

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))

AFFIDAVIT OF ANNEIESE SIMMONS
CONCERNING CONTENTION 1
FOREIGN OWNERSHIP CONTROL OR DOMINATION

I, Anneliese Simmons (AS), do hereby state as follows:

1. I am employed by the United States Nuclear Regulatory Commission (NRC) as a Financial Analyst in the Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation, Division of Policy

2. A statement of my professional qualifications is attached hereto as Exhibit 1.

3. This Affidavit is prepared in response to the Atomic and Safety Licensing Board's order directing the parties to: "To Show Cause Why the Board Should Not Grant Summary Disposition as to Contention 1, Deny Authorization to Issue the License, and Terminate This Proceeding." See Calvert Cliffs 3 Nuclear Project, L.L.C, and UniStar Nuclear Operating Services, L.L.C (Combined License Application for Calvert Cliffs, Unit 3) (April 18, 2011) (unpublished order) (Adams Accession No. ML111080553).

4. UniStar Nuclear Operating Services, LLC and Calvert Cliffs 3 Nuclear Project, LLC ("Applicant" or "Applicants") have applied, pursuant to 10 C.F.R. Part 52, Subpart C, for a combined license ("COL") to construct and operate a U.S. Evolutionary Power Reactor, designated Unit 3, to be located at the Calvert Cliffs site in Lusby,

Calvert County, Maryland. Applicants are domestic subsidiaries of UniStar Nuclear Energy, LLC (“UniStar”).

5. The purpose of my testimony is to present the NRC analysis with respect to the evaluation of the foreign ownership control or domination (FOCD) issues arising in this proceeding under Contention 1 and NRC request for additional information 281. (RAI 281)

6. Contention 1 challenges the applicant’s ownership structure asserting that the applicant does not meet the statutory or regulatory requirements limiting FOCD.

7. On November 3, 2010, Calvert Cliffs Nuclear Power Plant Unit 3, on behalf of UniStar, filed a letter with the Atomic Safety and Licensing Board panel indicating that Electricite de France (EDF), a foreign business entity, had acquired Constellation’s 50% in UniStar. On November 4, 2010, Constellation filed a Schedule 13D with the U.S. Securities and Exchange Commission confirming this transaction. Due to this change in UniStar’s ownership structure, the Staff issued a request for additional information (RAI) 281 asking UniStar to justify how it met the requirements of Title 10 of the *Code of Federal Regulation* 10 C.F.R. § 50.38. See Agencywide Documents Access and Management System (ADAMS) Accession No. ML103360352.

8. By letter dated January 31, 2011, UniStar submitted its response to Staff’s request for additional information along with revisions to the ownership and financial information provided in the Applicants COL application. See Calvert Cliffs 3 Nuclear Project, LLC and UniStar Nuclear Operating Services, LLC, Response to Staff Request for Additional Information 281 (January. 31, 2011) (Response to RAI 281). UniStar’s response included its Negation Action Plan (Negation Plan) for the Staff’s review. Id.

9. I reviewed UniStar’s Response to RAI 281, After completion of my review I determined that UniStar’s Response to RAI 281, and therefore the underlying

application, did not satisfy the requirements of 10 C.F.R. § 50.38. My review is set forth below.

10. UniStar is 100% owned by a foreign corporation. UniStar has provided a Negation Action Plan in its application and supplements. According to the Applicant, the Negation Action Plan describes the controls implemented to assure that the governance of UniStar Nuclear Energy, LLC (UniStar) and the licensed activities undertaken by Calvert Cliffs 3 Nuclear Project, LLC and UniStar Nuclear Operating Services, LLC are not subject to FOCD within the meaning of 10 C.F.R. § 50.38 and Section 103.d of the Atomic Energy Act of 1954, as amended (Section 103.d of the Act). The Applicant stated that the measures described effectively negate the risk that UniStar's foreign owned parent companies might exercise control, domination, or influence over matters that are required to be under U.S. control pursuant to the terms of 10 C.F.R. § 50.38 and Section 103.d of the Act.

11. I reviewed the Response to RAI 281 as provided by the Applicant. EDF is a foreign corporation and holds 100% ownership interest in UniStar. This was confirmed by UniStar's November 3, 2010 filing with the Board indicating that EDF, a foreign business entity, had acquired Constellation Energy's 50% interest in UniStar. On November 4, 2010, Constellation Energy Group Inc. filed Schedule 13D with the United States Securities and Exchange Commission confirming the acquisition of Constellation Energy's former interest in UniStar by EDF. See Change of Ownership Letter at 1.

