UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

NRC STAFF'S ANSWER TO PETITION TO INTERVENE IN DOCKET NO. 52-016, CALVERT CLIFFS-3 NUCLEAR POWER PLANT COMBINED CONSTRUCTION AND LICENSE APPLICATION

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INTRODUCTION

Pursuant to 10 C.F.R. § 2.309(h)(1), the staff of the U.S. Nuclear Regulatory Commission (NRC) hereby answers the "Petition to Intervene in Docket No. 52-016, Calvert Cliffs-3 Nuclear Power Plant Combined Construction and License Application" (Petition). The NRC Staff (Staff) does not oppose a finding that Nuclear Information and Resource Service ("NIRS" or the "Petitioner") has established standing, but opposes the petition because NIRS has not identified an admissible contention. The Staff opposes consideration of the petition to intervene as a basis for intervention Beyond Nuclear, Public Citizen, Maryland Public Interest Research Group (MD PIRG), and Southern Maryland Citizen's Alliance for Renewable Energy Solutions (So MD CARES) based on an unsigned petition and NIRS' lack of authority to petition on their behalf.

The Staff does not object to granting NIRS' request for an additional period of time after the public availability of Revision 3 of the application to modify its proposed contentions or draft

new contentions exclusively based on new information contained in Revision 3 to the Calvert Cliffs combined license application (COLA) that has not yet been made publicly available.

BACKGROUND

On July 13, 2007, and March 14, 2008, UniStar Nuclear Operating Services, LLC and Calvert Cliffs 3 Nuclear Project, LLC (Applicants), pursuant to the Atomic Energy Act of 1954, as amended (AEA) and the Commission's regulations, submitted an application for a combined license (COL) for one U.S. Evolutionary Power Reactor (U.S. EPR) to be located adjacent to the existing Calvert Cliffs Nuclear Power Plant, Units 1 and 2, near Lusby, Calvert County, Maryland (Application).[1] The proposed unit will be known as Calvert Cliffs Nuclear Power Plant, Unit 3. The COL Applicants subsequently revised and supplemented the application.

On August 15, 2007, the Staff published a notice of the receipt and availability of Part 1 of the COL application in the *Federal Register*. *See* 72 Fed. Reg. 45,832 (Aug. 15, 2007). Part 1 of the application was accepted for docketing on January 25, 2008. *See* 73 Fed. Reg. 5877 (Jan. 31, 2008). On May 2, 2008 the Staff published a notice of availability of Part 2 of the application. 73 Fed. Reg. 24,321 (May 2, 2008). Part 2 of the application was accepted for docketing on January 25, 2008. 73 Fed. Reg. 5877 (Jan. 31, 2008). On September 26, 2008, the NRC published a notice of hearing on the Application, which provided members of the public sixty days from the date of publication to file a petition for leave to intervene in this proceeding. *See* 73 Fed. Reg. 55,876 (Sept. 26, 2008). In response to the Notice of Hearing, the Petitioner submitted its Petition through which it seeks to intervene in this proceeding.

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[1] The original COL applicants were Constellation Generation Group, LLC and UniStar Nuclear Operating Services, LLC. The application was revised by letter dated August 1, 2008, which among other things changed the applicants to Calvert Cliffs 3 Nuclear Project, LLC and UniStar Nuclear Operating Services, LLC.

DISCUSSION

In its Petition, NIRS asserts that it has standing to intervene on behalf of its members and in its own right. NIRS asserts that joining it in the Petition are Beyond Nuclear, Public Citizen Energy Program, and Maryland Public Interest Research Group. The Petitioner asserts seven contentions summarized as follows:

1. Contrary to the Atomic Energy Act and NRC Regulations, Calvert Cliffs-3 would be owned, dominated, and controlled by foreign interests;

2. Decommissioning Funding Assurance described in the Application is inadequate to assure that sufficient funds will be available to fully decontaminate and decommission Calvert Cliffs-3. Applicants must use the prepayment method of assuring decommissioning funding.

3. The Application's Environmental Report (ER) is unacceptably deficient because it omits from the analysis of the proposed plant's environmental impact the new reactor's potential adverse contribution to the cumulative and potentially synergistic environmental impact of 11 operational reactor units and two proposed additional nuclear power projects on the watershed of an already severely degraded and declining Chesapeake Bay whose recovery plan is currently in serious doubt and the focus of a federal lawsuit for failure to comply with mitigation actions.

4. The Application's ER is unacceptably deficient because it omits from the analysis of the proposed plant's reactor design and safety of the Calvert Cliffs facility, additional relevant impacts arising from the expansion of the Dominion Cove Point (DCP) Liquefied Natural Gas (LNG) facility located 3.2 miles south of the proposed reactor.

5. The Application's ER is unacceptably deficient because it omits the combined and cumulative mechanical stress to Chesapeake Bay biota caused by the cooling water intake pumps for the proposed Unit 3, Calvert Cliffs units 1 and 2 water intake pumps and water ballast intake pumps of the LNG tanker ships that are operational during LNG unloading operations at the DCPLNG pier.

6. The application is deficient in its discussion of high-level radioactive waste that would be generated by Calvert Cliffs-3:

> A. Failure to evaluate whether and in what time frame spent fuel generated by Calvert Cliffs Unit 3 can be safely disposed of. The ER is deficient because it fails to discuss the environmental implications of the lack of options for permanent disposal of the irradiated (i.e. spent) fuel that will be generated by the proposed new reactor if built and operated
>
> B. Even if the waste confidence decision applies to this proceeding, it should be reconsidered in light of significant and pertinent unexpected events that raise substantial doubt about its continuing validity, i.e., the increased threat of terrorist attacks against U.S. facilities.

7. The Application to build and operate Calvert Cliffs Nuclear Power Plant Unit 3 violates the National Environmental Policy Act (NEPA) by failing to address the environmental impacts of the waste that it will generate in the absence of licensed disposal facilities or capability to isolate the radioactive waste from the environment. The ER does not address the environmental, environmental justice, health, safety, security or economic consequences that will result from lack of permanent disposal for the radioactive wastes generated.

Additionally, the Petitioner requests that it be given an extended time period to modify the contentions and/or draft new contentions based on information submitted to the NRC that is not publicly available prior to the deadline to file petitions. Petition at 5.

As explained below, only NIRS has properly established standing. NIRS has not submitted an admissible contention. Accordingly, NIRS' Petition should be denied.

I. LEGAL STANDARDS

A. Filing Requirements

The Commission's regulations require that the original of each document must be signed by the participant or authorized representative.

> The original of each document must be signed by the participant or its authorized representative, or by an attorney having authority with respect to it. The document must state the capacity of the person signing; his or her address; and the date of signature.

10 C.F.R. § 2.304(d). The rule provides the methodology for signing by multiple participants.

> An electronic document must be signed using a participant's or representative's digital ID certificate. Additional signatures can be added to the electronic document, including to any affidavits that accompany the document, by a typed-in designation that indicates the signer understands and acknowledges that he or she is assenting to the representations in paragraph (d) of this section.

10 C.F.R. § 2.304(d)(1). The Commission's rule explains the significance of the signature requirement as:

> The signature of a person signing a pleading or other similar document submitted by a participant is representation that the document has been subscribed in the capacity specified with full authority, that he or she has read it and knows the contents, that to the best of his or her knowledge, information, and belief the

> statements made in it are true, and that it is not interposed for delay.

10 C.F.R. § 2.304(d). Likewise, the Commission explains the form and significance of the signature requirement for an affidavit.

> The signature of a person signing an affidavit or similar document, which should be submitted in accord with the form outlined in 28 U.S.C. 1746, is a representation that, under penalty of perjury, the document is true and correct to the best of that individual's knowledge and belief.

10 C.F.R. § 2.304(d). The rule further provides that as a consequence of not signing a document or signing with the intent to defeat the purposes of 10 C.F.R. § 2.304 the document may be struck.

The rules further provide requirements for representation in adjudicatory proceedings.

> A person may appear in an adjudication on his or her own behalf or by an attorney-at-law. A partnership, corporation, or unincorporated association may be represented by a duly authorized member or officer, or by an attorney-at-law. A party may be represented by an attorney-at-law if the attorney is in good standing and has been admitted to practice before any Court of the United States, the District of Columbia, or the highest court of any State, territory, or possession of the United States.

10 C.F.R. § 2.314(b). The rule further provides that any person appearing in a representative capacity shall file a notice of appearance. The notice of appearance must contain the basis of the representative's authority to act on behalf of the party. 10 C.F.R. § 2.314(b).

