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— *of* —
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Ms. Terry Romine
Executive Secretary
Public Service Commission
6 St. Paul Street, 16th floor
Baltimore, MD 21202

January 23, 2008

Re: Case 9127 -- In the matter of the application of Unistar Nuclear Energy, LLC and Unistar Nuclear Operating Services, LLC for a Certificate of Public Convenience and Necessity to construct a nuclear power plant at Calvert Cliffs in Calvert County, Maryland

Dear Ms. Romine:

Please accept this letter in response to the applicants' opposition to the Petitions to Intervene filed in the above-described proceeding by the Nuclear Information Resource Service (NIRS) and Beyond Nuclear at the Nuclear Policy Research Institute (NPRI).

With this letter, the petitioners to intervene request that they be granted the opportunity to intervene and participate as parties in the action by explaining that the petitioners do indeed have genuine and material interests in the proceeding which are relevant to the Commission's decision-making, and which are not represented by other parties to the action. In the alternative, the petitioners would request leave to amend their petitions to make explicit these interests for the applicants and the Commission.

In their letter of opposition, the applicants supply the relevant law regarding intervention in the Public Service Commission proceeding in this case. Specifically, leave to intervene will be granted unless: "(1) the parties to the proceeding adequately represent the interest of the person seeking to intervene; or (2) the issues that the person seeks to raise are irrelevant or immaterial." Md. Code Ann., Public Utility Companies Article, § 3-106(b). The statute is obviously and intentionally quite broad, clearly designed to allow participation by any non-redundant party wishing to raise any relevant or material issue.

Applicants further supply the issues to be considered by the Public Service Commission in a CPCN proceeding, in relevant part:

- (i) the stability and reliability of the electrical system;
- (ii) economics;

- (iii) esthetics;
- (iv) historic sites;
- (v) aviation safety as determined by the Maryland Aviation Administration and the administrator of the Federal Aviation Administration;
- (vi) when applicable, air and water pollution; and
- (vii) the availability of means for the required timely disposal of wastes produced by any generating station.

Md. Code Ann., Public Utility Companies Article, § 7-207(e).

1. The interests of the petitioners are material and relevant.

Beyond Nuclear, in its brief petition to intervene states that its advocacy interests are in “an energy future that is sustainable, benign, and democratic.” It was, perhaps, taken for granted that the broad concept of sustainability would encompass the economics and reliability concerns that are well within the PSC’s purview in this proceeding. Likewise, the broad concept of “benign” when applied to a power plant application would include specific concerns about the environment and esthetics which are also within the PSC’s purview. Indeed, it is the organization’s commitment to a “democratic” energy future that motivates the petition to intervene in the first place. Beyond Nuclear has expertise, experience and perspectives that it will bring to the proceedings, and full participation will help to more fully ventilate the discussions of whether the proposed plant should receive a Certificate from the Commission. Beyond Nuclear’s full participation will help to better inform the Commission as it comes to a decision in this case.

NIRS, in its brief Petition to intervene, states that it has “a special interest in Maryland energy policy, nuclear power, radioactive waste and sustainable energy issues.” Even setting aside for a moment the organization’s interest in radioactive waste, the organizational interests in energy policy, nuclear power and sustainable energy would clearly indicate the organization’s interests in the economics, reliability, esthetics, and environmental issues wrapped up in the applicant’s proposal and subject to Public Service Commission review. Like Beyond Nuclear, NIRS has expertise and experience that will help to inform the proceedings and assist the Commission if they are granted the opportunity to do so.

No testimony has been received in this case, and there’s been very little time to review and digest the information supplied by the applicants in this proceeding. So, it is impossibly premature to enumerate in a Petition to Intervene each and every issue that the petitioners might want to raise as this case progresses. Nevertheless, the petitioners anticipate a robust exploration of the economics of the proposed plant, as it will be an extraordinarily expensive facility, with unique financing, and a set of costs and economic contingencies that may not be in the best interests of the organizations’ members, ratepayers, or the public. The petitioners, both with stated interests in sustainable energy solutions, are likely to suggest that there are numerous more sustainable, less expensive, and therefore less economically risky alternatives to the applicants’ nuclear proposal. The interests of these organizations are relevant and material to the proceeding and well within the jurisdiction and interest of the Public Service Commission in this particular

case. Should the Commission prefer a more explicit statement of these interests, the petitioners would request leave to amend their Petitions to Intervene in order to do so.

