

**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' STATEMENT OF DISPUTED FACTS
IN RESPONSE TO APPLICANT'S MOTION FOR SUMMARY DISPOSITION OF
CONTENTION 7**

In support of its Motion for Summary Disposition, Applicants submitted a statement of undisputed facts. Joint Intervenors hereby reply to Applicants' submission and contend that there are genuine issues of material fact still in dispute. Where Joint Intervenors contend that no dispute exists, the statement is followed by the word "ADMITTED"; where the matter remains in dispute, the statement is followed by the word "DENIED" and a statement for the basis of denial.

Applicants state: 1. Calvert Cliffs 3 Nuclear Project, LLC, and UniStar Nuclear Operating Services, LLC filed the combined license ("COL") application for Calvert Cliffs Unit 3 on July 13, 2007, and March 14, 2008. The application included an Environmental Report ("ER").

ADMITTED

Applicants state: 2. On November 19, 2008, Nuclear Information and Resource Service ("NIRS"), Beyond Nuclear, Public Citizen Energy Program, and Southern Maryland Citizen's Alliance for Renewable Solutions (collectively "Joint Intervenors") filed their "Petition to

Intervene in Docket 52-016, Calvert Cliffs-3 Nuclear Power Plant Combined Construction and License Application” (“Petition”). Contention 7 alleged that the COL application failed to offer a viable plan for disposal of low-level radioactive waste (“LLRW”).

ADMITTED

Applicants state: 3. In its Memorandum and Order dated March 24, 2009, the Licensing Board admitted a portion of Contention 7 as an environmental “contention of omission.” LBP-09-04, ___ NRC ___, slip op. at 67. Contention 7 was narrowed by the Licensing Board as follows:

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.

ADMITTED. The Commission upheld admission of this contention in an order dated October 13, 2009 (CLI-09-20).

Applicants state: 4. On December 9, 2009, the Applicants provided a response to an NRC Staff question regarding the plan for managing LLRW at Calvert Cliffs Nuclear Power Plant, Unit 3. See Letter to Document Control Desk from Greg Gibson, Vice President of Regulatory Affairs, UniStar Nuclear Energy, UNE#09-510, “Response to NRC Telecom Question Regarding CCNPP Unit 3 Low Level Radioactive Waste Disposal Plans” (ADAMS Accession No. ML093550165). The letter also included revised content for ER Section 3.5.4.5.

ADMITTED, to the best of our knowledge, although we note that we do not know on what date this letter and revised content for ER Section 3.5.4.5 were made public.

Applicants state: 5. The revised text for ER Section 3.5.4.5 describes UniStar's plans for managing low-level waste on site, including the environmental consequences of extended on-site storage. The revised ER language also describes the process for and the environmental and radiological impacts of transferring the Class B and C wastes to another licensed LLRW storage facility prior to eventual disposal.

DENIED

EXPLANATION OF DENIAL: The revised text for ER Section 3.5.4.5 describes no "plans" for management of low-level radioactive waste on site whatsoever. Rather, this revised text contains four possibilities for waste management (one of which, sending the waste to an offsite NRC-licensed facility, is by Applicants' own acknowledgement not even a possibility).

Thus, Applicants briefly describe three possible options, but commit to none of them. A mere list of possible options does not constitute radioactive waste management "plans."

Moreover the brief discussion of each possibility is insufficient to demonstrate "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 is at the heart of our Contention 7.

Applicants' brief discussion of the option of undertaking waste minimization measures contains a simple assertion that such measures "would extend the capacity of the Solid Waste Storage System to store Class B and C waste to over ten years." No basis is provided for this assertion, other than reference to two generic EPRI reports. For example, there is no discussion of the volume of radioactive waste that might be reduced, nor of the radioactivity of that waste,

nor of the potential effect of such measures on occupational and environmental radiation exposures. Applicants do not discuss whether and how measures described in a generic EPRI report apply to the specific Areva EPR reactor proposed, which has never operated anywhere in the world.

Applicants' brief discussion of the possibility of constructing a temporary storage facility does not provide any information on how Applicants would meet the requirements of Appendix 11.4A of the Standard Review Plan, "Design Guidance for Temporary Storage of Low-Level Waste," which 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 not provided any information on whether it has conducted the required "substantial safety review and environmental assessments" much less any information on the outcome of such review and assessments. Applicants have not identified a location for such a facility, do not state for how long such a facility would operate, nor provided any description as to how such a facility would demonstrate "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).

Applicants' briefly discuss the possibility of entering "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 provide no information on whether a third-party contractor even exists that is able to accept radioactive waste from CCNPP3. Thus, 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 and provides no information about “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).

In another reactor licensing case (Southern Nuclear Company application for two units at Vogtle, Georgia), the issue of third party contractors also arose. We attach for reference the joint affidavit of Joint Intervenors expert witness in this proceeding Diane D’Arrigo and of Dr. Arjun Makhijani (an expert witness in the Vogtle proceeding), which describes why the two potentially available third-party contractors 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 CCNPP3’s Class B and C radioactive waste.

The separate declaration of Diane D’Arrigo, in support of this Statement of Disputed Facts, is attached.

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.

JOINT INTERVENORS' STATEMENT OF DISPUTED FACTS IN RESPONSE TO APPLICANT'S MOTION FOR SUMMARY DISPOSITION OF CONTENTION 7

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