B. Standing to Intervene

In accordance with the Commission's Rules of Practice:[2]

> [a]ny person whose interest may be affected by a proceeding and who desires to participate as a party must file a written request for hearing or petition for leave to intervene and a specification of the contentions that the person seeks to have litigated in the hearing.

10 C.F.R. § 2.309(a). The regulations further provide that the Licensing Board:

> will grant the [petition] if it determines that the [petitioner] has standing under the provisions of [10 C.F.R. § 2.309(d)] and has proposed at least one admissible contention that meets the requirements of [10 C.F.R. § 2.309(f)].

Id.

Under the general standing requirements set forth in 10 C.F.R. § 2.309(d)(1), a request for hearing or petition for leave to intervene must state:

> (i) The name, address and telephone number of the requestor or petitioner;
> (ii) The nature of the requestor's/petitioner's right under the [AEA] to be made a party to the proceeding;
> (iii) The nature and extent of the requestor's/petitioner's property, financial or other interest in the proceeding; and
> (iv) The possible effect of any decision or order that may be issued in the proceeding on the requestor's/petitioner's interest.

10 C.F.R. § 2.309(d)(1).

As the Commission has observed:

> [a]t the heart of the standing inquiry is whether the petitioner has "alleged such a personal stake in the outcome of the controversy" as to demonstrate that a concrete adverseness exists which will sharpen the presentation of issues.

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[2] *See* "Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders." 10 C.F.R. Part 2.

Sequoyah Fuels Corp. and Gen. Atomics (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 71 (1994) (citing *Duke Power Co. v. Carolina Envtl. Study Group, Inc*., 438 U.S. 59, 72 (1978), and quoting *Baker v. Carr*, 369 U.S. 186, 204 (1962)).

> To demonstrate such a "personal stake," the Commission applies contemporaneous judicial concepts of standing. Accordingly, petitioner must (1) allege an "injury in fact" that is (2) "fairly traceable to the challenged action" and (3) is "likely" to be "redressed by a favorable decision."

Sequoyah Fuels, 40 NRC at 71-72 (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992) (citations and internal quotations omitted) and citing *Cleveland Elec. Illuminating Co.* (Perry Nuclear Power Plant, Unit 1), CLI-93-21, 38 NRC 87, 92 (1993)). *See also Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 323 (1999).

In reactor licensing proceedings, licensing boards have typically applied a "proximity" presumption to persons "who reside in or frequent the area within a 50-mile radius" of the proposed plant. *See, e.g.*, *Fla. Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-01-6, 53 NRC 138, 148 (2001).[3] The Commission noted this practice with approval, stating that:

> We have held that living within a specific distance from the plant is enough to confer standing on an individual or group in proceedings for construction permits, operating licenses, or significant amendments thereto[.] *See, e.g. Virginia Electric and Power Co.* (North Anna Power Station, Units 1 and 2), ALAB-522, 9 NRC 54 (1979). . . . [T]hose cases involved the construction or operation of the reactor itself, with clear implications for the offsite environment[.] *See, e.g., Gulf States Utilities Co.* (River Bend Station, Units 1 and 2), ALAB-183, 8 [sic, 7] AEC 222, 226 (1974).

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[3] The *Turkey Point* decision summarizes the development of this doctrine. *See Turkey Point*, LBP-01-6, 53 NRC at 147-48.

Fla. Power & Light Co. (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329 (1989). The proximity presumption establishes standing without the need to establish the elements of injury, causation, or redress. *Turkey Point*, LBP-01-6, 53 NRC at 150. The Staff submits that because a COL application is an application for a construction permit combined with an operating license (*see* 10 C.F.R. § 52.1(a)), the proximity presumption would appear, in general, to apply to such applications. *See e.g. Virginia Elec. & Power Co., d/b/a/ Dominion Virginia Power and Old Dominion Elec. Coop.* (COL for North Anna Unit 3), LBP-08-15, slip op. at 8.

An organization may establish its standing to intervene based upon a theory of organizational standing (showing that its own organizational interests could be adversely affected by the proceeding), or representational standing (based upon the standing of its members). Where an organization seeks to establish representational standing, it must show that at least one of its members may be affected by the proceeding, it must identify that member by name and address and it must show that the member "has authorized the organization to represent him or her and to request a hearing on his or her behalf." *See, e.g.*, *Consumers Energy Co.* (Palisades Nuclear Power Plant), CLI-07-18, 65 NRC 399, 409 (2007); *Amergen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), LBP-06-07, 63 NRC 188, 195 (2006) (citing *GPU Nuclear Inc.* (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 NRC 193, 202 (2000)).

Further, for the organization to establish representational standing, the member seeking representation must qualify for standing in his or her own right, the interests that the organization seeks to protect must be germane to its own purpose, and neither the asserted claim nor the requested relief may require an individual member to participate in the organization's legal action. *Palisades,* CLI-07-18, 65 NRC at 409; *Private Fuel Storage,* CLI-99-

10, 49 NRC at 323 (citing *Hunt v. Wash. State Apple Advertising Comm'n,* 432 U.S. 333, 343 (1977)).

"Organizations seeking to intervene in their own right must satisfy the same standing requirements as individuals seeking to intervene. This is because an organization, like an individual, is considered a 'person' as we have defined that word in 10 C.F.R. § 2.4 and as we have used it in 10 C.F.R. § 2.309 regarding standing." *Palisades*, 65 NRC at 411. "For an organizational petitioner to establish standing, it must show either immediate or threatened injury to its organizational interests or to the interests of identified members. An organization seeking to intervene in its own right . . . to establish organizational standing . . . must demonstrate a palpable injury in fact to its organizational interests that is within the zone of interests protected by the AEA or NEPA." *Crow Butte Res., Inc.,* (citations omitted; internal quotation marks omitted) (License Amendment for the North Trend Expansion Project), 2008 NRC LEXIS 31, 47-48 (2008).

C. Legal Requirements for Contentions

1. General Requirements

The legal requirements governing the admissibility of contentions are well established and are currently set forth in 10 C.F.R. § 2.309(f) of the Commission's Rules of Practice (formerly 10 C.F.R. § 2.714(b)).[4]

[4] In 2004, the Commission codified the requirements of former § 2.714, together with rules regarding contentions set forth in Commission cases, in 10 C.F.R. § 2.309. *See* "Changes to Adjudicatory Process" (Final Rule), 69 Fed. Reg. 2182 (Jan. 14, 2004), *as corrected*, 69 Fed. Reg. 25,997 (May 11, 2004). In the Statements of Consideration for the final rule, the Commission cited several Commission and Atomic Safety and Licensing Appeal Board decisions applying former § 2.714 in support of the codified provisions of § 2.309. *See* 69 Fed. Reg. at 2202. Accordingly, Commission and Atomic Licensing Appeal Board decisions on former § 2.714 retain their vitality, except to the extent the Commission changed the provisions of § 2.309 as compared to former § 2.714.

The standards in 10 C.F.R. § 2.309(f)(1) may be summarized as follows: an admissible contention must: (1) provide a specific statement of the legal or factual issue sought to be raised; (2) provide a brief explanation of the basis for the contention; (3) demonstrate that the issue raised is within the scope of the proceeding; (4) demonstrate that the issue raised is material to the findings the NRC must make to support the action that is involved in the proceeding; (5) provide a concise statement of the alleged facts or expert opinions, including references to specific sources and documents, that support the petitioner's position and upon which the petitioner intends to rely at the hearing; and (6) provide sufficient information to show that a genuine dispute with the applicant exists with regard to a material issue of law or fact, including references to specific portions of the application that the petitioner disputes, or in the case when the application is alleged to be deficient, the identification of such deficiencies and supporting reasons for this belief. *See* 10 C.F.R. § 2.309(f).[5]

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[5] Section 2.309(f) provides:

> (f) Contentions.
>
> (1) A request for hearing or petition for leave to intervene must set forth with particularity the contentions sought to be raised. For each contention, the request or petition must:
> (i) Provide a specific statement of the issue of law or fact to be raised or controverted;
> (ii) Provide a brief explanation of the basis for the contention;
> (iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding;
> (iv) Demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding;
> (v) Provide a concise statement of the alleged facts or expert opinions which support the requestor's/petitioner's position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue; and
> (vi) Provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact. This

(continued. . .)

