

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

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NRC STAFF'S BRIEF ON DECOMMISSIONING FUNDING ASSURANCE

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May 15, 2009

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INTRODUCTION

The U.S. Nuclear Regulatory Commission (NRC) staff (NRC Staff) hereby submits, pursuant to the Atomic Safety and Licensing Board's (Board) April 22, 2009 Memorandum and Order (Establishing schedule to govern further proceedings), the NRC Staff's brief on the issue of law identified by the Board regarding whether UniStar Nuclear Operating Services, LLC and Calvert Cliffs 3 Nuclear Project, LLC (Applicant) must specify the method by which it will provide decommissioning funding assurance and demonstrate that its decommissioning funding method passes the NRC's financial tests, in Docket No. 52-016, Calvert Cliffs 3 Nuclear Project, LLC, and Unistar Nuclear Operating Services, LLC (Combined License Application for Calvert Cliffs Unit 3). The NRC Staff's position is that the NRC's regulations do not require a combined license applicant to specify in its application which method it will eventually use to provide financial assurance of decommissioning funding, certify that method, or demonstrate that its proposed method passes the NRC's financial tests. The Applicant voluntarily provided information proposing the use of a parent company guarantee to provide financial assurance of decommissioning funding, but this information was not required by the regulations that govern the content of the combined license application. As such, any issue regarding the method of

providing decommissioning funding assurance, including the timing of financial tests of parent company guarantees, is beyond the scope of this proceeding, is not material to the findings the NRC must make to support this licensing proceeding, and does not demonstrate that a genuine dispute exists with the Applicant on a material issue of law or fact.

### BACKGROUND

On July 13, 2007, and March 14, 2008, the Applicants, pursuant to the Atomic Energy Act of 1954, as amended (AEA) and the Commission's regulations, submitted an application for a combined license (COL) for one U.S. Evolutionary Power Reactor (U.S. EPR) to be located adjacent to the existing Calvert Cliffs Nuclear Power Plant, Units 1 and 2, near Lusby, Calvert County, Maryland (Application).<sup>1</sup> The proposed unit will be known as Calvert Cliffs Nuclear Power Plant, Unit 3. The COL Applicant subsequently revised and supplemented the application.

On September 26, 2008, the NRC published a notice of hearing on the Application, which provided members of the public sixty days from the date of publication to file a petition for leave to intervene in this proceeding. 73 Fed. Reg. 55,876 (Sept. 26, 2008). In response to the Notice of Hearing, the Joint Intervenors, Nuclear Information Resource Services, Beyond Nuclear, Public Citizen Energy Program, and Southern Maryland Citizens' Alliance for Renewable Energy Solutions (Joint Intervenors) submitted a Petition on November 19, 2008, to intervene in this proceeding. On March 24, 2009, the Board found that Joint Intervenors have standing to participate in this proceeding, admitted Contention 1 as pleaded, Contentions 2 and 7 as modified by the Board, and granted the Joint Intervenors' hearing requests.<sup>2</sup>

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<sup>1</sup> The original COL applicants were Constellation Generation Group, LLC and UniStar Nuclear Operating Services, LLC. The Application was revised by letter dated August 1, 2008, which among other things changed the applicants to Calvert Cliffs 3 Nuclear Project, LLC and UniStar Nuclear Operating Services, LLC.

<sup>2</sup> *Calvert Cliffs 3 Nuclear Project, LLC, and UniStar Nuclear Operating Services, LLC* (Continued. . .)

In Contention 2 of their Petition, Joint Intervenors argued that the decommissioning funding assurance described in the application for the COL was inadequate to assure that sufficient funds would be available to fully decontaminate and decommission Calvert Cliffs 3, and that the Applicants should be required to use the prepayment method of assuring decommissioning funding.<sup>3</sup> The Board denied the admissibility of the portion of Contention 2 that urged a requirement that the Applicant use a certain method of decommissioning funding, but admitted the portion of the contention that the Board found raised a legal issue.<sup>4</sup> To best manage these proceedings, the Board requested that the parties immediately file briefs on the legal issue as to whether the Applicant must, as part of its Application, specify the method by which it will provide decommissioning funding assurance and demonstrate that its decommissioning funding strategy is financially possible according to the NRC's financial tests.<sup>5</sup>

#### DISCUSSION

In ruling on the admissibility of Contention 2, the Board noted that the Joint Intervenors contend that the Application does not adequately demonstrate a decommissioning funding strategy that is financially possible, and the Board can only decide whether the Applicant's current decommissioning funding proposal fulfills the NRC's requirements.<sup>6</sup> The Board described the multiple step process governing decommissioning funding assurance, and noted

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(. . .continued)

License Application for Calvert Cliffs Unit 3), LBP-09-04, 69 NRC\_\_ (March 24, 2009) (slip op. at 76 – 77) (Calvert Cliffs 3).

