

ORDER NO. 82741

IN THE MATTER OF THE APPLICATION OF	*	BEFORE THE
UNISTAR NUCLEAR ENERGY, LLC AND	*	PUBLIC SERVICE COMMISSION
UNISTAR NUCLEAR OPERATING SERVICES,	*	OF MARYLAND
LLC FOR A CERTIFICATE OF PUBLIC	*	_____
CONVENIENCE AND NECESSITY TO	*	CASE NO. 9127
CONSTRUCT A NUCLEAR POWER PLANT AT	*	_____
CALVERT CLIFFS IN CALVERT COUNTY,	*	
MARYLAND.	*	

ORDER GRANTING APPLICANTS' MOTION TO DISMISS APPEALS AND DENYING UNTIMELY PETITIONS TO INTERVENE

On November 13, 2007, UniStar Nuclear Energy, LLC and UniStar Nuclear Operating Services, LLC filed a joint application for a Certificate of Public Convenience and Necessity to construct a new nuclear power plant at Calvert Cliffs in Calvert County, Maryland (“Application”) with the Public Service Commission (“the Commission”). The Commission considered the Application at its Administrative Meeting on November 28, 2007 and determined that a proceeding should be instituted and a hearing held on the Application.¹

By Order No. 81745, issued on December 6, 2007, the Commission initiated Case No. 9127 to consider the application while delegating certain motions and discovery matters to the Hearing Examiner Division.² A pre-hearing conference was held on January 4, 2008, notice of which was published in newspapers of general circulation

¹ During the course of this proceeding, co-Applicant UniStar Nuclear Energy, LLC has been replaced by Calvert Cliffs 3 Nuclear Project, LLC, so that the co-Applicants at the conclusion of the proceeding are UniStar Nuclear Operating Services, LLC and Calvert Cliffs 3 Nuclear Project, LLC, who are collectively referred to as the “Co-Applicants” or “Company” in this proceeding and in this order.

² By letter dated January 28, 2008, the conduct of the entire proceeding was delegated to the Hearing Examiner Division.

throughout Calvert County as well as the Baltimore-Washington area.³ At the pre-hearing conference, petitions for intervention were granted to various parties and a procedural schedule was established including filing of testimony and rebuttal, with hearings scheduled for August 2008.⁴

Pursuant to the procedural schedule,⁵ evidentiary hearings were held on August 11 and 12, 2008 in Dowell, Maryland, while the evening hearings for receipt of public comment were held on August 4, 11, and 19, 2008 in Solomons, Maryland, notice of which were again published in The Baltimore Sun, The Washington Post, The Calvert Independent, and The Calvert Recorder.⁶ In addition, following the recommendation of the PPRP to grant the application subject to various licensing conditions, an additional evening hearing for further public comment on the Air Permit aspects of the application was held on March 9, 2009, at the Solomons, Maryland location of the prior evening hearings, notice of which was also published in the same newspapers.

On April 28, 2009, the Hearing Examiner issued a Proposed Order that would grant a Certificate of Public Necessity to construct a nuclear power plant at Calvert Cliffs

³ Notice was published in the Calvert Independent, The Calvert Recorder, The Baltimore Sun, and the Washington Post.

⁴ In addition to the Co-Applicants noted above, the admitted parties are the Office of People's Counsel ("OPC"), which represents residential and non-commercial customers of utility services in Maryland pursuant to Sections 2-204 and 2-205 of the PUC Article; the Technical Staff of the Commission ("Staff"), who participate as a party pursuant to Section 3-104 (e) of the PUC Article; and the Power Plant Research Program of the Maryland Department of Natural Resources ("PPRP"), which coordinates the review of the proposed project by various State agencies in accordance with Sections 3-304 and 3-306 of the Natural Resources Article. Also granted interventions as parties in this proceeding are the following petitioners that are concerned with nuclear generation and the proposed project and participated through joint counsel in this case: Maryland Public Interest Research Group, Nuclear Information and Research Service, Public Citizen, and Beyond Nuclear at Nuclear Policy Research Institute ("NPRI") (collectively, "Joint Interveners").

⁵ At a status conference held on May 29, 2008, revised procedural dates were established, with the hearings remaining for August which included three evening hearings for receipt of public comment.

⁶ The locations of both the evidentiary and evening hearings were held in meetings rooms of local hotels in very close proximity to one another, both of which locations are located in Calvert County, Maryland near the Calvert Cliffs site.

in Calvert County, Maryland. Pursuant to Section 3-113 (d)(2) of the Public Utility Companies Article (“PUC Article”), the Proposed Order would become a final order of the Commission on May 29, 2009, unless an appeal were to be noted prior to that date, or unless the Commission were to modify or reverse the Proposed Order or initiate further proceedings as provided in Section 3-114 (c)(2) of the PUC Article.

