

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

August 30, 2012

ORDER

(Granting Summary Disposition of Contention 1)

This adjudicatory proceeding arises from an application by UniStar Nuclear Operating Services, LLC, and Calvert Cliffs 3 Nuclear Project, LLC, (Applicants) for a combined license (COL) to construct and to operate one U.S. Evolutionary Power Reactor (U.S. EPR), designated Unit 3, to be located at the existing Calvert Cliffs site in Lusby, Calvert County, Maryland.<sup>1</sup> Applicants are subsidiaries of UniStar Nuclear Energy, LLC (UniStar), a Delaware corporation.<sup>2</sup>

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<sup>1</sup> See 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 Unit 3, 73 Fed. Reg. 55,876 (Sept. 26, 2008).

<sup>2</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 [hereinafter UniStar Letter].

For the reasons set forth below, the Board grants summary disposition in favor of Joint Intervenors as to Contention 1 and finds Applicants ineligible to obtain a license because they are owned by a United States (U.S.) corporation that is 100 percent owned by a foreign corporation. As such, Applicants fail to meet the requirements of Section 103(d) of the Atomic Energy Act (AEA) and 10 C.F.R. § 50.38.

The Board is also issuing today its Partial Initial Decision (PID) resolving the other pending contention (Contention 10C). In accordance with precedent delineated by the Commission in the North Anna proceeding,<sup>3</sup> if Applicants fail to find a domestic partner within 60 days of this ruling, this proceeding will be terminated.

A license cannot be issued in this proceeding until the ownership issue is properly corrected. Should the foreign ownership situation change, Applicants may motion to reopen the record in accordance with 10 CFR § 2.326.

#### I. BACKGROUND

Joint Intervenors' Contention 1, which the Board admitted in its March 24, 2009, Memorandum and Order, 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>4</sup> 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 Électricité de France, S.A. (EDF), a French corporation.<sup>5</sup>

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<sup>3</sup> Virginia Electric and Power Company d/b/a Dominion Virginia Power and Old Dominion Electric Cooperative (Combined License Application for North Anna Unit 3), CLI-12-14, 75 NRC \_\_, \_\_ (slip op. at 10) (June 7, 2012) ("[T]he longstanding practice in our proceedings [is] that [] once all contentions have been decided, the contested proceeding is terminated.").

<sup>4</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 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>5</sup> UniStar Letter at 1.

On November 3, 2010, Applicants filed a letter with the Board stating that EDF had acquired Constellation's 50 percent interest in UniStar, thus making EDF the sole owner of UniStar.<sup>6</sup> On November 4, 2010, Constellation filed a Schedule 13D with the U.S. Securities and Exchange Commission confirming this transaction.<sup>7</sup>

Based on this letter, the NRC Staff issued a request for additional information (RAI), RAI 281, that asked UniStar to explain how it complies with the foreign ownership, control, or domination regulations contained in 10 C.F.R. § 50.38, given that Applicants are 100 percent owned by UniStar, which in turn is now 100 percent owned by a foreign corporation—namely EDF.<sup>8</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.<sup>9</sup> Included in UniStar's response to RAI 281 was a proposed "Negation Action Plan," which proposed measures intended to ensure negation of potential foreign ownership, control, or domination of Calvert Cliffs Unit 3.<sup>10</sup> Such measures include the establishment of a "Security Subcommittee" of its Board of Directors, made up of U.S. citizens, who have the exclusive right to exercise the Board of Director's authority over matters that are required to be under U.S. control.<sup>11</sup>

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<sup>6</sup> Id.

<sup>7</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>8</sup> Email from Surinder Arora, Project Manager, Office of New Reactors, U.S. NRC, to Robert Poche (Dec. 12, 2010) at 3.

<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) at 1.

<sup>10</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 [hereinafter Proposed Negation Action Plan].

<sup>11</sup> Id. at 3.

On April 6, 2011, the NRC Staff issued a Determination Letter in which it informed UniStar that it had completed its review of UniStar's response to RAI 281 and determined that the COL application did not meet the foreign ownership, control, or domination requirements contained in 10 C.F. R. § 50.38.<sup>12</sup> In that letter, the NRC Staff outlined 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 domination over UniStar; and (3) the Negation Action Plan submitted by UniStar does not negate foreign ownership, control or domination issues discussed above."<sup>13</sup> Further, the NRC Staff stated that it would continue to review the Calvert Cliffs Unit 3 COL application while UniStar "considers its options to move forward," but that a license would not be issued unless the requirements of 10 C.F.R. § 50.38 were met.<sup>14</sup>

In response to the NRC Staff's Determination Letter, on April 18, 2011, the Board issued an Order directing the parties to show cause why the Board should not grant summary disposition as to Contention 1, deny authorization to issue the license, and terminate the proceeding.<sup>15</sup> Joint Intervenors filed a response in support of summary disposition and Applicants filed a response opposing summary disposition. The NRC Staff's response did not oppose summary disposition.<sup>16</sup> The Board held oral argument on July 7, 2011, in the Atomic

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<sup>12</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 Proposed Negation Action Plan at 2.

<sup>13</sup> NRC Determination Letter at 1.

<sup>14</sup> Id.

<sup>15</sup> Licensing Board 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) (Apr. 18, 2011) at 4 (unpublished) [hereinafter Show Cause Order].