<sup>3</sup> Petition at 10.

<sup>4</sup> Calvert Cliffs 3, LBP-09-04, 69 NRC at \_\_\_\_(slip op. at 38, 76-77).

<sup>5</sup> Calvert Cliffs 3, LBP-09-04, 69 NRC at \_\_\_\_(slip op. at 38) (citing *Crow Butte Res., Inc.* (License Renewal for the In Situ Leach Facility, Crawford, Nebraska), LBP-08-24, 68 N.R.C.\_\_(November 21, 2008)(slip op. at 74-75, 83.).

<sup>6</sup> Calvert Cliffs 3, LBP-09-04, 69 NRC at \_\_\_\_(slip op. at 36).

that there are differences between how those provisions apply to Part 50 operating license applicants and Part 52 combined license applicants.<sup>7</sup> The Board described the regulatory requirements for providing decommissioning funding assurance, and noted that the regulations require the Applicant to specify in its Application which method it will use to provide financial assurance for decommissioning.<sup>8</sup> For these reasons, and because the Board found no definitive answer as to when the Applicant must submit the financial tests for the method of providing decommissioning funding assurance, the Board found the Applicant was required to include in its combined license application, the Board partially admitted Contention 2 to address what the Board identified as a material legal issue.<sup>9</sup>

I. The NRC's Regulations Do Not Require a COL Applicant to Certify a Method of Decommissioning Funding Assurance or Provide a Financial Instrument for Testing

The Board's interpretation that 10 C.F.R. § 50.75(b)(3) requires that the Applicant's decommissioning report specify the method by which financial assurance of decommissioning funding will be provided<sup>10</sup> is incorrect: the NRC's regulations contain no such requirement. Under the NRC's regulations, a combined license applicant must provide a decommissioning report that contains an estimate of decommissioning costs and contains a certification that financial assurance for decommissioning will be provided no later than 30 days after the

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<sup>7</sup> Calvert Cliffs 3, LBP-09-04, 69 NRC at \_\_\_\_ (slip op. at 34-36) (citations omitted).

<sup>8</sup> Calvert Cliffs 3, LBP-09-04, 69 NRC at \_\_\_\_ (slip op. at 36 - 37) (citing 10 C.F.R. §§ 50.75(b)(1) and (3), 50.75(e)(1)(iii)(B), and 52.103(a)).

<sup>9</sup> Calvert Cliffs 3, LBP-09-04, 69 NRC at \_\_\_\_ (slip op. at 36 - 37) (citing NUREG-1577 at 13 (1999); 10 C.F.R. §§ 50.75(b)(1) and (3), 50.75(e)(1)(iii)(B), and 52.103(a); Financial Assurance Requirements for Decommissioning Nuclear Power Reactors, 63 Fed. Reg. 50,465 (Sept. 22, 1998)).

<sup>10</sup> Calvert Cliffs 3, LBP-09-04, 69 NRC at \_\_\_\_ (slip op. at 36) (citing 10 C.F.R. § 50.75(b)(3)).

Commission publishes notice in the *Federal Register* under Section 52.103(a) regarding the initial loading of fuel. 10 C.F.R. §§ 50.33(k)(1), and 50.75(b)(1).<sup>11</sup>

There is no requirement that a combined license application specify or certify which method of decommissioning funding financial assurance the applicant will actually use, nor is there any requirement that a combined license applicant obtain or provide the NRC with a final, executed financial instrument documenting that method or submitting the financial test so that the NRC can review it.<sup>12</sup> Under the NRC's regulations, a combined license **applicant** is not required to certify the method of providing financial assurance for decommissioning or provide the NRC with a final, executed financial instrument.<sup>13</sup> In fact, even after a license has been

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<sup>11</sup> Title 10 of the Code of Federal Regulations, Section 50.75(b) provides that each applicant for a combined license shall submit a decommissioning report as required by 10 C.F.R. § 50.33(k), and that the report,

...must contain a certification that financial assurance for decommissioning will be provided no later than 30 days after the Commission publishes notice in the FEDERAL REGISTER under §52.103(a) in an amount which may be more, but not less, than the amount stated in the table in paragraph (c)(1) of this section, adjusted using a rate at least equal to that stated in paragraph (c)(2) of this section.