On May 27, 2009, William D. Johnston, III, joined by Peter Vogt and Bruce Gordon filed a purported Notice of Appeal of the Proposed Order. On the same day, a purported Notice of Appeal was also filed by Cathy Garger. On May 28, 2009, Chris Bush filed a purported Notice of Appeal. On June 2, 2009, June Sevilla filed a purported Notice of Appeal.⁷ The Notice of Appeal filed by Messrs. Johnston, Vogt and Gordon included a statement of intent to include a Motion to Intervene in their Memorandum on Appeal. Bush’s Notice of Appeal also included a Petition to Intervene.⁸ Neither Ms. Garger nor Ms. Sevilla asked to intervene.

On June 4, 2009, the Co-Applicants filed a Motion to Dismiss Appeals. They argue that the Appeals of Johnston, Vogt, Gordon, Garger, Bush and Sevilla should be dismissed by the Commission because none of these individuals is a party to the present proceedings and, therefore, none has standing to appeal. Further, they assert, the Commission should deny the Motions to Intervene of Johnston, Vogt, Gordon and Bush

⁷ On May 27, 2009, the Office of People’s Counsel also had filed a Notice of Appeal of the Proposed Order of the Hearing Examiner in this matter. On June 4, 2009, however, it filed a Withdrawal of its Notice of Appeal.

⁸ In addition to these new Motions to Intervene, Mr. Johnston also filed an Appeal of the Hearing Examiner’s July 11, 2008 decision denying his prior Motion to Intervene. We have reviewed the Hearing Examiner’s six-page opinion denying Johnston’s Motion to Intervene of May 29, 2008 and see no reason to disturb his findings. Noting that this initial Petition for Intervention was “very untimely,” as it was filed nearly five months after the deadline, the Hearing Examiner found that “[m]ost importantly, however, Mr. Johnston fails to demonstrate in his Motion that intervention should be granted as he fails to state any interests that are not adequately represented by the parties in this proceeding as specified under § 3-106 (b)(i) of the PUC Article.” Mr. Johnston has not presented any fact or legal argument to support a reversal of the Hearing Examiner’s denial of the Motion to Intervene.

because they are filed long past the appropriate time for their consideration. The Commission agrees.

The Commission has considered and now denies these post-Proposed Order Motions to Intervene. Pursuant to the December 14, 2007 Notice of Pre-hearing Conference, petitions to intervene were to be filed by January 2, 2008. As noted above, at the direction of the Hearing Examiner, UniStar published public notice concerning petitions to intervene in several different newspapers on several separate occasions. Each public notice specified that “[p]ersons interested in intervening in the matter should file a petition to intervene by January 2, 2008....”

To become a party in this proceeding, an individual must comply with the requirements for intervention set forth in PUC Article § 3-106(a), which requires, among other things, a timely petition.⁹ These parties seek to intervene nearly eighteen months after the deadline and more than two months after the final close of the record, and after a process that included multiple public hearings. None of these individuals has claimed to be unaware of the intervention deadline or offered any reason why intervention should be allowed at this late date. The Commission finds no basis on which it can grant these interventions now, under these circumstances, and denies the motions and petitions.

Because these putative intervenors are not parties to the present proceeding, they are not eligible to appeal the Proposed Order of the Hearing Examiner. Therefore, these parties lack standing to challenge the Proposed Order at this point¹⁰ and their appeals are

⁹ See *Clipper Windpower Inc. v. Sprenger*, 399 Md. 539, 562 (2007) (“compliance requires, at a minimum, the timely filing of an application to intervene.”).

¹⁰ See also *Zapco Development Corporation*, Case No. 8889, Order No. 80311 (September 30, 2005) wherein the Commission dismissed an appeal of a Hearing Examiner’s Proposed Order granting a CPCN on the ground that the petitioner lacked party status in the proceeding.

dismissed. And with the dismissal of these appeals and OPC's withdrawal of its appeal (which the Commission hereby grants), the Proposed Order is a final Order of the Commission.¹¹

IT IS THEREFORE, this 26th day of June, in the year Two Thousand Nine, by the Public Service Commission,

ORDERED: (1) That the Motions to Intervene filed by William Johnston, Peter Vogt, Bruce Gordon and Chris Bush are denied.;

(2) That the Appeals of the Proposed Order of the Hearing Examiner filed by William Johnston, Peter Vogt, Bruce Gordon, Cathy Garger, Chris Bush and June Sevilla are dismissed;

(3) That the Withdrawal of Notice of Appeal by OPC is granted;
and

(4) That the Proposed Order of Hearing Examiner is affirmed; and

(5) That the docket in this proceeding is closed.

By direction of the Commission,

/s/ T. J. Romine

Terry J. Romine
Executive Secretary

¹¹ See PUC Article, § 3-113(d)(2)(i) (a Proposed Order becomes final “unless a *party* to the proceeding notes an appeal with the Commission within the time period designated in the proposed order.”) (emphasis added).