

**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 ASLBP No. 09-874-02-COL-BD01

Joint Intervenors believe that it would be premature to hold a hearing on Contention 1 at this time. Joint Intervenors believe summary disposition of this Contention would be inappropriate before a hearing and we would oppose any such motion.

THE FACTS OF CONTENTION 1 HAVE NOT BEEN FULLY ESTABLISHED

Since Contention 1 was first filed in November 2008 there have been numerous changes to the facts in this case, and numerous revisions to the License Application (which is now on Revision 6). Among these changes was a major corporate restructuring by Applicants, which is still in process. Additional relevant facts continue to emerge. For example, just last week the *Baltimore Sun* reported that Applicants have obtained a commitment from COFACE, the French government's export-import bank, for "almost \$2.9 billion in debt financing" for the proposed Calvert Cliffs-3 project.¹ This commitment would increase the stake of the French government in this project contrary to the Atomic Energy Act's prohibitions against foreign ownership, control or domination. We had pointed out the

¹<http://www.baltimoresun.com/news/maryland/bs-md-calvert-cliffs-loan-20100701,0,773855.story>, July 1, 2010.

possibility of COFACE funding for this project in the February 20, 2009 pre-hearing conference and in our response brief of April 24, 2009 to the NRC Commissioners. It now appears that this very significant financing from the French government will materialize.

While we do not know what additional facts may materialize in the coming months, given the continued revelation of facts related to this contention, it is reasonable to assume there may be new relevant developments.

In addition, at this time a Preliminary Safety Evaluation Report has not even been released (and is apparently some months behind schedule), the Safety Evaluation Report with Open Items is not scheduled for release until April 2011,² and the NRC staff has not issued their own finding on the issues raised in Contention 1. Surely it would be impossible for the NRC to take a meaningful position on the issues raised in this contention before publicly issuing their own finding. Such a finding must not be a mere preliminary look at the issues, but a final NRC staff position, and certainly must occur before a hearing can be held.

THERE IS NO URGENCY TO RESOLVE CONTENTION 1

Given that the PSER has not even been released, the initial SER with Open Items has not been released and the Areva EPR design has not been certified by the Commission, there is considerable time before a COL could be granted to Calvert Cliffs-3. This should

² Letter to Applicants from John Rycyna, Senior Project Manager, EPR Projects Branch, Division of New Reactor Licensing, Office of New Reactors, July 14, 2009. Found at: http://adamswebsearch2.nrc.gov/idmws/doccontent.dll?library=PU_ADAMS^PBNTAD01&ID=092030107

provide ample opportunity to allow for consideration of any new relevant facts and for consideration of the NRC staff's position on the issues without causing any delay in the licensing process.

Joint Intervenors have limited resources. Our expert lives in Oregon and it will be costly to bring him here for the hearing when it does occur. It would be extremely burdensome and unfair for us to participate in a hearing that turns out to be premature. It is essential that the hearing encompass all relevant facts, and, at this point, all relevant facts may not be known. Absent a final position by the NRC staff on these issues, and compilation of all relevant facts, a hearing held prematurely could simply result in not reaching a final resolution of the issues and could result in new contentions and additional hearings.

We note that we recently (June 28, 2010) submitted a new contention on this application based on significant new data found in the Draft Environmental Impact Statement and discrepancies between the Applicants Environmental Report and the DEIS. It is certainly conceivable that the release of the PSER and/or other new documents will result in additional new contentions. Thus, holding a hearing on Contention 1 soon would be unlikely to accelerate the licensing process in any event.

**JOINT INTERVENORS SUGGESTED SCHEDULE FOR HEARING ON
CONTENTION 1**

Joint Intervenors suggest that a hearing on Contention 1 be scheduled approximately 30 days after issuance of the Final SER. The issues raised in this contention, which could

lead to denial of a license if Joint Intervenors' position prevails, are simply too fundamental to address without a full examination of all relevant facts—including those that may arise in the coming months—as well as a final understanding of the NRC staff's position and any requirements NRC staff may place on Applicants that are relevant to this contention. We understand that this is consistent with NRC staff's position on scheduling.

As a possible alternative, we would not oppose a hearing scheduled for approximately 60 days after release of the SER with Open Items, with the caveat that the NRC Staff position on the issues raised in Contention 1 and any relevant requirements NRC staff places on Applicants not be among the Open Items (we believe it would be premature to hold a hearing as long as the issues relevant to this Contention are Open Items). This document is currently scheduled for release on April 27, 2011.³ This would still leave more than a year before the planned issuance of the Final SER in July 2012, which should be adequate time for the hearing and any subsequent changes to the Application by Applicants should intervenors prevail on this Contention.

Respectfully submitted,

Michael Mariotte
Nuclear Information and Resource Service

This 8th day of July 2010

³ Ibid.

_____ 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 July 8, 2010 via the EIE system.

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