<sup>16</sup> Applicants' Response to Show Cause Order (May 9, 2011) at 1 [hereinafter Applicants' Show Cause Response]; Joint Intervenors Reply to Licensing Board Order ASLBP No. 09-874-02-

Safety and Licensing Board Panel's hearing room in Rockville, Maryland, to discuss: "(1) the parties' responses to the Board's April 18, 2011 Order; and (2) whether an evidentiary hearing should proceed on Contention 10C were the Board to grant summary disposition as to Contention 1."<sup>17</sup>

On August 26, 2011, the Board issued a Memorandum and Order in which it deferred ruling on Contention 1 until the issuance of the Board's Partial Initial Decision on Contention 10C.<sup>18</sup> The Board is issuing its Partial Initial Decision on Contention 10C separate from, but concurrently with, this Order.<sup>19</sup>

## II. LEGAL STANDARDS

### A. Summary Disposition

The standards for summary disposition in Subpart L proceedings, such as this, are set forth in 10 C.F.R. § 2.1205. That regulation in turn directs licensing boards to apply the same standards for granting or denying summary disposition as would be applied in Subpart G

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COL-BD01 (May 9, 2011) at 1 [hereinafter Joint Intervenors' Show Cause Response]; Staff's Response to the Atomic Safety and Licensing Board's Show Cause Order Regarding Contention 1 (May 9, 2011) at 1 [hereinafter NRC Staff's Show Cause Response]; Applicants' Reply to Responses to Show Cause Order (May 23, 2011) at 1 [hereinafter Applicants' Show Cause Reply]; Joint Intervenors Reply to Applicant's and NRC Staff's Responses to Licensing Board Order ASLBP No. 09-874-02-COL-BD01 (May 23, 2011) at 1 [hereinafter Joint Intervenors' Show Cause Reply]; Staff's Reply to the Applicants' and Joint Intervenors' Response to the Atomic Safety and Licensing Board's Show Cause Order (May 23, 2011) at 1 [hereinafter NRC Staff's Show Cause Reply]; see also NRC Staff's Show Cause Response, Attachment 1, Affidavit of Anneliese Simmons Concerning Contention 1 Foreign Ownership Control or Domination (May 9, 2011) at 1 [hereinafter NRC Staff Affidavit]. In addition, the NRC Staff filed a surreply on June 2, 2011, and Applicants filed a reply to the NRC Staff's surreply on June 13, 2011. NRC Staff's Motion to Allow a Surreply (June 2, 2011) at 1; Staff's Surreply to Applicant's Reply to Show Cause Order (June 2, 2011) at 1 [hereinafter NRC Staff Surreply]; Applicants' Response to NRC Staff Motion for Leave to File a Surreply (June 13, 2011) at 1 [hereinafter Applicants' Response to Surreply].

<sup>17</sup> See Licensing Board Order (Scheduling Oral Argument) (June 24, 2011) at 1 (unpublished).

<sup>18</sup> Licensing Board Order (Denying Summary Judgment of Contention 10C, Denying Amended Contention 10C, and Deferring Ruling on Contention 1) (August 26, 2011) at 1 (unpublished) [hereinafter Order Deferring Ruling].

<sup>19</sup> LBP-12-17, 76 NRC \_\_ (Aug. 30, 2012).

proceedings, which are set forth in 10 C.F.R. § 2.710.<sup>20</sup> Under 10 C.F.R. § 2.710(d)(2), a moving party is entitled to summary disposition “if the filings in the proceeding, . . . together with the statements of the parties and the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law.”

Generally, when ruling on motions for summary disposition, the Commission applies standards analogous to the standards used by the federal courts when ruling on motions for summary judgment under the comparable Rule 56 of the Federal Rules of Civil Procedure.<sup>21</sup>

A party seeking summary disposition bears the initial burden of “showing the absence of a genuine issue as to any material fact” and that it is entitled to judgment as a matter of law.<sup>22</sup> In addition, the Board must view the record in the light most favorable to the non-moving party.<sup>23</sup> Consequently, if the moving party fails to meet its burden, then “the Board must deny the motion—even if the opposing party chooses not to respond or its response is inadequate.”<sup>24</sup> Thus, “[n]o defense to an insufficient showing is required.”<sup>25</sup>

However, if the moving party meets its burden,<sup>26</sup> the party opposing the motion must “set forth specific facts showing that there is a genuine issue,” and may not rely on “mere allegations

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<sup>20</sup> 10 C.F.R. § 2.1205(c) (“In ruling on motions for summary disposition, the presiding officer shall apply the standards for summary disposition set forth in subpart G of this part.”).

<sup>21</sup> Advanced Medical Systems, Inc. (One Factory Row, Geneva, Ohio 44041), CLI-93-22, 38 NRC 98, 102–03 (1993).

<sup>22</sup> Id.

<sup>23</sup> Id. at 102; see Poller v. Columbia Broadcasting Systems, Inc., 368 U.S. 464, 473 (1962).

<sup>24</sup> Advanced Medical Systems, CLI-93-22, 38 NRC at 102.

<sup>25</sup> Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), ALAB-443, 6 NRC 741, 754 (1977) (internal citations omitted).

<sup>26</sup> Although this summary disposition motion arises originally from the Board’s Order directing the parties to show cause why the Board should not grant summary disposition as to Contention 1, deny authorization to issue the license, and terminate the proceeding, for practical purposes Joint Intervenors will be considered the moving party since they filed a response to that Order

or denials.”<sup>27</sup> Mere assertions or general denials are insufficient.<sup>28</sup> While the opposing party need not demonstrate that it would prevail on the issues at hand, it must at least show that there is a genuine dispute of material fact to be tried.<sup>29</sup> Thus, if, after considering all of the arguments and facts proffered by the parties, no genuine issue of material fact exists, the Board may dispose of all arguments based on the pleadings.<sup>30</sup>

B. Foreign Ownership, Control, or Domination

Section 102 of the Atomic Energy Act of 1954 (AEA) states that any license issued for a utilization or production facility for industrial or commercial purposes must meet the requirements set out in Section 103 of the AEA.<sup>31</sup> Section 103(d) of the AEA, in turn, prohibits the 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>32</sup>

This proscription is reiterated in 10 C.F.R. § 50.38 of the NRC regulations, “Ineligibility of certain applicants,” which states that:

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supporting summary disposition of Contention 1. See Show Cause Order; Joint Intervenors’ Show Cause Response.

<sup>27</sup> Perry, ALAB-433, 6 NRC at 102–03.

<sup>28</sup> Id. at 102; Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB–629, 13 NRC 75, 78 (1981); see also Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2), ALAB–584, 11 NRC 451, 455 (1980).

<sup>29</sup> Advanced Medical Systems, CLI-93-22, 38 NRC at 102; see Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), CLI–92–8, 35 NRC 145, 154 (1992) (to avoid summary disposition, intervenors must present contrary evidence so significantly probative that it creates a material factual issue).