Sound legal and policy considerations underlie the Commission's contention requirements. The purpose of the contention rule is to "focus litigation on concrete issues and result in a clearer and more focused record for decision." 69 Fed. Reg. at 2202; *see also Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553-54 (1978); *BPI v. AEC*, 502 F.2d 424, 428 (D.C. Cir. 1974); *Phila. Elec. Co.* (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20 (1974). The Commission has stated that it "should not have to expend resources to support the hearing process unless there is an issue that is appropriate for, and susceptible to, resolution in an NRC hearing." 69 Fed. Reg. at 2202. The Commission has emphasized that the rules on contention admissibility are "strict by design." *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 358 (2001), *pet. for reconsideration denied*, CLI-02-01, 55 NRC 1 (2002). Failure to comply with any of these requirements is grounds for the dismissal of a contention. 69 Fed. Reg. at 2221; *see also*, *Private Fuel Storage, L.L.C.,* CLI-99-10, 49 NRC at 325; *Ariz. Pub. Serv. Co*. *et al.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 NRC 149, 155-56 (1991).

(. . .continued)

> information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief.
>
> (2) Contentions must be based on documents or other information available at the time the petition is to be filed, such as the application, supporting safety analysis report, environmental report or other supporting document filed by an applicant or licensee, or otherwise available to a petitioner. On issues arising under the National Environmental Policy Act, the petitioner shall file contentions based on the applicant's environmental report.

10 C.F.R. § 2.309(f)(1) through (f)(2).

"Mere 'notice pleading' does not suffice." *Amergen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-06-24, 64 NRC 111, 119 (2006).

Finally, it is well established that the purpose for requiring a would-be intervener to establish the basis of each proposed contention is: (1) to assure that the contention raises a matter appropriate for adjudication in a particular proceeding; (2) to establish a sufficient foundation for the contention to warrant further inquiry into the assertion; and (3) to put other parties sufficiently on notice of the issues so that they will know generally what they will have to defend against or oppose. *Peach Bottom*, ALAB-216, 8 AEC at 20-21; *Ariz. Pub. Serv. Co., et al.* (Palo Verde Nuclear Generating Station, Units 1, 2 and 3), LBP-91-19, 33 NRC 397, 400 (1991). The *Peach Bottom* decision requires that a contention be rejected if:

> (1) it constitutes an attack on applicable statutory requirements;
> (2) it challenges the basic structure of the Commission's regulatory process or is an attack on the regulations;
> (3) it is nothing more than a generalization regarding the petitioner's view of what applicable policies ought to be;
> (4) it seeks to raise an issue which is not proper for adjudication in the proceeding or does not apply to the facility in question; or
> (5) it seeks to raise an issue which is not concrete or litigable.

Peach Bottom, 8 AEC at 20-21.

These rules focus the hearing process on real disputes susceptible to resolution in an adjudication. *See Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 334 (1999). For example, "a petitioner may not demand an adjudicatory hearing to attack generic NRC requirements or regulations or to express generalized grievances about NRC policies." *Id.* Specifically, NRC regulations do not allow a contention to attack a regulation unless the proponent requests a waiver from the Commission. *See* 10 C.F.R. § 2.335; *Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), *Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-07-3, 65 NRC 13, 17-18 and n.15 (2007) (citing *Millstone*, CLI-01-24, 54 NRC at 364).

II. ONLY NIRS HAS MET THE FILING REQUIREMENTS OF 10 C.F.R. PART 2

The Petition filed in this case is filed in the name of four distinct organizations: Nuclear Information and Resource Service, Beyond Nuclear, Public Citizen Energy Program, and Maryland Public Interest Research Group (MD PIRG). petition at 1. However, the Petition is only signed by Michael Mariotte, Executive Director of NIRS. Petition at 52. Also, 10 C.F.R. § 2.304(d) requires that the Petition be signed by each participant or their authorized representative. The Petition and its attachments do not indicate that either NIRS or Mr. Mariotte are authorized to sign on behalf of the other organizations mentioned in the Petition or the other organizations' members.[6] Petition at 52. The Board has previously held that, "[i]t is a basic legal principle that one party may not represent another without the express authority to do so." *Long Island Lighting Company* (Shoreham Nuclear Power Station, Unit 1) LBP-77-11, 5 NRC 481, 483 (1977). In the Shoreham case, the Board held that in the absence of proof that the petitioners were authorized to represent persons other than their own members, their claims must be rejected. *Id.* While the Petition does not state that NIRS is representing either the other named organizations or their respective members, this appears to be implied based on the lack of signatures for the other named organizations. The Board has the authority to strike the non-signing participants from the Petition and treat it as filed only on behalf of NIRS.[7] 10 C.F.R. § 2.304(d).

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[6] Additionally, 10 C.F.R. § 2.314(b) limits partnerships, corporations, and unincorporated organizations to representation only by a duly authorized member or officer, or by an attorney-at-law. Under this rule, Mr. Mariotte may not sign on behalf of other organizations.

[7] While 10 C.F.R. § 2.304 does not explicitly provide an opportunity to cure a defect in a pleading, the Staff recognizes that under various circumstances Boards in prior cases have both struck parties and pleadings and allowed opportunities to cure defects in pleadings based on the circumstances of each case. *See Public Service Company of New Hampshire* (Seabrook Station, Units 1 and 2) LBP86-34, 24 NRC 549, 550 n.1 (1986); *Carolina Power and Light Co.* (Shearon Harris Nuclear Power Plant) (continued. . .)

In addition to being signed only by a representative of NIRS, the Petition incorrectly lists Maryland Public Interest Research Group as a petitioner. The first of two subsequently filed Errata sheets submitted by Paul Gunter, Director of the Reactor Oversight Project of Beyond Nuclear, attempted to correctly identify the petitioners.[8] "Errata of Joint Petitioners Clarifying Intervenors and Standing and Other Corrections" (Nov. 25, 2008). The first Errata sheet explains that contrary to the statement in the Petition, MD PIRG did not request to intervene in this proceeding. The second Errata filing asks that "Southern Maryland Citizen's Alliance for Renewable Energy Solutions" (So MD CARES) be substituted for "Maryland Public Interest Research Group". "Corrected Errata of Joint Petitioners Clarifying Intervenors and Standing" (Nov. 26, 2008). The second Errata filing states that "[a]s is demonstrated by Exhibit 7, the signed declaration of Steven Warner correctly identifies the petitioning organization as Southern Maryland Citizen's Alliance for Renewable Energy Solutions." NIRS Exhibit 7. However, the declaration of Steven W. Warner identifies the petitioning organization as NIRS, as it is entitled, "Declaration of Steven W. Warner in Support of Nuclear Information and Resource Service [not So MD CARES] Petition to Intervene in Docket 52-016." *Id*. Further, it identifies Mr. Warner as a member of "Southern Maryland Citizen's Alliance for Renewable Solutions" (omitting "Energy"). NIRS Exhibit 7.

(. . .continued)

ALAB-837, 23 NRC 525, 542-543 n.58 (1986); *Puget Sound Power and Light Co.* (Skagit Nuclear Power Project, Units 1 and 2) ALAB-556, 10 NRC 30, 33 (1979); *but see Public Service Company of New Hampshire* (Seabrook Station, Units 1 and 2) ALAB-933, 31 NRC 491, 496-497 (1990); and *Duquesne Light Co.* (Beaver Valley Power Station, Unit 2) LBP-84-6, 19 NRC 393, 408-411.

[8] Similar to the Petition, the Errata filings are filed by only one organization. They are signed by Paul Gunter, Director of the Reactor Oversight Project of Beyond Nuclear, and they do not indicate that either Mr. Gunter or Beyond Nuclear are authorized to represent the other organizations or their members.

If the Board determines that Beyond Nuclear is authorized to amend the Petition on behalf of So MD CARES, and treats the Petition as filed on behalf of So MD CARES, then as discussed below, the declaration of Mr. Warner is deficient in supporting So MD CARES' standing to intervene because it identifies or misidentifies two other groups to which Mr. Warner delegates his authority.

III. NIRS HAS ESTABLISHED REPRESENTATIONAL STANDING AND STANDING IN ITS OWN RIGHT

NIRS claims to have representational standing to intervene in this proceeding by a demonstrated injury-in-fact to two of its members who have authorized it to represent them in this matter. Petition at 1 and NIRS Exhibits 1 and 2. The two individuals are Michael Mariotte and Roma R. Mauro. Petition at 2.

