

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

NRC STAFF ANSWER TO JOINT INTERVENORS' MOTION TO CLARIFY DEADLINE FOR
FILING AMENDED CONTENTION FOR CONTENTION 1

Pursuant to 10 C.F.R. §§ 2.1204(a) and 2.323(c), the staff of the Nuclear Regulatory Commission (NRC Staff) hereby answers the "Motion to Clarify Deadline for Filing Amended Contention for Contention 1," (Intervenors' Motion) filed on November 5, 2010, by Michael Mariotte on behalf of Nuclear Information and Resource Service, Beyond Nuclear, Public Citizen, and Southern Maryland CARES (collectively, Intervenors). For the reasons set forth below, the NRC Staff does not oppose the Intervenors' Motion insofar as it seeks clarification from the Licensing Board as to the deadline for new or amended contentions, but disagrees that a deadline of thirty (30) days from the date an amendment to the combined license (COL) application is the only appropriate deadline the Licensing Board could set. The Staff supports setting a 30-day deadline for new or amended contentions based on the date UniStar Nuclear Operating Services, LLC and Calvert Cliffs 3 Nuclear Project, LLC (collectively, Applicants) file new or materially different information on the licensing docket, including but not limited to revisions to the COL application, responses to Staff requests for additional information (RAIs), or other supplemental information.

BACKGROUND

On July 13, 2007, the Applicants first submitted part of their 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 (CCNPP), Units 1 and 2, near Lusby, Calvert County, Maryland (COLA or Application). UniStar Nuclear LLC; Notice of Receipt and Availability of Part of an Application for a Combined License, 72 Fed. Reg. 45,832 (Aug. 15, 2007).¹ The proposed unit will be known as Calvert Cliffs Nuclear Power Plant, Unit 3 (CCNPP3). *Id.*

On September 26, 2008, the NRC issued a notice of hearing and opportunity to intervene. Calvert Cliffs 3 Nuclear Project, LLC, and UniStar Nuclear Operating Services, LLC Notice of Hearing and Opportunity To Petition for Leave To Intervene and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information for Contention Preparation on a Combined License for the Calvert Cliffs Nuclear Power Plant 3, 73 Fed. Reg. 55,876 (Sept. 26, 2008). The Intervenors timely filed a petition to intervene which alleged, in Contention 1, that CCNPP3 would be owned, dominated and controlled by foreign interests. Petition to Intervene in Docket No. 52-016, Calvert Cliffs-3 Nuclear Power Plant Combined Construction and License Application (Nov. 19, 2008), at 5 (Petition). On March 24, 2009, the Atomic Safety and Licensing Board admitted Contention 1. *Calvert Cliffs 3 Nuclear Project, LLC, and UniStar Nuclear Operating Services, LLC* (Combined License Application for Calvert Cliffs Unit 3), LBP-09-04, 69 NRC 170, 190-196 (2009), *affirmed in relevant part*, CLI-09-20, (slip op. at 8-13) (Oct. 13, 2009) (unpublished memorandum and order).

By letter filed November 3, 2010, the Applicants notified the Licensing Board that Électricité de France, S.A. (EDF), the French limited company that owned 50% of UniStar, had acquired the remaining 50% interest in UniStar from Constellation Energy Group, Inc.

¹ 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.

(Constellation), a U.S. corporation. See Letter of David Repka, Counsel for Applicants, to the Licensing Board, regarding Calvert Cliffs 3 Nuclear Project, LLC, and UniStar Nuclear Operating Services, LLC (Calvert Cliffs Nuclear Power Plant, Unit 3) (Nov. 3, 2010) (ADAMS Accession No. ML1030705200) (Applicants' Letter). The Applicants have stated that they will submit additional information on the licensing docket, including necessary revisions to the COL application and a proposed negation action plan, but have not identified a target date for these submissions. Applicants' Letter at 1 - 2.