<sup>30</sup> Advanced Medical Systems, CLI-93-22, 38 NRC at 102.

<sup>31</sup> Atomic Energy Act of 1954 as amended, 42 U.S.C. § 2132(a). Calvert Cliffs Unit 3 is a “production or utilization facility” as defined in 10 C.F.R. § 50.2. See 10 C.F.R. § 50.2 (defining production and utilization facilities).

<sup>32</sup> 42 U.S.C. § 2133(d).

“[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.”

Moreover, 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, a person excluded by Section 50.38 is ineligible even to apply for a license, much less to receive one.

The NRC’s Standard Review Plan on Foreign Ownership, Control, or Domination (SRP)

“contains the review procedures used by the staff to evaluate applications for the issuance or transfer of control of a production or utilization facility license in light of the prohibitions in sections 103d and 104d of the Atomic Energy Act and in 10 CFR 50.38 against issuing such reactor licenses to aliens or entities that the Commission ‘knows or has reason to believe’ are owned, controlled, or dominated by foreign interests.”<sup>33</sup>

The SRP explains that an entity is considered to be under foreign ownership, control, or domination “whenever a foreign interest has the ‘power,’ direct or indirect, whether or not exercised, to direct or decide matters affecting the management or operations of the applicant.”<sup>34</sup> The SRP cautions that there is generally no specific ownership percentage above which the NRC Staff would conclusively determine that an applicant is per se controlled by foreign interests.<sup>35</sup> Instead, foreign control “must be interpreted in light of all the information that bears on who in the corporate structure exercises control over what issues and what rights may

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<sup>33</sup> Final Standard Review Plan on Foreign Ownership, Control, or Domination, 64 Fed. Reg. 52,355 (Sept. 28, 1999), cited in Calvert Cliffs 3 Nuclear Project, LLC, and UniStar Nuclear Operating Services, LLC (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-09-20, 70 NRC 911, 920 (2009).

<sup>34</sup> 64 Fed. Reg. at 52,358.

<sup>35</sup> Id.



be associated with certain types of shares.”<sup>36</sup> Under the SRP, applicants are permitted to use negation action plans to negate potential foreign ownership, control, or domination.<sup>37</sup> When conducting a foreign ownership, control, or domination inquiry, the focus should be on “safeguarding the national defense and security.”<sup>38</sup>

Although, in general, the SRP avoids designating a foreign ownership percentage that would make an applicant per se controlled by foreign interests, it nonetheless repeatedly states that a completely (i.e., 100 percent) foreign-owned applicant would be ineligible to receive a license. The SRP provides that “[w]here an applicant that is seeking to acquire a 100 percent interest in the facility is wholly owned by a U.S. company that is wholly owned by a foreign corporation, the applicant will not be eligible for a license.”<sup>39</sup> The only such situation that the SRP suggests might be permissible is where the Commission knows that the foreign owner’s stock is “largely” owned by U.S. citizens.<sup>40</sup> That limited qualification to the general prohibition on 100 percent foreign ownership does not apply in this case. No party has argued that EDF is largely owned by U.S. citizens. On the contrary, it is undisputed that EDF is largely owned by the French government.

### III. ANALYSIS

#### A. Parties’ Positions

Joint Intervenors argue that the Board should grant summary disposition as to Contention 1, deny authorization to issue the license, and terminate this proceeding. According to Joint Intervenors, UniStar’s acquisition of Constellation’s 50 percent interest in Calvert Cliffs

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<sup>36</sup> Id.

<sup>37</sup> Id. at 52,359.

<sup>38</sup> Id. at 52,358.

<sup>39</sup> Id.; see also Tr. at 198.

<sup>40</sup> 64 Fed. Reg. at 52,358.

Unit 3 (thereby raising UniStar's interest to 100 percent) renders Applicants ineligible to receive, or even to apply for, a license under both 10 C.F.R. § 50.38 and the AEA.<sup>41</sup> Joint Intervenors caution that giving Applicants additional time to find a suitable American partner, and thus to meet the foreign ownership, control, or domination requirements, could lead to an "open-ended proceeding."<sup>42</sup> They find this particularly disturbing given that "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."<sup>43</sup> In addition, Joint Intervenors note that an open-ended proceeding would pose unnecessary burdens on them, given that they are pro se and would be required to make "endless" monthly disclosures.<sup>44</sup>

NRC Staff does not oppose granting summary disposition of Contention 1.<sup>45</sup> The NRC Staff acknowledges that there are no genuine issues as to any material fact in dispute concerning Contention 1 and agrees that the Board could deny authorization to issue the license and terminate this proceeding.<sup>46</sup> Upon review of Applicants' response to RAI 281, the

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<sup>41</sup> Joint Intervenors' Show Cause Response at 1. Further, Joint Intervenors argue that the NRC Staff should not be allowed to continue reviewing the license applications of ineligible applicants and that the NRC Staff should direct its resources towards other priorities such as examining the implications of the recent Fukushima nuclear accident. Id. at 2. In making this argument, Joint Intervenors imply that the Board should direct the NRC Staff to discontinue its review of the license application at issue. However, it is well established that boards lack the authority to direct the NRC Staff's regulatory reviews. See Duke Energy Corp. (Catawba Nuclear Station, Units 1 and 2), CLI-04-6, 59 NRC 62, 74 (2004). If Joint Intervenors wish to pursue this issue, they will have to do so with the NRC Staff or before the Commission.

<sup>42</sup> Joint Intervenors' Show Cause Response at 3 ("[h]aving 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").

<sup>43</sup> Id.

<sup>44</sup> Id. at 4.

<sup>45</sup> NRC Staff's Show Cause Response at 1, 10.

<sup>46</sup> Id. at 5, 10.

