

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Ronald M. Spritzer, Chairman  
Dr. Gary S. Arnold  
Dr. William W. Sager

In the Matter of

CALVERT CLIFFS 3 NUCLEAR PROJECT,  
LLC, and UNISTAR NUCLEAR OPERATING  
SERVICES, LLC

(Combined License Application for Calvert Cliffs  
Unit 3)

Docket No. 52-016-COL

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

April 18, 2011

ORDER

(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)

UniStar Nuclear Operating Services, LLC and Calvert Cliffs 3 Nuclear Project, LLC (“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”).<sup>1</sup>

Joint Intervenors’ Contention 1, which the Board admitted, alleges that “[c]ontrary to the Atomic Energy Act and NRC Regulations, Calvert Cliffs-3 would be owned, dominated and controlled by foreign interests.”<sup>2</sup> Section 103(d) of the Atomic Energy Act (AEA) prohibits the

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<sup>1</sup> Letter from David A. Repka, Counsel for Calvert Cliffs 3 Nuclear Project, LLC and UniStar Nuclear Operating Services, LLC, to Calvert Cliffs Board (Nov. 3, 2010) at 1 [hereafter UniStar Letter].

<sup>2</sup> See Petition to Intervene in Docket No. 52-016, Calvert Cliffs-3 Nuclear Power Plant Combined Construction and License Application (Nov. 19, 2008) at 5. The Board has

NRC from issuing a reactor license to “any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government.”<sup>3</sup> Under 10 C.F.R. § 50.38, “Ineligibility of certain applicants,” “[a]ny person who is a citizen, national, or agent of a foreign country, or any corporation, or other entity which the Commission knows or has reason to believe is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government, shall be ineligible to apply for and obtain a license.” In addition, 10 C.F.R. § 52.75, which applies specifically to applications for combined licenses under 10 C.F.R. Part 52, Subpart C, provides that “[a]ny person except one excluded by § 50.38 of this chapter may file an application for a combined license for a nuclear power facility with the Director, Office of New Reactors or Director, Office of Nuclear Reactor Regulation, as appropriate.” Thus, the regulations not only appear to prohibit issuing a COL to an entity owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government; they also seem to prohibit the filing of a COL application by such an entity.

From the commencement of this proceeding until November 3, 2010, UniStar was owned in near-equal shares, through intermediate parent companies, by Constellation Energy Group, Inc. (“Constellation”), a U.S. corporation, and Electricite de France, S.A. (“EDF”), a French limited company.<sup>4</sup> On November 3, 2010, Applicants filed a letter with this Board indicating that EDF had acquired Constellation’s 50 percent interest in UniStar.<sup>5</sup> On November

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previously found that Joint Intervenors have standing and granted their request for a hearing. See Calvert Cliffs 3 Nuclear Project, LLC (Calvert Cliffs Nuclear Power Plant, Unit 3), LBP-09-04, 69 NRC 170 (2009).

<sup>3</sup> 42 U.S.C. § 2133(d).

<sup>4</sup> UniStar Letter at 1.

<sup>5</sup> Id.

4, 2010, Constellation filed a Schedule 13D with the U.S. Securities and Exchange Commission confirming this transaction.<sup>6</sup>

In response to this change in UniStar's ownership structure, the NRC Staff issued request for additional information ("RAI") 281, which asked UniStar to explain how it met the foreign ownership, control, or domination regulations contained in 10 C.F.R. § 50.38.<sup>7</sup> On January 31, 2011 UniStar submitted its response to RAI 281, along with revisions to the ownership and financial information contained in the Calvert Cliffs Unit 3 COL application, for the NRC Staff's review.<sup>8</sup> Included in UniStar's response to RAI 281 was UniStar's proposed Negation Action Plan, which provided guidance intended to ensure negation of potential foreign ownership, control, or domination of Calvert Cliffs Unit 3.<sup>9</sup>