12. As stated in the Standard Review Plan (SRP), an applicant is considered to be owned, controlled or dominated whenever a foreign interest, has the power, whether or not exercised, to direct or decide matters affecting the management or operations of the applicant. See Final Standard Review Plan on Foreign Ownership, Control or Domination 64 Fed. Reg. 52,355, 52,358 (September 28, 1999) (SRP). SRP at 3.2. In this instant case, EDF, as the 100% owner of UniStar, exercises extensive and

broad authority over UniStar and the intermediate companies. Non U.S. Citizen representatives of EDF sit on the boards of directors of all the intermediate companies from the parent to the licensee. EDF has the authority to appoint managers and key officers for all the intermediate authorities. Thus, I concluded that EDF exercises both direct and indirect influence over the applicant in the governance structure.

13. The Negation Plan Does Not Negate the FOCD issues.

In response to RAI 281, the Applicant submitted a Negation Plan. See Response to RAI 281, Enclosure 3, Negation Action Plan. The Negation Action Plan includes a number of measures to ensure that there is U.S. control over matters related to nuclear safety, security and reliability. Specifically, the negation action plan includes two key measures: the Security Subcommittee and the Nuclear Advisory Committee (NAC). After reviewing the Negation Plan, including all factors in combination, I concluded the Negation Plan does not sufficiently negate EDF's ownership, control or domination of UniStar and therefore fails to satisfy the FOCD requirements of the AEA or 10 C.F.R. § 50.38.

Although the delegation of specific decision-making authorities to the Security Subcommittee negates to some degree direct foreign control and domination over NRC-licensed activities by delegating specific decisions to U.S. citizen directors, it is insufficient to fully negate both direct and indirect foreign control and domination of UniStar for the following reasons: EDF exercises control and domination over the Board because it appoints the directors, including those who serve on the Security Subcommittee; and EDF exercises control over strategic, operational, personnel and financing decisions to such an extent that it undermines the ability of the Security Subcommittee to exercise any meaningful oversight over nuclear safety, security and reliability. Decisions, including indirect decisions, which affect the organizational safety culture cannot be readily sequestered from management, including the Board of Directors of a parent company.

14. Applicants Response to RAI 281, at page 19, describes the role of the NAC. Response to RAI 281, at 19. The NAC (either in combination with the Security Subcommittee or independently) does not negate foreign ownership control or domination for several reasons. First, members of the Nuclear Advisory Committee are appointed by the Board of Directors whose members, in turn, are appointed by EDF. The members of the NAC are subject to reappointment by the same Board to which they are expected to provide “ongoing independent assessment” of issues related to nuclear safety, security and reliability . Second, members of the NAC are non-voting, they have no authority to impose or decide matters related to FOCD. Finally, the actions and decisions of the NAC do not provide “transparency” to the NRC or other authorities as stated in the application. The negation action plan lacks reporting requirements to or from the NAC, beyond an annual report to the Board, and does not describe any procedures that would safeguard against decision makers circumventing NAC involvement. Without specific and on-going reporting requirements, decision makers have the potential to exclude, ignore or circumvent the NAC and its participation, recommendations or decisions. Thus, I conclude that the NAC lacks precautions to ensure that the NAC membership is sufficiently neutral, independent, and free from the influence of special interests. See Simmons Affidavit at 5.

15. With respect to financial influence, I found that EDF exercises both indirect and direct influence over the applicant due to its financial support of the applicant. See Response to RAI 281, at Part 1, General Information Section 1.0, subsections 1.1 to 1.1.2.10, pages 1-1 to 1-11. UniStar’s sole source of income is via EDF and there are numerous financial and contractual commitments with EDF. Id at subsection 1.2 page 1-13. Additionally, I found that UniStar has established financial ring-fencing measures, including establishing a U.S. owned Class B Member holding a nominal share with special voting rights to protect against an insolvent parent such as

EDF siphoning off assets by forcing UniStar into voluntary bankruptcy. Ring fencing is a method by which corporations attempt to isolate or insulate one or more entity from direct or indirect financial or corporate impacts.

16. I concluded UniStar has not demonstrated its financial viability - independent of the foreign interest. I note that the fact that EDF's lenders required the ring fencing may indicate that lenders may share my view. I concluded that the ring fencing measures address only a single, speculative component of the UniStar's financial structure. I concluded that the proposed bankruptcy protection measures, as established by setting up GSS Holdings Inc. as a bankruptcy remote entity, does not protect UniStar from the overarching indirect financial control and domination of EDF, including control of overall corporate strategy, corporate investments, and financial management.

