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 RESPONSE TO APPLICANTS' MOTION FOR SUMMARY DISPOSITION OF CONTENTION 7

INTRODUCTION

On February 5, 2010, Applicants (Calvert Cliffs 3 Nuclear Project, LLC and UniStar Nuclear Operating Services, LLC) filed a motion for summary disposition of Joint Intervenors' Contention 7, on low-level radioactive waste (LLRW) issues.

On February 24, 2010, Joint Intervenors submitted a request for an extension of time to reply to this motion, based on unprecedented weather conditions in the Washington, DC area. The ASLB approved this request on February 25, 2010 and extended the reply period until March 4, 2010.

Now Joint Intervenors file a timely response in opposition to Applicants' motion for summary disposition of Contention 7. This response is supported by the attached Statement of Disputed Facts and a Declaration of Diane D'Arrigo of March 4, 2010.

A GENUINE DISPUTE OF MATERIAL FACT REMAINS ON CONTENTION 7

Joint Intervenors do not accept the "Statement of Material Facts on Which No Genuine Dispute Exists" attached to Applicants' motion. Specifically, Joint Intervenors object to Point Number 5 of this document, as indicated in our attached Statement of Disputed Facts.

Thus, Applicants have failed to show the absence of a genuine dispute to any material fact and the contention must remain in effect and subject to hearing on the merits.

APPLICANTS' MOTION AND COL APPLICATION REVISION DO NOT ADEQUATELY ADDRESS THE LANGUAGE OR SUBSTANCE OF CONTENTION 7

While we are pleased that in Revision 6 of its Combined Construction/Operating License application, Applicants have finally acknowledged that the Barnwell, South Carolina radioactive waste site has been unavailable to Applicants for disposal of their low-level radioactive waste since July 2008, the remainder of Applicants' discussion of low-level waste, specifically their Class B and C wastes, is inadequate to address the language or substance of our Contention 7.

Applicants seem to believe that because Contention 7 has been characterized both by the ASLB and the NRC Commissioners as a "contention of omission," Applicants need simply add a few paragraphs of text about some different possible (and, as we argue, not-so-possible) options for their Class B and C waste to be able to cause dismissal of our Contention.

However, as the language of the Contention (as narrowed by this Board) states:

> The ER for CCNPP-3 is *deficient* in discussing its plans for management of Class B and C wastes. In light of the current lack of a licensed off-site disposal facility, and the uncertainty of whether a new disposal facility will become available during the license term, the ER must either describe how Applicant will store Class B and C wastes on-site and the environmental consequences of extended on-site storage, or show that Applicant will be able to avoid the need for extended on-site storage by transferring its Class B and C wastes to another facility licensed for the storage of LLRW. (emphasis added). (LBP-09-04, __ NRC __, slip op. at 66)

The burden on the Applicants is not only to provide information originally lacking in their application (i.e. to cure the omission), it is to provide substantive-enough information to correct the deficiency and "describe how Applicant will store Class B and C wastes on-site and the environmental consequences of extended on-site storage, or show that Applicant will be able to avoid the need for extended on-site storage by transferring its Class B and C wastes to another facility licensed for the storage of LLRW."

Other than acknowledging that the Barnwell facility is closed, Applicants Revision 6 does not correct the deficiency and thus does not change the basis or substance of our contention.

Applicants state that they *expect* "to enter into an agreement prior to initial criticality with an NRC-licensed facility that will process or otherwise accept class B and C LLRW." Yet they provide only one example of such a facility (in Andrews County, Texas) and acknowledge that it is not available to radioactive waste generators outside Texas and Vermont—which means Applicants' proposed CCNPP3 facility does not have access to this site. In that regard, this site is no different from Barnwell and is no solution whatsoever. It is not even a possible remedy to the problem.

Applicants then go on to state that they "*could*" attempt waste minimization measures to reduce the generation of Class B and C wastes. However, there is no commitment by Applicants to do so.

Applicant' assertion is also impermissibly vague. They simply assert, with no documentation other than reference to two generic EPRI studies from 2007, that these waste minimization measures "would extend the capacity of the Solid Waste Storage System to store Class B and C waste to over ten years."