10 C.F.R. 50.75(b)(1). The regulation continues in paragraph (b)(4),

As part of the certification, a copy of the financial instrument obtained to satisfy the requirements of paragraph (e) of this section must be submitted to NRC; *provided, however*, that an applicant for or holder of a combined license need not obtain such financial instrument or submit a copy to the Commission except as provided in paragraph (e)(3) of this section.

10 C.F.R. 50.75(b)(4) (emphasis in original). Section (e)(3) provides:

Each **holder** of a combined license under subpart C of 10 CFR part 52 shall, 2 years before and 1 year before the scheduled date for initial loading of fuel, consistent with the schedule required by § 52.99(a), submit a report to the NRC containing a certification updating the information described under paragraph (b)(1) of this section, including a copy of the financial instrument to be used.

10 C.F.R. 50.75(e)(3) (emphasis added).

<sup>12</sup> 10 C.F.R. § 50.75(b)(4) and (e)(3). Contrast this to the requirement that a non-power reactor applicant must indicate the decommissioning funding assurance method or methods. 10 C.F.R. § 50.75(d)(2)(ii).

<sup>13</sup> 10 C.F.R. § 50.75(b)(4) and (e)(3).

issued, a *combined license holder* is not required to certify the method by which it will provide financial assurance for decommissioning or provide the NRC with a final, executed financial instrument *until 30 days after the Commission publishes notice in the Federal Register under 10 C.F.R. § 52.103(a)*.<sup>14</sup> Because the Staff reviews the certification of the method of financial assurance that will be used and the final, executed financial instrument that will be used to provide the assurance, and this information and the documents providing it are not due until the period between license issuance and the time 30 days after the Commission publishes notice in the Federal Register under 10 C.F.R. § 52.103(a), neither the method which will eventually be used, the test used to determine if it is sufficient, nor issues pertaining to the timing of that test are relevant or material to this licensing proceeding.

II. The NRC's Regulations Permit COL Applicants and Licensees to Change Methods of Providing Decommissioning Funding Assurance

The NRC's regulations in 10 C.F.R. Part 50 contain requirements for providing decommissioning funding assurance which consist of a series of steps, not all of which apply to this phase of this combined license action.<sup>15</sup> Contention 2 focuses on the methods set out in 10 C.F.R. § 50.75 by which a *COL license holder* indicates to the NRC that the *licensee*<sup>16</sup> will provide reasonable assurance that funds will be available for the decommissioning process, but no Part 52 license has been issued in this proceeding. Since the issuance of a Part 52 license must occur before a COL license holder is required to certify a method of providing financial assurance and provide an executed, final financial instrument, which includes a financial test, if required, for the NRC to review, issues regarding the method of providing financial assurance or

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<sup>14</sup> 10 C.F.R. § 50.75(e)(3).

<sup>15</sup> 10 C.F.R. § 50.75(a).

<sup>16</sup> "Licensee' means a person who is authorized to conduct activities under a license issued by the Commission." 10 C.F.R. §§ 50.2 and 52.1(b).

testing the sufficiency of that method are beyond the scope of this proceeding and not material to any findings the Commission would have to make to support this proceeding.<sup>17</sup>

In preparation for receiving new COL applications under Part 52, the NRC reviewed its licensing rules, including those governing decommissioning funding assurance. In drafting the rules and regulations pertaining to decommissioning funding assurance requirements for combined license applications, the NRC made changes “reflecting the unique considerations of a combined license.”<sup>18</sup> The NRC noted that some of the requirements in 10 C.F.R. § 50.75 “are directed at the two phase licensing process in 10 C.F.R. Part 50, in which the NRC issues a construction permit followed by an operating license.”<sup>19</sup> The NRC also noted that the requirements in 10 C.F.R. § 50.75 which pertain to the two-phase licensing process were “not well suited to the combined license process under Part 52” because requiring an applicant for a combined license to submit a copy of the financial instrument obtained to satisfy the requirements of Section 50.75(e) “would place a more stringent requirement on the combined license applicant” than on an operating license applicant, “inasmuch as that applicant would be required to fund decommissioning assurance at an earlier date as compared with the operating license applicant.”<sup>20</sup>

To address these discrepancies, the NRC revised 10 C.F.R. § 50.75 to require that a combined license applicant submit a decommissioning report as required by Section 50.33(k), but the NRC did not require the applicant to obtain a financial instrument to fund decommissioning or to submit a copy of that instrument to the NRC. Instead, under Section

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<sup>17</sup> 10 C.F.R. § 2.309(f)(1)(vi).