In order to establish representational standing, an organization must demonstrate, among other things, that its members would otherwise have standing to participate in their own right and that at least one of its members has authorized it to represent the member's interests. *See Palisades*, CLI-07-18, 65 NRC at 409. NIRS satisfies the representational standing requirement through both of the individuals named in the Petition. The NIRS Declarants have provided similar affidavits, each asserting that he or she is a member of NIRS, lives within fifty miles of the Calvert Cliffs site, and authorizes NIRS to represent him or her in this proceeding. NIRS Exhibits 1 and 2.

NIRS must also show that the interests that the organization seeks to protect are germane to its own purpose, and that neither its claim, nor the requested relief requires an individual member to participate in the action. *Palisades*, CLI-07-18, 65 NRC at 409. The Petitioner describes itself as "an information and networking center for people and organizations concerned about the safety, health and environmental risks posed by nuclear power

generation." Petition at 1. This interest is germane to the interests of its members that NIRS seeks to protect, where the NIRS Declarants each stated that:

> I am concerned that if the NRC grants CGG [Constellation Generation Group, LLC] and UniStar's COLA, the construction and operation of the proposed nuclear power plant could adversely affect my health and safety and the integrity of the environment where I live. I am particularly concerned about the risk of accidental releases of radioactive material to the environment, and the potential harm to groundwater supplies and local surface waters.

NIRS Exhibits 1 and 2. Because both of the NIRS declarants have established standing to intervene in their own right, and have authorized NIRS, whose organizational interests are germane to those whom it would represent, to represent their interests in this proceeding NIRS has satisfied the standards for representational standing set forth in *Palisades*, CLI-07-18, 65 NRC at 409. Therefore, the Staff does not object to NIRS' representational standing to petition to intervene on behalf of its members.[9]

NIRS also claims that it has standing in its own right to bring this petition. In support of this claim, NIRS states that, "… its offices are located within about 50 miles of the site of the proposed nuclear power plant" and that an accident at the plant could result in radiological releases and environmental contamination that would adversely affect the value of its property and its ability to conduct its business. Petition at 2. The Staff agrees that NIRS has established standing in its own right.[10]

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[9] NIRS also argues that it has standing in its own right to bring this petition based in part on the assertion that, "[a]n accident at the proposed nuclear power plant could result in radiological releases and environmental contamination that would adversely affect the health of NIRS' employees, …". Petition at 2. However, this goes to representational standing of the individual employees. The Petition does not provide support that the employees have authorized NIRS to represent their interests in this matter, that they are members of NIRS, or that their interests are aligned with the stated interests of NIRS. *See Palisades*, CLI-07-18, 65 NRC at 409.

[10] Although NIRS does not provide the necessary specificity for its reliance on proximity to the (continued. . .)

IV. DECLARATIONS OF MEMBERS FILED WITH THE PETITION SUPPORT STANDING FOR BEYOND NUCLEAR BUT NOT PUBLIC CITIZEN OR SO MD CARES

Although Beyond Nuclear, Public Citizen, and So MD CARES have not properly joined in the Petition and cannot be represented by NIRS as explained above, declarations of members for each organization in support of standing were filed with the Petition. NIRS Exhibits 3 - 7. The declarations filed in support of Beyond Nuclear would support representational standing if Beyond Nuclear had properly joined in filing the Petition. The Petition and the declarations filed in support of Public Citizen and So MD CARES do not support standing for these two organizations even if they had properly joined in the Petition.

A. If Beyond Nuclear Had Joined in the Petition, It Would Have Representational Standing

The Petition describes Beyond Nuclear as an advocacy group that, "aims to educate and activate the public on issues pertaining to the hazards of nuclear power, its connection to nuclear weapons and the need to abandon both." Petition at 2. In order to establish representational standing, an organization must demonstrate, among other things, that its members would otherwise have standing to participate in their own right and that at least one of its members has authorized it to represent the member's interests. See Palisades, CLI-07-18, 65 NRC at 409. Declarations of Kevin Kamps, Cynthia B. Peil, and William Louis Peil were filed with the Petition in support of Beyond Nuclear. Each asserts that they are a member of Beyond Nuclear, live within 50 miles of the proposed plant, and authorize Beyond Nuclear to represent them in this proceeding. NIRS Exhibits 3 - 5. Beyond Nuclear must also show that the

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(. . .continued)

proposed plant, the organization's address at the end of the pleading indicates that NIRS is within 50 miles of the proposed plant.

members' interests that the organization seeks to protect are germane to its own purpose, and that neither its claim, nor the requested relief requires an individual member to participate in the action. The interests asserted by the Petition that Beyond Nuclear seeks to protect are aligned with the interests of these three members where their declarations state,

> I am concerned that if the NRC grants CGG and UniStar's COLA, the construction and operation of the proposed nuclear power plant could adversely affect my health and safety and the integrity of the environment where I live. I am particularly concerned about the risk of accidental releases of radioactive material to the environment, and the potential harm to groundwater supplies and local surface waters.

NIRS Exhibits 3 - 5. These declarations would have supported Beyond Nuclear's standing if it had properly petitioned to intervene in this case. The Petition also states that Beyond Nuclear also has standing in its own right to bring this Petition. While the Petition claims that the Beyond Nuclear's office is "within about 50 miles" of the proposed site, it does not provide information sufficient to support a determination, such as an address, that the office is within the 50 mile radius. Petition at 3. In order to demonstrate an interest based on proximity, a petitioner must provide fact-specific standing allegations, not conclusory assertions. *Palisades*, CLI-07-18, 65 NRC at 410. Thus the Petition does not support a finding that Beyond Nuclear has standing in its own right.

B. Even If Public Citizen Had Joined in the Petition, It Would Not Have Standing

The Petition describes Public Citizen as a "non-profit, non-partisan consumer rights organization". Petition at 3. The Petition only provides a limited description of how Public Citizen's organizational interests are germane to the interests of its member that it would seek to protect, "Its Energy Program does extensive work at the federal and state levels to promote energy policies that best protect consumers." Petition at 3. In support of Public Citizen's standing claim, the Petition references Robert Boxwell's declaration which states,

> I am concerned that if the NRC grants CGG and UniStar's COLA, the construction and operation of the proposed nuclear power plant could adversely affect my health and safety and the integrity of the environment where I live. I am particularly concerned about the risk of accidental releases of radioactive material to the environment, and the potential harm to groundwater supplies and local surface waters.

NIRS Exhibit 6. Public Citizen's consumer policy and protection interests do not appear to align with the interests that Mr. Boxwell is seeking to protect. Furthermore, general consumer and energy policy interests are not within the scope of this proceeding and fall outside of the protected interests of the AEA or the NEPA. *See Palisades* CLI-07-18, 65 NRC at 411; *Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 1) CLI-83-25, 18 NRC 327, 332 (1983). The Petition states that Public Citizen also has standing in its own right to bring this Petition. While the Petition claims that the Public Citizen office is "within about 50 miles" of the proposed site, it does not provide information sufficient to support a determination, such as an address, that the office is within a 50 mile radius of the proposed plant. In order to demonstrate an interest based on proximity, a petitioner must provide fact-specific standing allegations, not conclusory assertions. *Palisades*, CLI-07-18, 65 NRC at 410. Thus, the Petition, even if it were properly joined by Public Citizen, does not support its standing in this proceeding.

C. Even If So MD CARES Had Joined in the Petition, It Would Not Have Standing

The Petition provides a description of "Southern Maryland Citizen's Alliance for Renewable Solutions" and contends that the organization has "approximately 15 members, all of whom live in the southern Maryland tri-county area in proximity to the proposed reactor site as evidenced by the . . . declaration of Steven W. Warner." Petition at 4. At no point does the Petition state that any of its members seek to have So MD CARES represent their interests in this proceeding or that it has standing to intervene in its own right. Petition at 4. As such, the Petition fails to allege facts that would support a finding that Southern Maryland Citizen's

Alliance for Renewable Solutions, either by that name, or by any other name, has standing to participate in this proceeding.