DISCUSSION

The Staff notes that the Commission's Rules of Practice contemplate that new and material information may develop during the course of the Staff review, and specifically provide for the treatment of late-filed contentions and petitions to intervene, and new or amended contentions. See 10 C.F.R. § 2.309(c) and (f)(2). This Board has previously ruled that the Intervenor is obligated to file new or amended contentions "in compliance with 10 C.F.R. § 2.309(f)(2), including but not limited to the requirement in Section 2.309(f)(2)(iii) that any new or amended contention must be submitted 'in a timely fashion based on the availability of the [new] information[,]'" but did not establish a specific time for filing new or amended contentions. *Calvert Cliffs 3 Nuclear Project, LLC and UniStar Nuclear Operating Services, LLC* (Calvert Cliffs Unit 3), No. 52-016-COL, Order (Establishing schedule to govern further proceedings) (LBP April 22, 2009), at 6 (unpublished order) (ADAMS Accession No. ML0911205071) (Scheduling Order). The Board also previously declined to create a new deadline for filing new or amended contentions when Revision 3 to the Application was not yet publicly available, holding instead that once the Revision to the Application became publicly available, any new or amended contentions based on new information must comply with the requirements of 10 C.F.R. § 2.309(f)(2). *Calvert Cliffs 3 Nuclear Project, LLC and UniStar Nuclear Operating Services, LLC* (Calvert Cliffs Unit 3), No. 52-016-COL, Order (LBP December 29, 2008), at 1 - 2

(unpublished order) (ADAMS Accession No. ML0836403371).

New and material information may appear in a revision to the Application, but it might first become publicly available on the licensing docket, prior to any revision of the Application, in the form of responses to requests for additional information (RAIs), supplemental letters, or other documents. On November 19, 2010, as part of the Staff's review of the Application, the Staff issued a letter to the Applicants, alerting them that an RAI concerning foreign ownership is forthcoming. See Letter from Joseph Colaccino, Chief, EPR Projects Branch, NRC, to Greg Gibson, Vice President, Regulatory Affairs, UniStar Nuclear Energy (November 19, 2010) (ADAMS Accession No. ML1032105569).² The Applicants' response to the RAI, which may be submitted on the licensing docket prior to any revision of the Application, may contain new and material information. Waiting until the RAI process is complete, which may precede a revision to the Application, to allow the Intervenor to formulate specific contentions may delay the hearing process unnecessarily. *Duke Energy Corporation* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 339 (1999) (citing *Baltimore Gas & Electric Company* (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-25, 48 NRC 325, 350 (1998)).

CONCLUSION

The Staff agrees that a supplemental scheduling order that specifies how many days the Intervenor has from the public availability of new and material information for late-filed and new or amended contentions may help clarify what the Board views as "in a timely fashion based on the availability of the [new] information." Scheduling Order at 6 (quoting 10 C.F.R. § 2.309(f)(2)(iii)). The Staff would agree that allowing thirty (30) days from the date of

² The Staff has also scheduled a public meeting with the Applicants on December 8, 2010, to discuss foreign ownership; this meeting may result in new and material information, as well. See Notice of Forthcoming Public Meeting to Discuss Ownership of UniStar Nuclear Energy, Applicant for Calvert Cliffs Unit 3 (November 18, 2010) (ADAMS Accession No. ML103220056).

availability of new and material information for late-filed and new or amended contentions would be appropriate.³

Respectfully submitted,

/Signed (electronically) by/

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Dated at Rockville, Maryland
this 23rd day of November, 2010

³ The Staff notes that, generally, other licensing boards have allowed 30 days from the date of availability of new and material information for late-filed and new or amended contentions. See, e.g., *Luminant Generation Company, LLC* (Comanche Peak Nuclear Power Plant, Units 3 and 4), at 5 (LBP Oct. 28, 2009) (unpublished order) (ML093010356) (Initial Scheduling Order); *South Texas Project Nuclear Operating Co.* (South Texas Project Units 3 and 4), at 8 (LBP Oct. 20, 2009) (unpublished order) (ML0929305230) (Initial Scheduling Order) (“A motion and proposed new contention...shall be deemed timely...if it is filed either within thirty (30) days of the date when the new and material information on which it is based first becomes available, or within forty (40) days of the issuance of the DEIS with respect to any new and material information contained therein”); *Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), at 6n.6 (LBP Dec. 2, 2008) (unpublished order) (ML0833706081) (Initial Prehearing Order).

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CERTIFICATE OF SERVICE

I hereby certify that copies of NRC Staff Answer to Joint Intervenors' Motion to Clarify Deadline for Filing Amended Contention for Contention 1, have been served upon the following persons by Electronic Information Exchange this 23rd day of November, 2010:

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