In essence, and because it is so early in the proceeding, the applicants are suggesting that only a “magic words” approach to intervention is acceptable. Had the petitioners used the words “economics” or “stability and reliability of the electrical system” rather than expressing particular interests in “energy policy” for example, then, evidently, applicants would have no objection. If the Commission determines that the magic words are necessary, then Petitioners would simply request leave to amend to be able to use them.

2. Intervenors’ interests are not preempted.

In their opposition to the Petitions to Intervene, the applicants argue, prematurely and somewhat disingenuously, that much of Petitioners’ interest in the CPCN proceeding is preempted by federal law. On this issue, the applicants are protesting too much, too loudly, and too soon.

Notwithstanding the fact that Petitioners’ broader interests are well aligned with a number of the issues to be reviewed by the Public Service Commission under § 7-207 in this proceeding, the applicants’ efforts to block full participation by parties in the proceeding is an exceedingly aggressive and overly broad tactic. Mainly, the Petitioners have yet to offer a single word of evidence or argument to the Commission. If and when any offending evidence or argument is offered, that would be the appropriate time for the objection. To completely deny the rights of potential parties to participate based on speculation of what evidence may be offered would be restrictive to the extreme.

Moreover, the federal preemption highlighted by the applicants is not as broad as perhaps they would like. In Pacific Gas & Electric Company v. State Energy Conservation and Development Commission, et al, 461 U.S. 190 (1983), the U.S. Supreme Court upheld state legislation noting that “Congress has preserved the dual regulation of nuclear powered electricity generation: the federal government maintains complete control of the safety and ‘nuclear’ aspects of energy generation; the states exercise their traditional authority over the need for additional generating capacity, the type of generating facilities to be licensed, land use, ratemaking and the like.” Pacific Gas at 211-212. Indeed, the Court acknowledges that “it is clear that the states have been allowed to retain authority over the need for electrical generating facilities easily sufficient to permit a state so inclined to halt the construction of new nuclear plants on economic grounds by refusing to issue certificates of public convenience in individual proceedings.” Pacific Gas at 216. Further, the Court stated “Congress has left sufficient authority in the states to allow the development of nuclear power to be slowed or even stopped for economic reasons.” Pacific Gas at 223. The federal interest extends only to the issue of whether it is safe to proceed with nuclear plants, not whether it is economically wise to do so. Pacific Gas at 218-219.

To the extent that the Public Service Commission considers the *economic* implications of a new nuclear reactor -- for example, the *economic* uncertainties in radioactive waste disposal and how they affect system reliability and the costs ultimately borne by ratepayers -- such

consideration would not be preempted. Therefore, should the petitioners bring forth testimony or other evidence pertaining to the economic impacts of the complex nuclear waste dilemma on the applicants' proposal, such evidence would be material and relevant to this CPCN proceeding. Applicants are incorrect when they "must infer" that the petitioners interests in "radioactive waste is oriented toward radiological safety issues raised by nuclear waste disposal" when for the purposes of this proceeding, the proper inference would be that the petitioners interests also extend to the *economic* issues raised by nuclear waste disposal. Intervention, therefore, would be entirely appropriate.

In sum, the petitioners have genuine and material interests in the proceeding -- interests which are relevant to the Commission's decision-making, and which are not represented by other parties to the action. The petitioners therefore would request that the Commission deny the applicants' request to exclude participation. In the alternative, the petitioners would request leave to amend their petitions to extend and clarify the organizations' interests in the proceeding.

Respectfully submitted,

/s/

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cc: Service List for case 9127