NRC Staff confirmed that Applicants are currently 100 percent owned by a foreign corporation, EDF.<sup>47</sup> The NRC Staff then determined whether EDF exercises foreign control or domination over Applicants.<sup>48</sup> Based on its review of Applicants' response to RAI 281, the NRC Staff found that "EDF exercises both direct and indirect influence over the applicant in the governance structure" and thus is foreign owned, controlled, or dominated in contravention of the SRP on Foreign Ownership, Control, or Domination.<sup>49</sup> Specifically, the NRC Staff concluded that: (1) "EDF, as the 100% owner of UniStar, exercises extensive and broad authority over UniStar and the intermediate companies"; (2) "[n]on U.S. Citizen representatives of EDF sit on the boards of directors of all the intermediate companies from the parent to the licensee"; and (3) EDF has the authority to appoint manager and key officers for all the intermediate authorities."<sup>50</sup> Moreover, the NRC Staff reviewed the proposed Negation Action Plan submitted by Applicants in conjunction with their response to RAI 281 and concluded that the plan does not sufficiently negate EDF's ownership, control, or domination of Applicants.<sup>51</sup> As a result, the NRC Staff does not oppose summary disposition of Contention 1.<sup>52</sup>

The NRC Staff also stated, however, that, were the Board to grant summary disposition of Contention 1, the Board could terminate the proceeding, but it could also decide to move ahead with the pending environmental contention (Contention 10C).<sup>53</sup> The NRC Staff also suggested that the Board might "wish to hold Contention 1 in abeyance until such time as the

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<sup>47</sup> Id. at 7.

<sup>48</sup> Id.

<sup>49</sup> Id.

<sup>50</sup> Id.

<sup>51</sup> Id.

<sup>52</sup> Id. at 10; see also NRC Staff Affidavit.

<sup>53</sup> NRC Staff's Show Cause Response at 10 (citing Progress Energy Florida, Inc. (Levy County Nuclear Power Plant, Units 1 and 2), LBP-10-20, 72 NRC 571 (2010)).

Applicant amends its application to address the foreign ownership issue and the Staff concludes its review of the amended application.”<sup>54</sup> This is because, according to the NRC Staff, “[a]t this point it is not known what degree of foreign ownership may be present for CCNNP3 in the event UniStar obtains a domestic partner and amends its application.”<sup>55</sup> Thus, “even if the Board were to find the license could not issue with the current application, the issue may come before the Board again after a domestic partner is obtained.”<sup>56</sup>

Applicants argue that summary disposition as to Contention 1 should not be granted, authorization to issue the license should not be denied, and this proceeding should not be terminated.<sup>57</sup> Applicants reiterate that they are committed to obtaining a U.S. partner and recognize that a COL for Calvert Cliffs Unit 3 may not be issued until an appropriate U.S. partner is obtained.<sup>58</sup> As a result, Applicants contend that any foreign ownership, control, or domination concerns can be addressed once an appropriate U.S. partner is found and the COL is amended accordingly.<sup>59</sup> Until then, Applicants contend that the issue is not ripe for review and any decision on the matter would be a mere advisory opinion.<sup>60</sup> Similarly, Applicants argue that the Board should not deny authorization to issue the license or terminate the proceeding because “[a]pplicants are routinely entitled to an opportunity to address any deficiency

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<sup>54</sup> Id. at 11.

<sup>55</sup> Id.

<sup>56</sup> Id.

<sup>57</sup> Applicants’ Show Cause Response at 2.

<sup>58</sup> Id. at 7.

<sup>59</sup> Id. at 7–8.

<sup>60</sup> Id. at 8.

perceived in the application” and “[r]esponding to issues raised during the NRC Staff review is fully consistent with the dynamic licensing process followed in Commission licensing matters.”<sup>61</sup>

In addition, Applicants appear to argue that Contention 1 is moot. Because Joint Intervenors originally proffered Contention 1 to address the then-current 50 percent foreign ownership scenario, and never supplemented or amended it reflect the now-current 100 percent foreign ownership scenario, Applicants claim that Contention 1 is, or is at least soon to be, moot and is thus a “poor vehicle[] for adjudicatory pronouncements of possible significance.”<sup>62</sup>

#### B. Summary Disposition

The Board agrees with Joint Intervenors that summary disposition of Contention 1 is appropriate, given that the license applicants are wholly owned by a U.S. company (UniStar) that is wholly owned by a foreign corporation (EDF).

The AEA clearly prohibits the 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>63</sup> The fact that Congress connected the three prohibitions with the conjunction “or” rather than “and” shows that a license may not be granted if any of the three prohibitions is violated. The same proscription is reiterated in 10 C.F.R. § 50.38. As previously explained, the applicable regulations not only prohibit issuing a COL to a foreign owned, controlled, or dominated entity; but they go as far as prohibiting such an entity from filing a COL application.

To be sure, neither the AEA nor the NRC’s regulations define the percentage of foreign ownership that renders an applicant ineligible to apply for or receive a license. This suggests that the NRC has discretion in specifying the level of foreign ownership that would constitute a

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<sup>61</sup> Id. at 11.

<sup>62</sup> Id. at 9.

<sup>63</sup> 42 U.S.C. § 2133(d).

violation of the AEA.<sup>64</sup> Similarly, the NRC has discretion in interpreting the meaning of its own regulations.<sup>65</sup>

But the agency's discretion in defining the meaning of "foreign ownership" in the AEA and in 10 C.F.R. § 50.38 is not unlimited. We must also keep in mind the "settled rule that a statute must, if possible, be construed in such fashion that every word has operative effect."<sup>66</sup> In doing so, a court "avoid[s] . . . any construction which implies that the legislature was ignorant of the meaning of the language it employed."<sup>67</sup> As the Supreme Court has cautioned, "no provision [of a statute] should be construed to be entirely redundant."<sup>68</sup>

Thus, it would be impermissible to construe the prohibition of foreign ownership so as to make it redundant or otherwise deprive it of operative effect.<sup>69</sup> The language of AEA Section 103(d) shows that Congress thought foreign ownership itself should be sufficient to require denial of a license in some circumstances. Although the AEA implicitly grants the NRC substantial discretion in determining the threshold percentage at which foreign ownership becomes too great, that threshold must at a minimum include 100 percent foreign ownership or

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<sup>64</sup> See United States v. Mead Corp., 533 U.S. 218, 226-227 (2001); Chevron U.S.A., Inc. v. NRDC, 467 U.S. 837 (1984).