<sup>18</sup> 72 Fed. Reg. 49,397 (Aug. 28, 2007).

<sup>19</sup> 72 Fed. Reg. 49,406 (Aug. 28, 2007).

<sup>20</sup> *Id.*



50.75(b)(1) and (4), all that is required is that the combined license application contain a certification that decommissioning funding financial assurance will be provided no later than 30 days after the NRC publishes notice in the *Federal Register* under Section 52.103(a).<sup>21</sup>

The Statement of Considerations which explains the Commission's basis for, and interpretation of, the regulations' language provides useful guidance on the proper application of the regulations – guidance that is entitled to “special weight.”<sup>22</sup> The Statement of Considerations explains the Commission's intent when it modified the decommissioning funding assurance methods for reactors to be licensed under the 10 C.F.R. Part 52 process:

The Commission's objective is to have sufficient time to evaluate the projected costs of decommissioning, and any licensee-proposed changes in the financial assurance mechanism for funding before fuel is loaded into the reactor and operation commences. This will allow the Commission to take any necessary regulatory action before fuel loading and commencement of operation.<sup>23</sup>

In drafting these revisions to the regulations, the Commission considered both the lengthy process of licensing and constructing a plant and the provisions in the regulations that permit applicants and licensees to change the method by which they certify and provide financial assurance for decommissioning. The Commission then revised the regulations to minimize burdens and maximize the usefulness of the information provided and the time needed to analyze it. For example, initially, the proposed revision of Section 50.75 required a combined license holder to submit updated certifications of the method of providing decommissioning funding assurance on an annual basis, but the NRC received comments objecting that annual updates of decommissioning funding assurance and certification during the construction phase

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<sup>21</sup> 10 C.F.R. § 50.75(b)(3) and (4).

<sup>22</sup> *Connecticut Yankee Atomic Power Company* (Haddam Neck Plant) LBP-01-21, 54 NRC 33, 47 (2001) (citing *Long Island Lighting Company* (Shoreham Nuclear Power Station, Unit 1), ALAB-900, 28 NRC 275, 290-91 (1988)).

<sup>23</sup> 72 Fed. Reg. 49,407 (Aug. 28, 2007).

of a plant would be unduly burdensome, unnecessary, and would serve no purpose.<sup>24</sup> In response to these comments, the Commission eliminated the annual reporting requirement and instead required that the license holder update its reports two years before and again one year before the date scheduled for initial loading of fuel, consistent with the schedule required by 10 C.F.R. § 52.99(a), which pertains to inspections during construction of the plant.<sup>25</sup>

The revised regulations contain requirements for bi-annual updates of the status of decommissioning funding, which contemplates that the information might change over time. Once the Commission has issued a combined license, the holder of that license need not begin filing the requisite bi-annual reports on the status of decommissioning funding until the date that the Commission has made a finding that all acceptance criteria in the combined license have been met.<sup>26</sup> The reports include the information specified in Section 50.75(f)(1) including “any modification occurring to a licensee’s current method of providing financial assurance since the last submitted report.”

Regulatory Guide 1.206, “Combined License Application for Nuclear Power Plants” (June 2007) (Reg. Guide 1.206), which contains a checklist for the NRC Staff to use in reviewing a combined license application, also provides helpful guidance and supports the NRC Staff’s position that issues pertaining to financial tests of parent company guarantees for decommissioning funding are beyond the scope of this proceeding. While interpretation of the regulations pertaining to decommissioning funding assurances in combined license applications must begin with the regulations themselves, guidance documents which do not conflict with the

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<sup>24</sup> 72 Fed. Reg. 49,406 (Aug. 28, 2007).

<sup>25</sup> 10 C.F.R. § 50.75(e)(3); *see also* 72 Fed. Reg. 49,406-49,407.

<sup>26</sup> 10 C.F.R. §§ 50.75(f)(1) (citing 52.103(g)).

regulations and are at least implicitly endorsed by the Commission are entitled to special weight.<sup>27</sup>

The Regulatory Guide checklist indicates that the combined license application must contain a report describing how reasonable assurance will be provided that funds will be available to decommission the facility, but does not require that the applicant specify which method it will use or provide a financial instrument.<sup>28</sup> A combined license applicant must describe how it will provide reasonable assurance that funds will be available to decommission the plant when that information is required, but “[t]he applicant need not obtain or submit at the application stage a copy of the financial instrument to be used in providing financial assurance.”<sup>29</sup> The regulations do not require a final, executed financial instrument providing assurance of decommissioning funding as a condition precedent to issuance of a license under Part 52.