In making this vague statement, the Applicants fail to acknowledge that the Areva EPR they propose to build has never operated anywhere in the world and would be the largest reactor ever built in the United States. Applicants do not show that the measures used in these EPRI documents apply to the EPR reactor. Applicants provide no basis to support the statement that these measures "would extend the capacity of the Solid Waste Storage System to store Class B and C waste to over ten years." For example, there is no discussion of the volume of waste that might be reduced, nor of the radioactivity of that waste, nor whether such measures would increase occupational and/or environmental radiation exposures. In short, this statement is simply inadequate both as an answer to Class B and C waste storage and to correct the deficiency underlying Contention 7.

Applicants go on to state in ER Section 3.5.4.5 that if "additional storage capacity for Class Band C were necessary, CCNPP3 *could* elect to construct a new temporary storage facility." (emphasis added). Again, Applicants make no commitment to construct this facility, or describe its design or the necessary capacity. The NRC's guidance (Appendix 11.4A of the Standard Review Plan, "Design Guidance for Temporary Storage of Low-Level Waste") states, "Before implementing any additional onsite storage capacity, licensees should conduct substantial safety review and environmental assessments to assure adequate public health and safety protections and minimal environmental impact." Applicants have provided no information about any substantial safety review or environmental assessment they may have conducted, thus it is impossible to tell whether this potential option would meet NEPA requirements in this specific case.

Applicants do not describe the duration a temporary storage facility at CCNPP3 would be expected to operate. Appendix 11.4A states, "The longer the intended storage period, the greater

the degree of controls that will be required for radiation protection and accident prevention." Contention 7's concern is over "extended on-site storage." Building a temporary storage facility for an extended period presumably would require the highest amount of controls for radiation protection and accident prevention. Applicants do not describe any levels of controls they would institute.

As for siting such a facility, Applicants state only that it would be "in an appropriate onsite location." This is not a level of detail sufficient for a COL application nor to address the deficiency cited in our Contention. At the minimum, the COL must include information regarding building materials and high-integrity containers so as to permit a determination regarding exposure rates and dosages; a specific designation of where on the Calvert Cliffs site the storage facility will be located; and a discussion of the health impacts on employees from the additional LLRW storage associated with Calvert Cliffs-3.

Finally, Applicants' suggest that they "could enter into a commercial agreement with a third-party contractor to process, store, own, and ultimately dispose of low-level waste generated as a result of CCNPP3 operations." Applicants do not commit to this possible solution, do not name such a third-party contractor and indeed provide no information on whether a third-party contractor even exists that is able to accept radioactive waste from CCNPP3. Thus, Applicants' assurances that "all applicable laws and regulations" would be complied with ring hollow. Again, this possible course for Applicants amounts to no more than a simple, unsupported assertion.

The likelihood that a third party contractor will be available is speculative. In another licensing case, that for Southern Nuclear Company's proposed Vogtle reactors in Georgia, the issue of third-party contractors also has arisen, but with more specificity. For that reason, we

have attached for reference the joint declaration of Joint Intervenors expert witness Diane D'Arrigo and Dr. Arjun Makhijani (an expert witness in the Vogtle proceeding) which describes why two potential third-party contractors (Studsvik and Waste Control Specialists) are, in fact, not viable for extended storage of Vogtle's radioactive waste. We submit that for the same reasons, these contractors are not viable for extended storage of Applicants' Class B and C radioactive waste. We are not aware of other possible third-party contractors.

CONCLUSION

Applicants' revised ER Section 3.5.4.5 is an improvement only to the extent that it finally acknowledges that the Barnwell, South Carolina LLRW disposal facility is not available for the Class B and C radioactive waste that would be produced by CCNPP3.

However, this revision falls woefully short of meeting the concerns addressed in Joint Intervenors Contention 7. No actual plans to address the deficiencies stated in Contention 7 are offered, only four possible approaches (including one possible approach that even Applicants admit is not available to them). Each of the remaining three possibilities consists primarily of assertion, with little to no supporting information or documentation.

This revision provides no information that would assure "the ER's compliance with 10 C.F.R. § 51.45(b) and (e), and to the agency's compliance with NEPA." (LBP-09-04, __ NRC __, slip op. at 70), which underpins Contention 7.

Applicants' Motion for Summary Disposition of Contention 7 should be denied.

Respectfully submitted,

This 4th day of March 2010

_____Signed Electronically by_____

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CERTIFICATE OF SERVICE

It is our understanding that all on the Calvert Cliffs-3 service list are receiving this motion through the submission I am making on March 4, 2010 via the EIE system.

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_____Signed Electronically by_____

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