As noted above, even if the Board determines that Beyond Nuclear is authorized to amend the Petition on behalf of So MD CARES, and treats the Petition as filed on behalf of So MD CARES, the declaration of Mr. Warner is deficient in supporting So MD CARES' standing to intervene because it identifies (or misidentifies) NIRS as the sole petitioner, and Mr. Warner as a member of "Southern Maryland Citizen's Alliance for Renewable Solutions," and as delegating his authority to *them* to represent him in this proceeding, and not to So MD CARES. Commission case law requires a petitioner to "demonstrat[e] that [an] individual member has standing to participate, and has authorized *the organization* to represent his or her interests. (Emphasis added.) *Entergy Nuclear Operations* (Palisades Nuclear Plant, FitzPatrick Nuclear Power Plant) CLI-08-19 at 3. Here, So MD CARES has not provided an affidavit that any member of its organization has authorized it to represent their interests. Accordingly, as no declaration has been submitted by a member of So MD CARES authorizing that group to represent them in this proceeding, and because So MD CARES has not established organizational standing in its own right, it does not have standing to intervene in this proceeding pursuant to 10 C.F.R. § 2.309(d).

V. NIRS DOES NOT PROVIDE AN ADMISSIBLE CONTENTION

The Petition does not provide any admissible contentions as discussed below:

A. Proposed Contention 1:
Contrary to the Atomic Energy Act and NRC regulations, Calvert Cliffs-3 would be owned, dominated and controlled by foreign interests.

The Petition's challenge to the application does not consider the information contained in the Calvert Cliffs application, Revision 3, because it was not publically available at the time the Petition was filed. The information in the application in Part 1, Section 1.4 "Foreign Ownership,

Control, or Domination" was substantially revised in Revision 3 to the application. Despite this, the Petition does not meet the 10 C.F.R. § 2.309(f)(1)(v) criteria for an admissible contention. The Petition does not "[p]rovide a concise statement of the alleged facts or expert opinions which support the [Petitioner's] position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the [Petitioner] intends to rely to support its position on the issue." Specifically, NIRS makes several statements upon which its contention is based, but which are not supported by either expert opinion or appropriate references.

NIRS provides background facts on the ownership interests held by parent companies Constellation Energy Group, Inc. (Constellation) and Electricité de France, SA. (EdF) However, to support its assertion that EdF owns more than half of the UniStar Nuclear Energy, LLC (UniStar) subsidiary, Calvert Cliffs 3 Nuclear Project, LLC, NIRS adds EdF's fifty percent ownership share of UniStar to its 9.51 percent ownership share of Constellation, declaring, "[t]hus, EdF's ownership stake in Calvert Cliffs-3 is based not only on its 50% share of UniStar, but also on its 9.51% share in Constellation, making it more than a 50% owner of Calvert Cliffs-3." Petition at 7. NIRS provided no expert support that the EdF ownership shares of the two companies can be simply added together to determine whether or not the prohibition of foreign ownership in the Atomic Energy Act is violated by the application. NIRS does not provide either an expert opinion or cite specific sources to support its method of analyzing the ownership of the proposed plant. Using the same logic that NIRS applies to assert that EdF owns more than 50 percent of Calvert Cliffs 3 Nuclear Project, one could conclude that the non-EdF owned share of Calvert Cliffs 3 Nuclear Project is 50 percent of UniStar plus 90.49 percent of Constellation, equaling a dominant share of 140.49 percent. Compliance with foreign ownership, control, and domination requirements is not as simplistic as the Petition contends, and without citing specific sources or expert opinions, it cannot provide a reasonable basis to

support a contention. The remaining information provided by NIRS to support this contention does not address foreign ownership. Thus without a meaningful ownership analysis, the contention is not admissible.

The additional information NIRS provides in support of this contention asserts that the proposed plant uses a certified design application sponsored by a foreign company, and that this increases the level of foreign ownership and control of the proposed plant. NIRS does not explain how referencing a design sponsored by a foreign company could violate the provisions of the AEA. Next, NIRS describes the size of EdF compared to the size of Constellation based upon market value. Again, NIRS does not provide an expert opinion or documentation to explain how that affects the foreign ownership or control of the owner or operator of the proposed plant, or how the size of the parent corporations runs afoul of the AEA prohibition on foreign ownership or control of the plant. For these reasons, Contention 1 is inadmissible.

B. Proposed Contention 2:
The Decommissioning Funding Assurance described in the Application is inadequate to assure sufficient funds will be available to fully decontaminate and decommission Calvert Cliffs-3. Applicants must use the prepayment method of assuring decommissioning funding.

Contention 2 is not admissible because it does not, "[d]emonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding." 10 C.F.R. § 2.309(f)(1)(iv). Nor does the contention , "provide sufficient information to show that a genuine dispute exists with the [applicant] on a material issue of law or fact. 10 C.F.R. § 2.309(f)(1)(vi). In Contention 2, the petition focuses on the methods set out in 10 C.F.R. § 50.75 by which a licensee indicates to the NRC that the licensee will provide reasonable assurance that funds will be available for the decommissioning process. Petition 8-11. However, the Petition overlooks the fact that, "reasonable assurance consists of a series of steps." 10 C.F.R. § 50.75(a). NIRS does not acknowledge that the applicant has

provided in the application, information to comply with the decommissioning funds regulations applicable for COL issuance. *See Calvert Cliffs Nuclear Power Plant Unit 3, COLA*, Part I: General Information, Section 1.3 Decommissioning Funding Assurance, Revision 2, March 2008. NIRS does not explain how the information provided in the application does not meet the requirements of 10 C.F.R. §§ 50.75(b) or 50.33(k), and therefore does not show that a genuine dispute exists with the Applicants.

10 C.F.R. § 50.75(b) provides that each applicant for a combined license shall submit a decommissioning report as required by § 50.33(k), and that the report,

> …must contain a certification that financial assurance for decommissioning will be provided no later than 30 days after the Commission publishes notice in the FEDERAL REGISTER under §52.103(a) in an amount which may be more, but not less, than the amount stated in the table in paragraph (c)(1) of this section, adjusted using a rate at least equal to that stated in paragraph (c)(2) of this section.

10 C.F.R. 50.75(b)(1). The regulation continues in paragraph (b)(4),

> As part of the certification, a copy of the financial instrument obtained to satisfy the requirements of paragraph (e) of this section must be submitted to NRC; *provided, however,* that an applicant for or holder of a combined license need not obtain such financial instrument or submit a copy to the Commission except as provided in paragraph (e)(3) of this section.

10 C.F.R. 50.75(b)(4) (emphasis in original). Section (e)(3) provides:

> Each **holder** of a combined license under subpart C of 10 CFR part 52 shall, 2 years before and 1 year before the scheduled date for initial loading of fuel, consistent with the schedule required by § 52.99(a), submit a report to the NRC containing a certification updating the information described under paragraph (b)(1) of this section, including a copy of the financial instrument to be used.

10 C.F.R. 50.75(e)(3) (emphasis added).

NIRS provides lengthy argument concluding that the Applicants must make a prepayment of the full amount of anticipated decommissioning funds. Petition at 11. The

Petition does not establish why that finding is material to the issuance of a combined license. To be material, the petitioner must show why the alleged error or omission is of possible significance to the result of the proceeding. *Virginia Electric and Power Co.* (Combined License Application for North Anna Unit 3) LBP-08-15, 67 NRC _ *Slip op.* at 23 (2008)(citing *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-98-07, 47 NRC 142, 179-80 (1998) *aff'd. as to other matters*, CLI-98-13, 48 NRC 26 (1998). As described in the regulation cited above, the application is required to have a "certification", but financial assurance is only required "no later than 30 days after" the Commission publishes notice pursuant to 10 C.F.R. § 52.103(a). Under the provisions of Section 52.103(a), that notice is published only after issuance of the COL. Further, the provision in Section 50.75(b)(4) indicates that the "holder" of a combined license must submit a copy of the financial instrument to be used. The subject matter of the contention must impact the grant or denial of a pending license application. *Virginia Electric and Power Co.* (Combined License Application for North Anna Unit 3) LBP-08-15, 67 NRC _ *Slip op.* at 23 (citing *PFS*, LBP-98-07, 47 NRC at 179. Clearly, these findings are not material to the findings that must be made in order to issue a COL, and therefore are not material to this proceeding. Accordingly, proposed Contention 2 is inadmissible.

C. Proposed Contention 3:

> The Calvert Cliffs-3 application's Environmental Report is unacceptably deficient because it omits from the analysis of CCNPP 3's environmental impact the new reactor's potential adverse contribution to the cumulative and potentially synergistic environmental impact of 11 operational reactor units and two proposed additional nuclear power projects on the watershed of an already severely degraded and declining Chesapeake Bay whose recovery plan is currently in serious doubt and the focus of a federal lawsuit for failure to comply with mitigation actions.

