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 REPLY TO LICENSING BOARD ORDER ASLBP No. 09-874-02-COL-BD01

Joint Intervenors find no cause "why the Board should not grant summary disposition as to Contention 1, deny authorization to issue the license, and terminate this proceeding." Indeed, we believe this is precisely the action the Board should take.

THE REGULATIONS NEITHER REQUIRE, NOR ALLOW, THE NRC TO REVIEW A LICENSE APPLICATION FROM AN INELIGIBLE APPLICANT

As the Board has noted, the April 6, 2011 NRC staff Determination Letter has found the Applicant ineligible to receive a Construction/Operating License from the Nuclear Regulatory Commission under 10 CFR 50.38, the implementing regulation for the relevant portion of the Atomic Energy Act. Additionally, as noted by the Board, 10 CFR 50.38 not only applies to receiving a license, but also prevents entities falling under its prohibitions from applying for a license, as does 10 CFR 52.75. Thus the current Applicant may neither receive a license, nor apply for a license.

We can find nothing in the regulations that would require, or even allow, the NRC staff to continue reviewing a license application for an ineligible applicant. Indeed, if the NRC staff were required to review license applications from ineligible applicants, it could find itself doing nothing but that, particularly if there were such applicants who wished to gum up the works.

Nor do we find anything in the regulations that suggests the NRC staff has the latitude to continuing reviewing a license application for an ineligible applicant on its own behest. This could lead to an inappropriate diversion of resources away from potentially eligible license applications and other NRC priorities.

In the current situation, we suggest NRC staff resources would be far better used on a thorough examination of the implications of the Fukushima nuclear accident for U.S. nuclear reactors than on a continuing review of a license application by an ineligible applicant.

AN NRC LICENSING PROCEEDING MUST NOT BE AN OPEN-ENDED INVITATION FOR APPLICANTS TO ATTEMPT TO MEET LICENSING CRITERIA AND ELIGIBILITY

In a letter from Applicant to the NRC staff on April 26, 2011[1], the applicant states that "a suitable U.S. partner will be sought" and that the Applicant will attain such a partner "prior to the issuance of a combined operating license."

[1] UN#11-136, Letter from Greg Gibson of UniStar Nuclear to NRC, April 26, 2011.

Leaving aside for the moment that the Applicant does not set the licensing schedule, as seems to be implied here, it appears that the Applicant is seeking an endorsement of an open-ended proceeding that could go on until the Applicant finds "a suitable U.S. partner."

While we recognize that such business affairs may not take place in complete transparency, the Applicant provides no information whatsoever as to whether it has identified a potential partner(s); whether it has been or currently is in any negotiations with a potential partner(s); or any type of time frame at all as to when a partner may be expected to join with Applicant.

Having been ruled ineligible to receive a combined license, the April 26 letter from the Applicant appears to now seek an unlimited amount of time to attempt to become eligible (although we note that our original contention on foreign ownership, control or domination remains). While licensing proceedings can become long affairs (although it is usually Intervenors who are accused to trying to drag things out), we can find nothing in the regulations that could be construed as allowing an ineligible applicant unlimited time to attempt to meet eligibility requirements.

How long must this proceeding wait for the Applicant to become eligible? It already has been six months since Electricite de France became 100% owner of UniStar Nuclear. Should we wait another six months? A year? Ten years? Until the radioactive cesium from Fukushima has decayed?

We also note that an open-ended proceeding would provide unnecessary burden on Joint Intervenors (especially as *pro se* intervenors), who must make monthly disclosures and closely follow a proceeding that appears to be going nowhere, as well as NRC staff, who have more pressing things on their agenda.

EVEN IF APPLICANT FINDS A NEW PARTNER, IT WILL BE A DIFFERENT ENTITY AND SHOULD FILE A NEW LICENSE APPLICATION

In the unlikely event in the post-Fukushima age that the Applicant does manage to find a new U.S. partner and can create a corporate structure that can actually meet the requirements of the Atomic Energy Act, this new entity would, by definition, be a different entity than the one that applied for a license in the first place. As such, the new Applicant should file a new application.

CONCLUSION

Joint Intervenors believe the law (Atomic Energy Act), regulations (10 CFR 50.38 and 10 CFR 52.75) and facts of the case described above point to only one conclusion: the Board should grant summary disposition for Contention 1 in favor of Joint Intervenors, deny a license for the proposed Calvert Cliffs-3 project and terminate this proceeding.

Respectfully submitted,

This 9th day of May 2011
________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 May 9, 2011 via the EIE system.

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