The regulations do not require that a *COL license holder* immediately specify and certify which method it will use to provide financial assurance of decommissioning funding, or provide a final, executed financial instrument along with the financial test for the NRC Staff to review. Holders of combined licenses are required to submit reports updating the certification that financial assurance will be provided no later than 30 days after the Commission publishes notice in the *Federal Register* under Section 52.103(a) in the minimum amount required to

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<sup>27</sup> *Long Island Lighting Company* (Shoreham Nuclear Power Station, Unit 1), ALAB-900, 28 NRC 275, 288, 290 (1988), *review declined*, CLI-88-11, 28 NRC 603 (1988) (citing *Lewis v. United States*, 445 U.S. 55, 60 (1980); *Philadelphia Electric Co.* (Limerick Generating Station, Units 1 and 2), ALAB-819, 22 NRC 681, 711 & n. 11 (1985), *aff'd in part and review otherwise declined*, CLI-86-5, 23 NRC 125 (1986)) (other citations omitted).

<sup>28</sup> Reg. Guide 1.206, Regulatory Position Part IV: Miscellaneous Topics, C.IV.I, “Combined License Application Acceptance Review Checklist.”

<sup>29</sup> Reg. Guide 1.206, Regulatory Position Part IV: Miscellaneous Topics, C.IV.5.4 and C.IV.5.4.1, “Decommissioning Funding Assurance and Estimates of Funding Requirements.”

demonstrate reasonable assurance of funds for decommissioning. The updates are required both two years before and again one year before the scheduled date of the initial loading of fuel, consistent with the schedule required by 10 C.F.R. § 50.75(e)(3).<sup>30</sup> These reports must contain a certification updating the information provided at the COL application stage, and a copy of the financial instrument. However, even at this point, “[t]he financial instrument used to provide financial assurance for decommissioning may be in draft and unexecuted.”<sup>31</sup>

A COL license holder’s ability to delay committing to a particular method, and to submit financial information unexecuted and in draft form, indicates that the Commission anticipated that financial circumstances may change over time and a license holder, and certainly an applicant, may – consistent with the regulations – change the method by which financial assurance is ultimately provided. The Commission’s regulations do not require certification of a specific method of providing financial assurance for decommissioning and a final, executed copy of the financial instrument the license holder obtained to provide the requisite assurance until 30 days after the Commission publishes a notice in the in the *Federal Register* under § 52.103(a) regarding the initial loading of fuel.<sup>32</sup>

While the regulations may not contain a provision that states precisely when the NRC Staff reviews the financial test provided with a parent company guarantee, or, for that matter, of any other method by which an applicant for a combined license provides financial assurance of decommissioning funding, the regulations do provide that a certification of the method of financial assurance for decommissioning and a final, executed financial instrument are not required until after a license has been issued and the initial loading of fuel has been scheduled.

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<sup>30</sup> 10 C.F.R. 50.75(b)(1), (c), and (e)(3). (Reg. Guide 1.206, Regulatory Position Part IV: Miscellaneous Topics, C.IV.5.4.1, “Estimates of Funding Requirements.”)

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* (citing 10 C.F.R. § 50.75(e)(3)).

It stands to reason that if a COL applicant or licensee can change the method and the financial instrument by which it provides this assurance up to the time the Commission publishes a notice regarding the scheduled initial load of fuel, the financial test that the NRC will review is only relevant once the applicant or licensee is required to and actually commits to use a particular method of providing financial assurance. As the Board noted, “[t]he Commission’s decommissioning funding regulations are intended to ‘minimize administrative effort and provide reasonable assurance that funds will be available to carry out decommissioning funding in a manner that protects public health and safety.’”<sup>33</sup> A parent company’s financial condition, and its ability to pass the NRC’s financial tests, can change over time, and the NRC’s regulations regarding financial tests take this uncertainty into consideration.<sup>34</sup> A requirement that the NRC Staff analyze a financial test for proposed parent company guarantees before a COL applicant or licensee certifies that it will use that particular method and provides a final, executed financial instrument containing the terms of the guarantee and financial test information the NRC Staff would review, would waste the NRC Staff’s limited resources and serve no useful purpose.