<sup>65</sup> Courts give controlling weight to an agency's interpretation of its own regulation unless it is "plainly erroneous or inconsistent with the regulation." Auer v. Robbins, 519 U.S. 452, 461 (1997) (quoting Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 359 (1989) (quoting Bowles v. Seminole Rock & Sand Co., 325 U.S. 410, 414 (1945))).

<sup>66</sup> U.S. v. Nordic Village, Inc., 503 U.S. 30, 36 (1992) (citing U.S. v. Menasche, 348 U.S. 528, 538-39 (1955)). Courts must "give effect, if possible, to every clause and word of a statute." Inhabitants of Montclair Tp. v. Ramsdell, 107 U.S. 147, 152 (1883).

<sup>67</sup> Inhabitants of Montclair Tp., 107 U.S. at 152.

<sup>68</sup> Kungys v. U.S., 485 U.S. 759, 778 (1988). Similarly, the Supreme Court has also stated that it is "hesitant to adopt an interpretation of a congressional enactment which renders superfluous another portion of that same law." Mackey v. Lanier Collection Agency, 486 U.S. 825, 837 (1988).

<sup>69</sup> Cf. Gersman v. Group Health Assn., Inc., 975 F. 2d 886, 890 (D.C. Cir. 1992) (citing Supreme Court precedent stating that a statute should not be interpreted so as to render a provision of it redundant or superfluous).

the prohibition of foreign ownership in AEA Section 103(d) would be rendered superfluous.<sup>70</sup> Congress might just as well have written a statute that prohibited only foreign control or domination. The prohibition of foreign ownership in 10 C.F.R. § 50.38 would also be rendered superfluous if 100 percent foreign ownership is acceptable. Therefore, Section 103(d) of the AEA and 10 C.F.R. § 50.38 must be interpreted, at a minimum, as making a 100 percent foreign-owned applicant ineligible to receive a license.

This understanding is consistent with the SRP, which provides that when “an applicant that is seeking to acquire a 100 percent interest in the facility is wholly owned by a U.S. company that is wholly owned by a foreign corporation, the applicant will not be eligible for a license.”<sup>71</sup> This interpretation mirrors that put forward by the NRC Staff: “one hundred percent ownership, anything else notwithstanding, would bar the issuance of a license.”<sup>72</sup>

Consequently, no negation action plan would be sufficient to negate EDF’s 100 percent foreign ownership of UniStar, and thus it is unnecessary for the Board to review Applicants’ proposed Negation Action Plan or the NRC Staff’s analysis of its alleged inadequacies.<sup>73</sup> We therefore are not persuaded by Applicants’ argument that summary disposition is inappropriate because material facts remain in dispute.<sup>74</sup> On the contrary, the essential fact we require to decide this issue—that Applicants are 100 percent foreign-owned—is undisputed.

Furthermore, as the NRC Staff argues, the cases Applicants cite fail to support their claim that 100 percent foreign ownership is permissible. In their response to the Board’s Show

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<sup>70</sup> See 64 Fed. Reg. at 52,358.

<sup>71</sup> Id. As stated previously, the SRP envisions only one situation in which 100 percent foreign ownership might be permissible—i.e. where the Commission knows that the foreign owner’s stock is ‘largely’ owned by U.S. citizens. Id.; supra note 40 and accompanying text. There is no indication that such circumstances are present in this case.

<sup>72</sup> Tr. at 198.

<sup>73</sup> See NRC Staff Affidavit.

<sup>74</sup> Applicants’ Response to Surreply at 2–3.

Cause Order, Applicants stated that they “believe[] that 100 percent ownership of a licensee by a foreign entity can be acceptable under the Atomic Energy Act and NRC regulations (with appropriate negation of control), and that precedent exists to support that position.”<sup>75</sup> Applicants failed, however, to offer any such supporting precedent in that response.

In their reply to the Board’s Show Cause Order, Applicants again asserted that “the NRC has approved transfers of operating licenses to entities that are 100% owned by foreign companies” and thus that “. . . precedent illustrates that, with appropriate negation measures, FOCD concerns can be addressed for licenses wholly-owned by foreign parents or grandparents.”<sup>76</sup> In support of these claims, Applicants cite New England Electric System—National Grid Group PLC (Seabrook Plant) and PacificCorp (Trojan Nuclear Plant).<sup>77</sup>

However, as the NRC Staff points out, these two cases do not support the proposition that 100 percent foreign ownership of a licensee is acceptable where, as here, the licensee will be the sole license holder.<sup>78</sup> Rather, both cases cited by Applicants involved Commission approval of minority owners transferring non-operating licenses to foreign companies through mergers in which the minority owners became wholly-owned subsidiaries of foreign companies.<sup>79</sup> In the case of New England Electric System—National Grid Group PLC, the resulting total foreign ownership was 9.9 percent, while in the case of PacificCorp, the resulting

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<sup>75</sup> Applicants’ Show Cause Response at 8.

<sup>76</sup> Applicants’ Show Cause Reply at 3.

<sup>77</sup> See id. at 3–4; see also “Order Approving Application Regarding Merger of New England Electric System and National Grid Group PLC,” 64 Fed. Reg. 71,832 (Dec. 22, 1999) [hereinafter NEES Order]; “PacificCorp (Trojan Nuclear Plant); Order Approving Application Regarding Proposed Merger,” 64 Fed. Reg. 63,060 (Nov. 18, 1999) [hereinafter PacificCorp Order].

<sup>78</sup> See NRC Staff Surreply at 2.

<sup>79</sup> See NEES Order; PacificCorp Order.



total foreign ownership amounted to a mere 2.5 percent.<sup>80</sup> While both cases involve minority owners that are wholly-owned by foreign companies, their small overall ownership interests pale in comparison to the extent of foreign ownership present in this proceeding, where both applicants are owned by UniStar, a company that is in turn 100 percent owned by EDF.