This contention is inadmissible because it does not include references to specific portions of the application, including the environmental report, that are relevant to the

information that the Petitioner believes that the application omitted. The contention also fails to identify how the alleged omission is a relevant matter required by law. 10 C.F.R. § 2.309(f)(1)(vi). This contention is also inadmissible because it does not provide a concise statement of the alleged facts or expert opinions that support the petitioner's position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. 10 C.F.R. § 2.309(f)(1)(v).

The Petition quotes sections of the ER that describe the environment surrounding the proposed plant, specifically quoting sections regarding the general description of the Chesapeake Bay. Petition 12 - 13. NIRS focuses its claim of omission on a failure to analyze the cumulative impact of other nuclear plants located in the watershed that contributes to the Bay. NIRS claims that the ER is narrowly focused on analyzing impacts only from Units 1 and 2 at the existing Calvert Cliffs plant. "This narrow perspective is a fatal defect in the ER, demonstrating an overall failure to analyze-or even acknowledge discharge of toxic and/or radioactive materials to the receiving water body from the *nine* additional nuclear power units operating in the Applicant's description of the Chesapeake Bay watershed." (internal quotation marks omitted) Petition at 13. However, the Petition does not recognize other portions of the ER that discuss the contribution of other pollution sources or the baseline level of water quality in the Bay. The COLA ER section 2.3.3 describes how the applicant examined existing conditions in the Bay to form a baseline against which to measure the effects of the proposed plant. It reads in part:

> The data available and collected for this report is believed to be adequate to characterize the water bodies in terms of suitability for aquatic organisms and to serve as a baseline for assessing if plant construction or operations have impacted water quality. All liquid effluent discharges during plant operation will be monitored and regulated by a NPDES permit. Most of the data available and collected was to characterize Chesapeake Bay, the most

> significant water body in the vicinity of the CCNPP site. The most important parameters in terms of evaluating the Chesapeake Bay water quality are salinity, dissolved oxygen, temperature, sediments and chemical contaminants, and nutrients. Because nutrient loading is widely regarded as Chesapeake Bay's most critical water quality problem, this section examines trends in macronutrient concentrations (total nitrogen, nitrates, ammonia, phosphorus, orthophosphate) in Chesapeake Bay in the CCNPP vicinity. Many of these parameters were also measured in samples collected from the onsite water bodies. Groundwater samples were collected to monitor water quality parameters in the Surficial and Aquia aquifers in the area of the proposed project.

COLA Revision 2, ER, Section 2.3.3 at 2.3-57 to 2.3-58. NRC's pleading standards require a petitioner to read the pertinent portions of the licensing request and supporting documents, including the Final Safety Analysis Report (FSAR) and ER, state the applicant's position and the petitioner's opposing view, and explain why it has a disagreement with the applicant. *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 1 and 2) CLI-01-24, 54 NRC 349, 358 (2001)(*citing* Final Rule, 54 Fed. Reg. at 33,170 (Aug. 11, 1989)). The Petitioner does not indicate in its Petition that it reviewed this information in the ER or indicate how the baseline assessment of the conditions of the Bay do not account for possible contribution from upstream nuclear power plants. Additional discussion pertinent to the examination of cumulative impacts can be found in sections 10.5 and 2.8.6 of the ER, which are also not discussed or identified by the Petitioner. Because this contention claims that information is omitted, but does not identify or account for related information in the ER, it does not meet the requirements of 10 C.F.R. § 2.309(f)(1)(vi), and is therefore inadmissible.

The Petition asserts that nine existing nuclear power plant units within the Chesapeake Bay watershed "discharge chemical and radioactive contaminants into these tributary waters that then mix and accumulate in the Chesapeake Bay ecosystem." Petition at 14. NIRS contends that the ER fails to acknowledge and omits from its analysis the discharge of these contaminants that flow into the Bay. Petition at 14. However, NIRS does not cite a reference,

supporting document, or expert opinion to support its assertion that contaminants from these upstream sources accumulate in the Chesapeake Bay in a way that merits analysis in addition to the analysis already present in the ER. A "bald assertion that a matter ought to be considered or that a factual dispute exists . . . is not sufficient;" rather, "a petitioner must provide documents or other factual information or expert opinion that set forth the necessary technical analysis to show why the proffered bases support its contention." *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 180 (1998) (*citing Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), LBP-95-6, 41 NRC 281, 305, *vacated in part and remanded on other grounds*, CLI-95-10, 42 NRC 1, *aff'd in part*, CLI-95-12, 42 NRC 111 (1995) (A petitioner is obligated "to provide the [technical] analyses and expert opinion" or other information "showing why its bases support its contention.")) NIRS must provide support for the assertions it makes upon which its claim of omission relies. Without providing supporting sources or expert opinion for the assertions in this contention, NIRS has not met the requirements of 10 C.F.R. § 2.309(f)(1)(v), and this contention is inadmissible.

D. Proposed Contention 4:
The UniStar application's Environmental Report is unacceptably deficient because it omits from the analysis of CCNPP 3's reactor design and safety of the Calvert Cliffs facility, additional relevant impacts arising from the expansion of the Dominion Cove Point Liquefied Natural Gas facility located 3.2 miles south of the proposed reactor.

Proposed contention 4 asserts that the Applicant's ER does not properly consider the impacts of a catastrophic LNG spill over water, either to the Chesapeake Bay or the proposed reactor. The Petitioner also asserts that the ER does not contemplate the possibility that a "fast expanding vapor cloud could migrate before ignition to the CCNPP area and omits a total loss of LNG inventory from a large LNG tanker which could be 267,000 cubic meters . . . ." Petition at 25. Next, the Petitioner asserts that a study relied upon by the Applicant in its ER does not

evaluate construction phase risks of the LNG facility expansion. Petition at 26. Lastly, the Petitioner reiterates its concerns about the safety of the plant in the event of a large, delayed ignition vapor cloud migration, including secondary fires, and concludes that "the risk analysis and risk assessment the applicant is utilizing for its conclusions [for the proposed reactor with respect to the expanded DCPLNG facility] contains omissions and deficiencies that adversely affects its substantiation of the risk factors for installing the proposed CCNPP Unit 3." Petition at 32.

The Staff opposes admission of proposed contention 4 because it does not articulate a genuine dispute with the Applicant, raises issues outside the scope of this proceeding, does not support any dispute with the Application with facts or expert opinion, nor does the proposed contention support its claims of alleged omissions with supporting reasons as to why omitted material is required. Accordingly, proposed contention 4 does not comply with 10 C.F.R. § 2.309(f)(1)(iii)-(vi), and is inadmissible.

Proposed contention 4 contains several discrete claims, which are discussed separately, below. The contention alleges 1) that the ER does not discuss additional impacts from DCPLNG's recent expansion; 2) that the ER mischaracterizes a possible LNG accident, including a large vapor cloud migrating to the site of the proposed reactor, and then igniting; 3) that the ER omits the effects of an LNG fire on the temperature of the cooling water that the existing and proposed reactors draw from the Chesapeake Bay; 4) that the ER does not discuss the impacts from the expansion of the DCPLNG off-shore pier, a part of the DCPLNG expansion; and 5) that the FSAR does not discuss LNG unloading impacts.

1. Claims 1 through 5 of proposed contention 4, insofar as they directly concern the safety or environmental impacts from the DCPLNG facility, its expansion, or the currently operating Calvert reactors, are inadmissible because they are outside the scope of this proceeding.

An admissible contention must "be concrete and specific to the license application . . . ." *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-04-22, 60 NRC 125, 130 (2004). Here, the Petitioner raises several concerns about "additional relevant impacts arising from the expansion of [DCPLNG]," (Claim 1), "the effect of [an] LNG spill on water," (Claim 2), the impact of a temperature rise on the currently operating Calvert reactors (a portion of Claim 3), the impact of modification to the DCPLNG pier (Claim 4), and the impact of LNG unloading operations (Claim 5). None of these concerns, however, involve the proposed action: construction and operation of a third nuclear power plant at the Calvert Cliffs site. Thus, those claims that do not concern the proposed action are inadmissible pursuant to 10 C.F.R. § 2.309(f)(1)(iii).