On April 6, 2011 the NRC Staff issued a Determination Letter in which it informed UniStar that it had completed its review of the response to RAI 281 and determined that the COL application does not meet the foreign ownership, control, or domination requirements contained in 10 C.F.R. § 50.38.<sup>10</sup> The NRC Staff cited three bases underlying its determination that the COL application, as revised, fails to meet the requirements set out in 10 C.F.R. § 50.38: "(1) UniStar is 100 percent owned by a foreign corporation (EDF), which is 85 percent owned by the French Government; (2) EDF has the power to exercise foreign ownership, control, or

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<sup>6</sup> Letter from David B. Matthews, Director, Division of New Reactor Licensing, Office of New Reactors, U.S. NRC, to George Vanderheyden, President and CEO, UniStar Nuclear Energy (Apr. 6, 2011) at 1 [hereinafter NRC Determination Letter].

<sup>7</sup> Email from Surinder Arora, Project Manager, Office of New Reactors, U.S. NRC, to Robert Poche (Dec. 12, 2010) at 3.

<sup>8</sup> Letter from Gregory T. Gibson, Vice President, Regulatory Affairs, UniStar Nuclear Energy, LLC, to Document Control Desk, U.S. NRC (Jan. 31, 2011) at 1.

<sup>9</sup> Letter from Gregory T. Gibson, Vice President, Regulatory Affairs, UniStar Nuclear Energy, LLC, to Document Control Desk, U.S. NRC (Jan. 31, 2011), Enclosure 1, at 2.

<sup>10</sup> NRC Determination Letter at 1. Although the COL applicants are UniStar Nuclear Operating Services, LLC and Calvert Cliffs 3 Nuclear Project, LLC, the NRC Staff's correspondence was directed to UniStar, their corporate parent. See id.

domination over UniStar; and (3) the Negation Action Plan submitted by UniStar does not negate the foreign ownership, control or domination issues discussed above.”<sup>11</sup> The NRC Staff stated in its April 6, 2011 letter that it would continue its review of the COL Application for Calvert Cliff Unit 3 while UniStar “considers its options to move forward,” but that no license would be issued until the requirements of 10 C.F.R. § 50.38 were met.<sup>12</sup>

Given the NRC Staff’s determination that the COL application violates 10 C.F.R. § 50.38, and thus that UniStar and its subsidiaries are not persons lawfully entitled to apply for and obtain a COL, it appears that the Staff has resolved the issue raised by Contention 1 against the Applicants. The Board therefore directs the parties to show cause by May 9, 2011 why the Board should not grant summary disposition as to Contention 1, deny authorization to issue the license, and terminate this proceeding. The Parties will have until May 23, 2011 to respond to the arguments contained in the May 9, 2011 filings. The Board will not enforce specific page limitations for the parties’ filings, but it expects that they will exercise reasonable judgment in light of the issues presented.

Once the Board has reviewed the parties’ filings and responses, it will determine whether a hearing on this issue would be appropriate and notify the parties if it decides to conduct a hearing.

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<sup>11</sup> Id.

<sup>12</sup> Id. The NRC Staff also indicated in its April 6, 2011 letter that it would support a public meeting with UniStar to discuss its review of this issue and that it would continue to finalize the final environmental impact statement for this proceeding. Id.



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NUCLEAR REGULATORY COMMISSION

In the Matter of )  
)  
CALVERT CLIFFS 3 NUCLEAR PROJECT, LLC. )  
AND UNISTAR NUCLEAR OPERATING )  
SERVICES, LLC ) Docket No. 52-016-COL  
)  
(Calvert Cliffs 3 Nuclear Project, LLC) )  
(Combined License) )

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing ORDER (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) have been served upon the following persons by Electronic Information Exchange.

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[Original signed by Christine M. Pierpoint]  
Office of the Secretary of the Commission

Dated at Rockville, Maryland  
this 18<sup>th</sup> day of April 2011