We are also not persuaded by Applicants' claim that the issue is not ripe for review, and that any opinion on the issue would therefore amount to an impermissible advisory opinion.<sup>81</sup> Ripeness is a justiciability doctrine designed to prevent Article III courts from premature judicial review of abstract controversies and to "protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties."<sup>82</sup> The ripeness doctrine is "drawn both from Article III limitations on judicial power and from prudential reasons for refusing to exercise jurisdiction."<sup>83</sup> Thus, that doctrine was developed for, and is directly applicable only to, Article III courts, not to an administrative tribunal such as a licensing board. In our proceedings, unlike challenges to agency action in federal courts, intervenors are not only permitted but are required to file their contentions in response to the license application, rather than await a fully formalized administrative decision.<sup>84</sup> And licensing boards must resolve those claims during the administrative process, not after its conclusion.

Nevertheless, the Commission has indicated that licensing boards should not consider premature contentions. In Crow Butte Resources,<sup>85</sup> a petitioner, the Oglala Sioux Tribe, alleged

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<sup>80</sup> Id.

<sup>81</sup> Applicants' Show Cause Response at 8, 10, 13.

<sup>82</sup> Abbott Laboratories v. Gardner, 387 U.S. 136, 148–49 (1967)

<sup>83</sup> Reno v. Catholic Social Services, Inc., 509 U.S. 43, 57, n.18 (1993) (citations omitted).

<sup>84</sup> 10 CFR § 2.309(f)(2).

<sup>85</sup> CLI-09-9, 69 NRC at 348.

that it had not been consulted concerning tribal cultural resources, in violation of the National Historic Preservation Act. The Commission held that the contention was premature because the NRC Staff, not the applicant, has the duty to consult with the Tribe under the Act, and the Staff had not completed its review process.<sup>86</sup> In the present case, however, the Applicant must demonstrate compliance with the foreign ownership limitations in Section 103(d) of the AEA and 10 C.F.R. § 50.38. Moreover, the NRC Staff has already determined that the Applicants are not in compliance with the foreign ownership limitations. Thus, there is no prematurity problem in this case.

Furthermore, even were we to apply the formal ripeness test used by federal courts to this adjudicatory proceeding, the foreign ownership issue is ripe for decision. In determining whether an issue is ripe for judicial decision, a court must evaluate: “(1) the fitness of the issues for judicial decision and (2) the hardship to the parties of withholding court consideration.”<sup>87</sup> As to the first factor, Contention 1 is fit for judicial decision because no further factual development is needed in order for the Board to rule. Applicants concede that they are 100 percent owned by a foreign company, EDF.<sup>88</sup> As previously stated, 100 percent foreign ownership alone, notwithstanding any other factors such as a negation action plan, renders an applicant ineligible per se. Given that no material factual disputes exist as to Applicants’ 100 percent foreign ownership, and that Applicant has been consistently 100 percent foreign owned for almost two years, Contention 1 presents a fully developed issue on a pending application, and is thus suitable for decision.

As to the second factor, depriving Joint Intervenors of a ruling on Contention 1 would subject them to substantial unfairness and hardship. Joint Intervenors initially filed their foreign

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<sup>86</sup> Id. at 348-51.

<sup>87</sup> National Park Hospitality Ass’n v. Department of Interior, 538 U.S. 803, 808 (2003) (citing Abbott Laboratories, 387 U.S. at 148–49).

<sup>88</sup> UniStar Letter at 1; NRC Determination Letter at 1.

ownership contention in 2008, and the Board admitted the foreign ownership contention in its initial ruling on standing and contention admissibility in 2009. Moreover, roughly two years have already passed since Applicants became 100 percent foreign owned.<sup>89</sup> During that time, Joint Intervenors have been required to file monthly disclosures concerning Contention 1 and closely follow the Calvert Cliffs Unit 3 proceeding.<sup>90</sup> Refraining from ruling on Contention 1 until Applicants find an appropriate U.S. partner would force Joint Intervenors to continue to do so for an indefinite amount of time—even for decades, according to Applicants.<sup>91</sup> In a situation such as this, forcing a pro se intervenor to file monthly disclosures and closely follow a proceeding indefinitely solely to obtain a ruling on the merits of its claim would constitute a significant unfairness and hardship. Having satisfied the NRC's strict requirements for contention admissibility, and having complied with all other procedural requirements, Intervenors are entitled to a ruling on the merits of their claim without further delay.

Thus, even if we were to apply the ripeness doctrine, Contention 1 is ripe for decision. The Board's decision on the issue is not a mere advisory opinion but will resolve the last remaining issue in this case.

At bottom, Applicants want the Board to defer its ruling indefinitely while they attempt to resolve the foreign ownership problem. Although we have allowed the Applicants substantial additional time to resolve the foreign ownership problem by deferring our ruling on Contention 1 until now, we could not grant them an unlimited amount of time to do so, even if we were so inclined, without violating Commission policy. As we previously noted,<sup>92</sup> the Commission has

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<sup>89</sup> Id.

<sup>90</sup> Joint Intervenors' Show Cause Response at 3–4.

<sup>91</sup> Applicants' Show Cause Reply at 13–14. Applicants argue that it would be appropriate to hold the proceeding in abeyance based on Contention 1 for as long as seventeen years. Id. at 14 (citing Washington Public Power Supply System (WPPSS Nuclear Project No. 1), LBP-00-18, 52 NRC 9 (2000)).

