



Sept. 4, 2012

Contacts: Karen Hadden, SEED Coalition, 512-797-8481
Brett Jarmer and Robert V. Eye, Attorneys, 785-234-4040

Foreign Ownership Could Halt Licensing of South Texas Project Nuclear Reactors; NRC Decision to Deny a License for Calvert Cliffs Bodes Well

Austin, Texas On Thursday, the Nuclear Regulatory Commission denied an operating license to Unistar Nuclear Energy for its planned third reactor at Calvert Cliffs in Maryland because it is fully owned by France's Électricité de France (EDF)—a foreign entity. Federal law prohibits a foreign entity from completely owning or controlling a U.S. nuclear plant. The company was given 60 days to find a U.S. partner, which it has been unable to do in the past two years, and if it fails to do so the license application will be fully terminated.

“This decision sets good precedent for us as opponents of two proposed reactors at the South Texas Project,” said Karen Hadden, executive director of SEED Coalition, a group which has intervened in the licensing process, along with the South Texas Association for Responsible Energy and Public Citizen. “We hope to see clean, safe energy be developed in Texas instead of dangerous nuclear power. We must prevent Fukushima style disasters from happening here.”

"From a regulatory perspective, the Calvert Cliffs decision shows that the prohibition against foreign ownership means what it says. This could be a major setback to the nuclear industry if foreign capital is unavailable for U.S. nuclear projects, said Robert Eye, attorney for the intervenors. “Domestic investors and lenders won't put their money in nuclear projects without massive government subsidies and loan guarantees. Considering tight budgets, more government money for dangerous and expensive nuclear power doesn't make sense when cheaper and safer renewable sources are available.”

“Federal law is clear that foreign controlled corporations are not eligible to apply for a license to build and operate nuclear power plants. The evidence is that Toshiba is in control of the project and this precludes obtaining an NRC license for South Texas Project 3 & 4,” said Brett Jarmer, an attorney also representing the intervenors.

"Foreign investment in U.S nuclear projects is not per se prohibited; but Toshiba is paying all the bills for the STP 3 & 4 project. This makes it difficult to accept that Toshiba doesn't control the project," said Robert Eye.

Toshiba North America Engineering, or TANE, will assume exclusive, principal funding authority for the project, but they are a wholly owned subsidiary of Toshiba America, Inc, a Japanese corporation. Opponents contend that this makes them ineligible for

licensing.

How did foreign ownership become a problem? New Jersey based NRG announced on April 19, 2011 that it would write down its investment in the development of South Texas Project units 3 & 4. Engineering work and pre-construction activities were halted, and NRG stated that Toshiba North America Engineering – TANE – would be responsible for funding ongoing costs to continue the licensing process. TANE is a subsidiary of Toshiba America, Inc., a Delaware corporation that is a wholly owned subsidiary of Toshiba Corporation, a Japanese company.

“National security and safety concerns justify NRC’s limits on foreign ownership and control of nuclear reactors,” said Karen Hadden, Director of the Sustainable Energy and Economic Development (SEED) Coalition. “What if a foreign company was careless in running a U.S. reactor? International alliances are known to shift. What if a nation that is friendly toward the U.S. today becomes hostile in the future? Our own reactors could become a weapon to be turned against us to threaten civilians in a war against the U.S.”

“Even if the reactors are operated by the South Texas Nuclear Operating Company, they will get their orders from foreign owners. What if their concerns are more about cost-cutting and less about safety?” asked Susan Dancer, President of the South Texas Association for Responsible Energy. “Japanese investors would have us believe that they can come to America and safely build, own and operate nuclear plants, and that we should not concern ourselves with passé laws and regulations, but the recent Fukushima disaster has demonstrated the flawed Japanese model of nuclear safety and the lack of protection afforded the Japanese people. In such an inherently dangerous industry, the American people deserve protection through federal law, including that our nuclear reactors are controlled by the people most concerned about our country: fellow Americans.”

Foreign Ownership, Control or Domination policy is spelled out in the Atomic Energy Act (AEA) of 1954. In Section 103d it says that no license may be issued to an alien or 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.

The NRC interprets this to mean that these entities are not eligible to apply for and obtain a license. According to Commission guidance, an entity is 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.” There is no set percentage point cut-off point used to determine foreign ownership. The factors that are considered include:

- The extent of foreign ownership
- Whether the foreign entity operates the reactors
- Whether there are interlocking directors and officers
- Whether there is access to restricted data
- Details of ownership of the foreign parent company

The Atomic Safety and Licensing Board order can be found online at

www.NukeFreeTexas.org

###