The NRC’s regulations contemplate and provide for changes in the method by which applicants or licensees provide reasonable assurance of decommissioning funding, and only require a licensee to commit to a particular method after a license has been issued and the initial loading of fuel has been scheduled. These regulations support the NRC Staff’s position that the decommissioning funding method a combined license applicant may eventually use or

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<sup>33</sup> *Calvert Cliffs 3 Nuclear Project, LLC, and Unistar Nuclear Operating Services, LLC* (Combined License Application for Calvert Cliffs Unit 3), LBP-09-04, \_\_\_ N.R.C. \_\_\_ (March 24, 2009), slip op. at 34 (quoting *Consolidated Energy Co., Entergy Nuclear Indian Point 2, LLC and Entergy Nuclear Operations, Inc.* (Indian Point, Units 1 & 2), CLI-01-19, 54 N.R.C. 109, 142 (2001) (citing General Requirements for Decommissioning Nuclear Facilities, 53 Fed. Reg. 24,018, 24,030 (June 27, 1988))).

<sup>34</sup> 10 C.F.R. § 30, Appendix A, II.C.1 and 2.

the timing of the NRC's financial review of that method and applicable tests do not impact the Commission's decision to grant or deny an application for a combined license.

III. Issues Regarding the Timing of Financial Tests for Methods of Providing Decommissioning Funding Assurance are Immaterial to and Outside the Scope of a Combined License Proceeding

Since the regulations do not require the Applicant to commit to a particular method of providing decommissioning funding assurance in its Application, the NRC is not required to make findings regarding a proposed decommissioning funding method in order to grant or deny the Application for a combined license. In order for a contention to be admissible, the subject matter of the contention must impact the grant or denial of a pending license application.<sup>35</sup> Since no findings regarding a proposed method of providing decommissioning funding assurance are required in order for the Commission to issue or deny a combined license, the timing of parent company guarantee tests submitted with the final financial instrument, which would occur after certification of the method, are not material to the findings the NRC must make to grant or deny the license, and do not raise a genuine dispute with the Applicant on a material issue of law or fact.<sup>36</sup>

Here, the Applicant volunteered that it proposes using a parent company guarantee as one of the methods by which it will eventually provide decommissioning funding financial assurance, but the Applicant is free to change this proposal and select a different method. The NRC's regulations do not require the Applicant to provide or certify a method of providing such financial assurance, or to provide a final, executed financial instrument containing the terms of the guarantee. More importantly, the NRC's regulations do not require the NRC Staff to analyze

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<sup>35</sup> *Virginia Electric and Power Co.* (Combined License Application for North Anna Unit 3), LBP-08-15, 67 NRC \_\_\_ (Aug. 15, 2008) (slip op. at 23) (citing *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 179 (1998)).

<sup>36</sup> 10 C.F.R. § 2.309(f)(1)(iii), (iv), and (vi).

this information or for the Commission to make findings on this information prior to granting or denying the Application for a combined license. Where, as here, an applicant voluntarily provides information which the NRC's regulations do not require and which the NRC Staff is not required to analyze in order for the Commission to grant or deny a combined license, issues concerning that information are outside the scope of the proceeding.<sup>37</sup>

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<sup>37</sup> *Exelon Generating Company, LLC* (Early Site Permit for Clinton ESP Site), LBP-05-19, 62 NRC 134, 179 (July 28, 2005) (citing *Exelon Generating Company, LLC* (Early Site Permit for Clinton ESP Site), LBP-04-17, 60 NRC 229, 241 (2004)).

CONCLUSION

The NRC's regulations do not require a combined license applicant to specify in its application which method it will eventually use to provide financial assurance of decommissioning funding, certify that method, or demonstrate that its proposed method passes the NRC's financial tests. Although the Applicant voluntarily provided information proposing the use of a parent company guarantee to provide financial assurance of decommissioning funding, this information was not required by the regulations that govern the content of the combined license application. As such, any issue regarding the method of providing decommissioning funding assurance, including the timing of financial tests of parent company guarantees, is beyond the scope of this proceeding, is not material to the findings the NRC must make to support this licensing proceeding, and does not demonstrate that a genuine dispute exists with the Applicant on a material issue of law or fact.

Respectfully submitted,

**/Signed (electronically) by/**

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**Executed in Accord with  
10 CFR § 2.304(d)**

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UNITED STATES OF AMERICA

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CERTIFICATE OF SERVICE

I hereby certify that copies of the "NRC Staff's Brief on Decommissioning Funding Assurance" dated May 15, 2009, has been served on the following persons by Electronic Information Exchange on this 15th day of May, 2009:

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**Executed in Accord with  
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