<sup>92</sup> Order Deferring Ruling at 30.

repeatedly stressed, through both its policies and regulations, the importance of expediting adjudicatory proceedings. Both 10 C.F.R. §§ 2.329(b)(1) and 2.332(c)(1) reiterate that one of the fundamental purposes of the prehearing conference and the scheduling order is “[e]xpediting the disposition of the proceeding.”<sup>93</sup> The Commission’s Statement on the Conduct of Agency Adjudications reaffirmed the importance of expediting adjudications when it stated that “applicants for a license are . . . entitled to a prompt resolution of disputes concerning their applications” and thus that one of the Commission’s key objectives is “to avoid unnecessary delays in the NRC’s review and hearing process.”<sup>94</sup> Applicants themselves have repeatedly acknowledged such precedent in an effort to expedite this proceeding.<sup>95</sup> Consequently, while it is undeniable that substantial delays occurred in the proceedings cited by Applicants, such delays are contrary to the Commission’s stated policies and regulations, and thus should not be used as a model for this proceeding.<sup>96</sup>

Applicants have had roughly two years to remedy the foreign ownership problem. We do not doubt that Applicants have made substantial efforts to find U.S. partners, but they have thus far been unable to provide evidence to the Board indicating that a deal with an acceptable U.S. partner is imminent.<sup>97</sup> Applicants acknowledged at the July 7, 2011, oral argument that “we have nothing definite. I think that it’s a little more than open-ended. Discussions are ongoing and I think that’s an accurate statement, but we have no details that we can share.”<sup>98</sup>

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<sup>93</sup> 10 C.F.R. §§ 2.329(b)(1), 2.332(c)(1).

<sup>94</sup> Policy on Conduct of Adjudicatory Proceedings; Policy Statement, 63 Fed. Reg. 41,872, 41,873 (Aug. 5, 1998). This statement does not differentiate between whether the dispute is resolved in favor of or against an applicant.

<sup>95</sup> Applicants’ Report on Schedule Discussions and Proposed Schedule at 3 (Apr. 15, 2009).

<sup>96</sup> See Applicants’ Show Cause Reply at 13–15.

<sup>97</sup> See UniStar Letter.

<sup>98</sup> Tr. at 224–25.

Further, Applicants themselves acknowledged that the current economic climate poses significant impediments to finding an acceptable U.S. partner: “there has been a significant deterioration in power market conditions . . . . These developments have significantly impaired the prospects, in the immediate term, for a financially viable nuclear development project—particularly in a merchant market such as PJM in which Calvert Cliffs would be constructed.”<sup>99</sup> Given the apparent lack of progress in finding potential U.S. partners, the amount of time that has elapsed since Applicants became 100 percent foreign owned, and the current economic climate, we are not willing to grant Applicants an indefinite amount of time to resolve this deficiency because doing so would be counter to the Commission’s policies and regulations.

The need to avoid open-ended proceedings is particularly important when, as in this proceeding, the Board is confronted with a contention addressing such a fundamental element of an applicant’s application. For, unlike other deficiencies that may impair an applicant’s ability to obtain a license, 10 C.F.R. § 50.38 and 10 C.F.R. § 52.75 clearly state that a foreign owned, controlled, or dominated entity is ineligible to apply for, let alone obtain, a COL.<sup>100</sup>

Finally, the Board disagrees with Applicants’ assertion that the Contention 1 is moot because Joint Intervenors failed to supplement or amend it after EDF’s foreign ownership increased to 100 percent.<sup>101</sup> Contention 1 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>102</sup> The only thing that has changed since the initial filing of Contention 1 is that the percentage of foreign ownership has increased: 100 percent now compared to 50 percent at the

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<sup>99</sup> Applicants’ Show Cause Response at 6–7.

<sup>100</sup> 10 C.F.R. §§ 50.38, 52.75.

<sup>101</sup> Applicants’ Show Cause Response at 9.

<sup>102</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 previously found that Joint Intervenors have standing and granted their request for a hearing. See LBP-09-04, 69 NRC 170 (2009).

time Contention 1 was filed. If anything, this fact only bolsters the validity of Contention 1.<sup>103</sup> It in no way renders the Contention moot.

Thus, because there are no material facts in dispute concerning Applicant's 100 percent foreign ownership, and because 100 percent foreign ownership necessarily renders an applicant ineligible under 10 C.F.R. § 50.38 and Section 103(d) of the AEA, the Board GRANTS summary disposition as to Contention 1 in favor of Joint Intervenors.

C. Status of the Proceeding

Because this Order grants summary disposition of Contention 1 in favor of Joint Intervenors, there are no longer any admitted contentions pending before the Board. This is because the Board is today also issuing its Partial Initial Decision on Contention 10C, along with an Order declining to admit Joint Intervenors proposed new Contention 11, and previously dismissed Joint Intervenors' admitted Contentions 2 and 7.<sup>104</sup>

The initial intent of this Board was to leave this proceeding open until 30 days after the NRC Staff issued the Final SER. This would have allowed the Board to revisit the foreign ownership issue, if there had been a material change in the ownership situation, and would also have allowed Joint Intervenors to file new contentions based on any new information contained in upcoming staff review documents. However, we are precluded from applying our preferred approach due to a recent Commission ruling in the North Anna proceeding that demonstrated that this approach, while reasonable, is not permitted. In North Anna, the Board elected not to close the proceeding, despite the fact that no pending contentions remained. The Board's intent was to permit their Intervenors the opportunity to submit contentions on upcoming NRC Staff

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<sup>103</sup> Further, if Applicants truly believed that EDF's acquisition of 100 percent ownership rendered Contention 1 moot, then they should have promptly filed a motion for summary disposition after EDF had acquired 100 percent ownership, as required by the agency's regulations. See 10 C.F.R. § 2.323(a). Given that neither Applicants nor NRC Staff have filed such a motion in the roughly two years since EDF acquired its 100 percent ownership, the Board is led to believe that neither party truly views Contention 1 as moot.

<sup>104</sup> LBP-12-17, 76 NRC \_\_ (Aug. 30, 2012); LBP-12-18, 76 NRC \_\_ (Aug. 30, 2012).

review documents without forcing the Intervenors to meet the more difficult reopening standards.<sup>105</sup>

The Commission ruled, however, that “the Board’s ruling resolving the last pending contention (that is, LBP-11-10) amounted to a final board decision.”<sup>106</sup> The Commission further stated that “[t]he Board’s approach cannot be squared with the longstanding practice in our proceedings that, once all contentions have been decided, the proceeding is terminated.”<sup>107</sup> Further, the Commission noted, “[t]he courts of appeals have repeatedly approved our practice of closing the hearing record after resolution of the last ‘live contention.’”<sup>108</sup> The decision did not differentiate between whether the last pending contention was resolved in favor of an applicant or in favor of an intervenor. Given that the Board has resolved the last contention in this proceeding, the North Anna decision thus leaves us no choice but to close this proceeding.