To be found admissible, a contention must "[d]emonstrate that the issue raised in the contention is within the scope of the proceeding . . . ." 10 C.F.R. § 2.309(f)(1)(iii). An admissible contention must raise an issue *with the application that is the subject of this proceeding.* (Emphasis added.) *Private Fuel Storage*, CLI-04-22, 60 NRC at 130. Here, the subject of this proceeding is the construction and operation of Calvert Cliffs Nuclear Power Plant Unit 3. *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 (September 26, 2008). Only those claims that concern the impacts of or upon the proposed reactor are properly considered in this proceeding. Accordingly, those portions of claims 1 through 5 of proposed contention 4 that

concern the environmental impacts of the DCPLNG facility, or impacts upon the operating reactors at Calvert Cliffs, are outside the scope of this proceeding and are inadmissible.

2. Claim 1 of proposed contention 4 is inadmissible because the application does discuss additional impacts from the DCPLNG expansion, and the Petitioner has not articulated a genuine dispute with the Applicant on a material issue.

In Claim 1 of proposed contention 4, the Petitioner alleges that the "application's Environmental Report (ER) is unacceptably deficient because it omits from the analysis of CCNPP3's reactor (USEPR) design and safety of the CCNPP facility, additional relevant impacts arising from the expansion of the [DCPLNG] facility . . . ." Petition at 17. A contention is inadmissible if it fails to contain sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact and does not include references to the specific portions of the application that a petitioner may dispute. *See Pacific Gas and Electric Co.* (Diablo Canyon ISFSI), CLI-08-01, 67 NRC 1, 8 (2008). Here, the Petitioner alleges that the Applicant's ER omits "additional relevant impacts arising from the expansion of DCPLNG," Petition at 17. While the Petitioner quotes extensively from the application, it has not shown a genuine dispute with the applicant on a material issue, thus Claim 1 is inadmissible pursuant to 10 C.F.R. § 2.309(f)(1)(vi).

The Petitioner alleges that the Applicant's "ER [is deficient] as it pertains to various Sections and Subsections . . . specifically as it relates to DCPLNG, 2.2.3 Evaluation of Potential Accidents, and 2.2.3.1 Determination of Design-Basis events." Petition at 22. However, the above section numbers, and the Petitioner's quotations, reference the Applicant's FSAR, not their ER. This apparent confusion repeats itself throughout proposed contention 4. Where appropriate herein, the Staff will address proposed contention 4 as alleging deficiencies in the FSAR (rather than the ER). The Staff notes that an accident concerning DCPLNG is properly considered in the applicant's FSAR, *see* Standard Review Plan (NUREG-0800), Section 2.2.3, "Evaluation of Potential Accidents." The environmental impacts from radiological accidents are

discussed in chapter 7 of the Applicant's ER, to which the Petitioner makes no reference. If alleging an omission in the ER, Claim 1 is inadmissible, as the Petitioner has stated no reason why the claimed information needs to be included in the ER (rather than where it appears in the FSAR), and a contention that simply alleges that some matter ought to be considered does not provide the basis for an admissible contention. *See Sacramento Municipal Utility District* (Rancho Seco Nuclear Generating Station), LBP-93-23, 38 NRC 200, 246 (1993).

The Applicant's FSAR, as quoted by the Petitioner, extensively discusses the expansion of DCPLNG, including a citation to a study that evaluated the impacts of the expansion with respect to its impacts upon the operating reactors at Calvert Cliffs. *See* FSAR, Section 2.2.3; Petition at 19-20. The Application provides in part that "[t]he Federal Energy Regulatory Commission (FERC) has approved an application for the expansion of the DCPLNG facility. The scope of this expansion is described in more detail in Section 2.2.2.4.2." FSAR, Section 2.2.2.2.2. Section 2.2.2.4.2 goes on to describe the expansion, in detail. Thus, the Petitioner has not identified an omission in the FSAR, and has not articulated a genuine dispute with the application on a material issue. Accordingly, Claim 1 of proposed contention 4 is inadmissible, as it does not comply with 10 C.F.R. § 2.309(f)(1)(vi).

3. Claim 2 of proposed contention 4 is inadmissible because the Applicant does discuss a delayed ignition, migrating vapor cloud in its Application, because the Petitioner does not identify the specific sources upon which it relies for Claim 2, and because the Petitioner has not articulated a genuine dispute with the Applicant.

In Claim 2, the Petitioner alleges that "the ER omits the effects of the aforementioned LNG spill on water triggering a cumulative domino effect on the DCPLNG pipeline and storage tanks. These risks could involve overpressure, thermal stress and thermal explosions from the LNG spill on water and subsequent fires from radiant heat of an ignited flammable LNG vapor cloud." Petition at 18. As noted above, insofar as this claim concerns the DCPLNG facility, its expansion, or the environmental impacts of an accident at DCPLNG upon the Chesapeake Bay

and the surrounding environment, it is outside the scope of this proceeding. As concerning the proposed reactor, the Application contains extensive discussion that is relevant to the information that the Petitioner believes that the application omitted. To the extent that the Petitioner has raised a dispute with the Applicant, the Petitioner has not provided references to sources in support of their position, as required by 10 C.F.R. § 2.309(f)(1)(v). Therefore, Claim 2 is inadmissible.

The Applicant's FSAR, in Section 2.2.3.1.2, "Flammable Vapor Clouds (Delayed Ignition)," (again recited by the Petitioner) discusses precisely the sort of accident the Petitioner alleges to be omitted. There, the Applicant provides in detail its methodology in predicting the consequences of such an event, as well as the impacts of such an event on the proposed plant and surrounding area, including the DCPLNG facility itself. *See* FSAR at 2-78 to 2-83. As noted above, if the Petitioner is alleging that information included in the FSAR is missing from the ER, it has again failed to provide any reason why that information should be included in the ER. Thus, Petitioner has failed to show a genuine dispute with the Applicant, as required by 10 C.F.R. § 2.309(f)(1)(vi).

In its "argument," as well as in Claim 2 itself, the Petitioner describes the accident it alleges the ER to omit. *See* Petition at 18, 23-25. While a delayed ignition vapor cloud is considered in the FSAR, the Petitioner alleges that the Applicant "omits full breach of ship borne LNG over water" in its analysis, and that "[t]he assumption that the 'entire contents of the vessel leaked forming a 1 cm thick puddle providing a significant surface area to maximize evaporation and the formation of a vapor cloud' definitely omits risk analysis of a catastrophic LNG spill over water." Petition at 28. However, the Petitioner does not cite to any source or reference as the basis for its disagreement with the Applicant.

While the Petitioner has attached, and elsewhere made peripheral reference to a GAO report and studies from Sandia National Laboratories concerning LNG accidents, it has not

explained their relevance to the proposed action, or used them to substantiate any dispute with the Application. While the Petitioner does not need to prove its contention at the admissibility stage, *Private Fuel Storage*, CLI-04-22, 60 NRC at 139, 10 C.F.R. § 2.309(f)(1)(v) requires a "concise statement of the alleged facts or expert opinions which support the requestor's [or] petitioner's position on the issue . . . together with references to the *specific sources and documents* on which the requestor/petitioner intends to rely . . . ." (Emphasis added). Here, Petitioner has not explained how the attached LNG studies either support its position or substantiate a dispute with the Application.

The Petitioner asserts that the Applicant's study "is deficient as a source for justifying the analysis of risks to CCNPP operations and the evaluation of the safety aspects required for the proposed USEPR design and containment. Furthermore, the [Applicant] risk study covered mostly land-based scenarios and projected only a heat flux range of up to 37.5 kW/m^2 [in apparent contrast to the findings of another study] . . . ." Petition at 24-25. However, the Sandia study on which the Petitioner appears to rely concerned the proposed Cabrillo Port LNG Deepwater Port Project in California,[11] contemplating a very specific accident scenario based upon that facility's proposed design. The proposed Cabrillo project differs from DCPLNG in several respects. First, the Cabrillo LNG facility is a floating, off-shore facility, *see* Sandia Report SAND2005-7339 at 32, whereas DCPLNG pumps LNG from a delivery vessel to on-shore storage tanks; the two facilities also employ very different storage systems. *See, e.g.,* FSAR, Section 2.2.2.4.2 at 2.2-10. Second, the Sandia study assumes wind and other environmental conditions consistent with the proposed Cabrillo site off of Oxnard, CA. *See*

[11] On June 5, 2007, the Maritime Administration denied the application for a deepwater port license to construct and operate Cabrillo Port. *See* http://www.epa.gov/region09/liq-natl-gas/ (Accessed on December 8, 2008).

Sandia Report at 11-12. Thus, without some further explanation as to the relevance of the Sandia study, it appears inapposite to the Applicant's conclusions about a potential accident at DCPLNG, and unsupportive of the Petitioner's apparent dispute with the Application.