17. Finally, I note that non-U.S. citizens are responsible for staffing of key positions. UniStar is dependent on the financial backing of EDF and its majority shareholder, the government of France.

18. A license cannot be granted to UniStar under these circumstances. Thus, taken together, I concluded that the current ownership structure of UniStar does not comply with 10 C.F.R. 50.38 or Section 103d of the Atomic Energy Act. EDF, via its 100% ownership of UniStar, exercises active and broad control over corporate governance and management decisions.

19. I declare under penalty of perjury that my statements set forth above and in my statement of professional qualifications attached hereto is true and correct to the best of my knowledge, information and belief.

Executed in Accord with 10 C.F.R. §
2304(d)

Anneliese Simmons
Financial Analyst

Executed at Rockville, Maryland
this 9th day of May, 2011

Anneliese Simmons
Statement of Professional Qualifications

CURRENT POSITION

Financial Analyst
Division of Policy and Rulemaking
Office of Nuclear Reactor Regulation
U.S. Nuclear Regulatory Commission
Washington, D.C

EDUCATION

M.P.P., Public Policy, University of Maryland
B.A., Political Science and French, University of Kansas

PROFESSIONAL

Financial Analyst Technical Qualification, NRC, 2009

QUALIFICATIONS

Ms. Simmons has over 18 years of professional experience at various federal agencies and nonprofit organizations. Her background is in international development and trade, with a focus on financial policy. After completing her bachelor's degree in 1989, she spent six years in Africa working for the U.S. Peace Corps. After returning to the U.S., her career has been focused on budget and financial management for the Library of Congress, the International Trade Administration and several private sector organizations. She earned her Master's Degree in Public Policy with a concentration in finance in 2006.

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STATEMENT OF MATERIAL FACTS
ON WHICH NO GENUINE DISPUTE EXISTS

The staff of the U.S. Nuclear Regulatory Commission (Staff) submits, in support of its response to the Board's show cause order, this statement of material facts, to which the Staff contends that there is no genuine issue to be heard.

(1) The Applicants for the Calvert Cliffs Nuclear Power Plant Unit 3 are Calvert Cliffs Nuclear Project, L.L.C., and UniStar Nuclear Operating Services, L.L.C. (UniStar); See Letter from Greg Gibson (UniStar Nuclear Energy) to Surinder Arora (NRC) (January. 31, 2011) (ML110380423) Part 1, General Information Section 1.0 at pg. 1.2.

(2) Calvert Cliffs 3 Nuclear Project, L.L.C. is a limited liability company and is an indirect subsidiary of UniStar Nuclear Energy, L.L.C. - through UniStar Nuclear Holdings, LLC., and UniStar Project Holdings, LLC which operate as holding companies; Id.

(3) UniStar Nuclear Energy L.L.C. is owned by EDF Inc.; Id at 1-6.

(4) UniStar is an indirect subsidiary of UniStar Nuclear Energy, L.L.C., a U.S. company; Id at 1-2.

(5) UniStar Nuclear Energy is owned by EDF Inc.; Id.

(6) EDF Inc. is an indirect subsidiary of Electricite de France S.A (EDF). Id at 1-5

(7) EDF is a foreign corporation; Id. at 1-3.

(8) A foreign government owns 84.5% of the shares of EDF; Id. at 1-3.

(9) The EDF Board of Directors consists of 18 members – 6 appointed by shareholders, 6 appointed by a foreign government and 6 employee representatives; Id. at 1-3 to 1-4.

(10) The EDF Board of Directors appoints the directors and key officers of the subsidiaries; Id.

(11) UniStar has no separate source of financial support; Id. at 1-13.

(12) GSS Holdings Inc. is a Class B Member of Calvert Cliffs 3 Nuclear Project. According to the Applicants, as mandated by lenders, the Class B Member's consent is required for Calvert Cliffs 3 Nuclear Project to seek bankruptcy protection. Id. at 1-9.; and,

(13) GSS Holdings has limited responsibilities and only holds a non-economic interest in Calvert Cliffs 3 Nuclear Project. Id. at 1-9.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Notice, informing the Atomic Safety licensing Board and the parties of the availability of the letter, has been served upon the following persons by Electronic Information Exchange:

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Respectfully submitted,

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Dated at Rockville, Maryland
this 9th day of May, 2011