is Moot" were served on the following persons by Electronic Information Exchange:

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