Applicants maintain that the Appeal Board’s ruling in Commonwealth Edison Company<sup>109</sup> precludes the Board from denying the license application without giving the Applicants the opportunity to resolve the deficiency. In Commonwealth Edison, an evidentiary hearing was held concerning the adequacy of the applicant’s quality assurance program. After finding the program inadequate, the Board denied the license and closed the proceeding. At the time the Board’s decision was issued, however, the applicant was “catching up” with the quality assurance violations by implementing a “massive reinspection program,” the final report on which was about to be issued.<sup>110</sup> The Appeals Board found that the Licensing Board was not

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<sup>105</sup> See 10 CFR § 2.326.

<sup>106</sup> North Anna, CLI-12-14, 75 NRC at \_\_ (slip op. at 10).

<sup>107</sup> Id.

<sup>108</sup> Id.

<sup>109</sup> Commonwealth Edison Co. (Byron Nuclear Power Station, Units 1 and 2), ALAB-770, 19 NRC 1163 (1984).

<sup>110</sup> Id. at 1169.

justified in rendering a “final judgment in the face of unfolding developments having a deciding bearing – and conceivably a crucial effect – upon the issue that shaped that judgment.”<sup>111</sup> The Appeals Board remanded the issue to the Licensing Board for a further evidentiary hearing to address the unfolding developments.

Here, by contrast, we have no comparable unfolding developments to consider. Unlike Commonwealth Edison, we have no evidence of any imminent action by the Applicants that would resolve the alleged violation in their favor, but only the Applicants’ hope that someday they may be able to find a U.S. partner and thereby may be able to rectify the foreign ownership violation. We have already given the Applicants ample opportunity to resolve the violation, but it has not been corrected. For the reasons we have already explained, we may not further delay our ruling on the merits of Contention 1 based on nothing more than a hope that the foreign ownership violation may someday be resolved. And, having resolved the merits of the last pending contention, we must follow the Commission’s clear command in North Anna to terminate the proceeding.

Although we cannot keep this proceeding open indefinitely, we do grant Applicants an additional 60 days from the issuance of this order to notify the Board of any change in the ownership situation sufficient to establish their qualifications to apply for a license from the NRC. Although 60 days may seem a short period of time in which to obtain a domestic partner for Calvert Cliffs Unit 3, Applicants have already had nearly two years to find such a partner. If after 60 days Applicants have not notified the Board of such a change in the ownership situation, this proceeding will be closed. If, alternatively, Applicants manage to find a domestic partner, and provide information to the Board that an agreement has been or will be in the immediate future concluded, then this proceeding will remain open.

For the next 60 days, therefore, this proceeding will remain open and the parties should continue to comply with our scheduling orders and all other requirements applicable to an open

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<sup>111</sup> Id.



proceeding. If Applicants obtain a domestic partner within 60 days, this proceeding will continue to remain open and those requirements will continue to remain in effect. Joint Intervenors could, at that time, challenge the adequacy of Applicants' foreign ownership resolution. The Board would then resolve any dispute that may remain arising from Contention 1.

If, however, Applicants fail to obtain a domestic partner within 60 days, this proceeding will close. Once this proceeding is closed, Intervenors would no longer have an open proceeding in which to file proposed new contentions or make other filings, and we could not logically demand that they move to reopen a closed proceeding in which they have prevailed.<sup>112</sup> Therefore, while the proceeding is closed, Joint Intervenors need make no further filings. Joint Intervenors will not lose the right to propose new contentions if Applicants, at some future date, correct the foreign ownership violation and successfully move to reopen the proceeding.

In the event that Applicants obtain a domestic partner subsequent to the closing of this proceeding, they may then move to reopen the proceeding. Joint Intervenors will have 30 days from the filing of any such motion to respond. If the proceeding is thereafter reopened, Joint Intervenors will have 30 days from the reopening of the record to file timely new contentions based on new information that became available subsequent to the closing of the proceeding. That is, contentions filed within 30 days of reopening of the record that are based on information that became available after the close of the proceedings will be considered timely because of the good cause that until the time of reopening there had been no open proceeding in which to file the new contentions.

#### IV. CONCLUSION

For the aforementioned reasons, the Board grants summary disposition in favor of Joint Intervenors as to Contention 1 and finds Applicants currently ineligible to apply for or obtain a

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<sup>112</sup> To reopen a closed proceeding, Intervenors would have to file a motion demonstrating, among other things, that "a materially different result would be or would have been likely had the newly proffered evidence been considered initially." 10 CFR § 2.326(a)(3). It would be nonsensical to demand that Joint Intervenors advance a new contention seeking a materially different result—i.e., granting of the license.

license. The license cannot be granted as long as the current ownership arrangement is in effect. As no contentions remain pending, the Board will terminate this proceeding 60 days after the issuance of this order unless, within that time, Applicants provide information to show that they have changed their ownership situation so as to satisfy foreign ownership, control, and domination requirements.

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD

*/RA/*

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Ronald M. Spritzer, Chairman  
ADMINISTRATIVE JUDGE

*/RA/*

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Dr. Gary S. Arnold  
ADMINISTRATIVE JUDGE

*/RA/*

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Dr. William W. Sager  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
August 30, 2012

UNITED STATES OF AMERICA  
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 **BOARD ORDER (GRANTING SUMMARY DISPOSITION OF CONTENTION 1) (LBP 12-19)** have been served upon the following persons by Electronic Information Exchange.

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Docket No. 52-016-COL

**BOARD ORDER (GRANTING SUMMARY DISPOSITION OF CONTENTION 1) (LBP 12-19)**

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Docket Nos. 52-016-COL

**BOARD ORDER (GRANTING SUMMARY DISPOSITION OF CONTENTION 1) (LBP 12-19)**

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Dated at Rockville, Maryland  
this 30<sup>th</sup> day of August 2012

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