Sources or opinions cited by a petitioner as the basis for a contention are subject to scrutiny by the licensing board to determine whether, on their face, they actually support the facts alleged. *Virginia Electric and Power* (North Anna, Unit 3), LBP-08-15 (2008) *citing* Dominion Nuclear North Anna, LLC (Early Site Permit for North Anna ESP Site), LBP-07-09, 65 NRC 539, 550 (2007). *See also Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), LBP-96-2, 43 NRC 61, 90 (1996), *rev'd on other grounds,* CLI-96-7, 43 NRC 235, 269 n.39 (subject of Board holding not raised for review). Here, without some further explanation, the Sandia study simply does not support the Petitioner's dispute with the application.

Accordingly, because the Petitioner has not identified an alleged omission and the supporting reasons for its belief, or provided specific references to sources substantiating its dispute with the application, Claim 2 of proposed contention 4 is inadmissible for failure to satisfy 10 C.F.R. § 2.3090(f)(1)(v)-(vi).

4. Claim 3 of proposed contention 4 is inadmissible because the Petitioner has not articulated a genuine dispute with the Applicant on a material issue, as they have provided no supporting reasons for why the alleged omission is required.

In Claim 3, the Petitioner alleges that "the ER omits analysis of the impact of temperature rise of the cooling water to CCNPP and the proposed Unit 3 due to the prolonged heating of the Chesapeake Bay cooling water from the radiant heat of this ignited LNG vapor cloud." Petition at 18. As discussed above, insofar as this claim concerns Units 1 and 2, it is outside the scope of this proceeding, and thus inadmissible. Also as discussed above, insofar as the claim alleges an omission in the ER (rather than the FSAR), Petitioner has stated no reason why the claimed information needs to be included in the ER. Here, the Petitioner does not specify its basis for the claimed omission, and a contention that simply alleges that some

matter ought to be considered does not provide the basis for an admissible contention. *See Rancho Seco Nuclear Generating Station,* LBP-93-23, 38 NRC at 246.

Several portions of the Application, as well as the Application's Technical Specifications, discuss increases in temperature of the cooling water for the proposed units from the Chesapeake Bay (caused by any source, including an LNG fire), including plant responses such as Limiting Conditions for Operation (LCOs) or even shutdown if the water becomes too warm. *See e.g.*, FSAR, 2.4.11.5, "Plant Requirements," at 2.4-75; Technical Specifications, Section B 3.4 REACTOR COOLANT SYSTEM (RCS), LCO Section B 3.4.1 RCS Pressure, Temperature, and Flow Departure from Nucleate Boiling (DNB) Limits beginning at B 3.4.1-1; Technical Specifications, Section B. 3.4.3 RCS Pressure and Temperature (P/T) Limits beginning at B 3.4.3-1. The Petitioner has specified no portion of the application with which it specifically disagrees, nor specified the basis for any disagreement. Therefore, Claim 3 of proposed contention 4 is inadmissible for failure to satisfy 10 C.F.R. § 2.309(f)(1)(vi).

5. Claim 4 of proposed contention 4 is inadmissible because it is outside the scope of this proceeding, and because the Petitioner has not demonstrated a genuine dispute with the Applicant on a material issue.

Claim 4 alleges:

> The ER also omits analysis and impact of this modification to the pier which will add 150 feet to each end of the offshore platform thereby increasing the "footprint" of the pier, support pilings and platform. Furthermore, Figure 2.2-1 of the FSAR omits from the site map, the offshore LNG pier, underground LNG loading tunnel and the submerged DCPLNG pipeline . . . [these omissions] fail[] to illustrate visually how the pier's close proximity, breadth of the pier and the submerged pipeline contribute to the total visual overview of the risk factors in the inclusion zone of CCNPP and the proposed reactor.

Petition at 18-19. As above, the portions of this claim that concern Units 1 and 2, or the environmental or safety impacts of the DCPLNG facility beyond impacts to the proposed reactor are outside of the scope of this proceeding, and are inadmissible pursuant to 10 C.F.R.

§ 2.309(f)(1)(iii). If asserting an omission to the ER (concerning information contained in the FSAR), the Petitioner has not identified any basis for "risk factors" to be included in the ER, rather than the FSAR. *See* NUREG-0800, Section 2.2.3.

In Claim 4, the Petitioner alleges that the Application omits analysis of modification of the DCPLNG pier, and that FSAR Figure 2.2-1 does not graphically depict the pier. There is no further explanation of these claims in the contention's "argument" section. *See* Petition at 17-32. As above, the Petitioner has cited no source or reference for its claim that the Application ought to include these items. With respect to FSAR Figure 2.2-1, the Staff is unaware of any requirement that would compel the Applicant to display the DCPLNG pier in a particular figure, so long as the ER and FSAR properly consider the nearby DCPLNG facility in the relevant analyses. Accordingly, this portion of Claim 4 does not meet the requirements of 10 C.F.R. § 2.309(f)(1)(vi), and is inadmissible.

Further, the Petitioner has not provided any evidence that the pier is indeed going to be expanded, nor taken issue with any specific portion of the Applicant's analysis of the DCPLNG expansion. The Applicant cites to the Maryland Department of Natural Resource's (MD DNR) Power Plant Research Program June 2006 study[12] on the impacts of the DCPLNG expansion on the surrounding area and the existing Calvert Cliffs reactors; the Petitioner does not dispute any claims in that study. Thus, the Petitioner has not demonstrated a genuine dispute on a material issue with the Applicant. Therefore, Claim 4 of proposed contention 4, alleging that FSAR Figure 2.2-1 ought to depict the DCPLNG offshore pier, and that the Application does not consider expansion of the pier, is inadmissible pursuant to 10 C.F.R. § (f)(1)(iii) and (vi).

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[12] Available at http://esm.versar.com/pprp/bibliography/PPRP-CPT-01/CovePt_FINAL_Aug2006.pdf (Accessed on December 8, 2008)

6. Claim 5 of proposed contention 4 is inadmissible because the application does discuss risks from LNG unloading operations, and the Petitioner has not articulated a genuine dispute with the Applicant on a material issue.

Claim 5 alleges that "[t]he ER also omits risk analysis of the impact of LNG unloading operations which involve the pier, underground tunnel, and the LNG ship carrying capacity which affect volume and duration of risk exposure." Petition at 18. However, the Application, and the MD DNR study it cites do consider those impacts, as they affect the plant. Thus, the Petitioner has not shown a genuine dispute on a material issue with the Applicant. As above, the portions of this claim that concern the environmental or safety impacts of the DCPLNG facility, beyond impacts to the proposed reactor, are outside of the scope of this proceeding, and inadmissible pursuant to 10 C.F.R. § 2.309(f)(1)(iii). If asserting an omission to the ER (concerning information contained in the FSAR), the Petitioner has not identified any basis for a "risk analysis" to be included in the ER, rather than the FSAR. *See* NUREG-0800, Section 2.2.3.

The MD DNR study concludes that:

> The probability of occurrence of a fatality at CCNPP from hazardous events associated with the existing DCPLNG facility is estimated to be 2.3E-9 per year. The probability of occurrence of physical damage to CCNPP is estimated to be lower still. Further, the probability of occurrence for a fatality involving the proposed expansion of the DCPLNG facility is estimated to be 6.6E-9 per year at CCNPP, with the risk of physical damage to the CCNPP estimated to be even smaller.

FSAR, Section 2.2.3.1, "Determination of Design-Basis Accidents," at 2.2-13. The MD DNR study was based upon the impacts of 200 LNG ships per year under expanded operations at DCPLNG (MD DNR at 4), considers a range of ship, platform, and land-based release accidents, including the loss of all storage tanks (MD DNR at 21-22), and specifically considers liquid releases from storage tanks and the LNG tanker (Section 2.1.1, at A-5), as well as from process inventory, the transfer pipeline, and the export pipeline (Sections 2.1.2-2.1.4, at A-6 to

A-7). The Petitioner neither cites to, nor demonstrates a genuine dispute with any portion of the above analysis. Accordingly, Claim 5 is inadmissible pursuant to 10 C.F.R. § 2.309(f)(1)(vi).[13]

7. Contention 4 is inadmissible.

Proposed contention 4, analyzed as five distinct claims for convenience, is inadmissible. A contention that simply alleges that some matter ought to be considered does not provide the basis for an admissible contention. *See Rancho Seco Nuclear Generating Station*, LBP-93-23, 38 NRC at 246. A contention is inadmissible if it fails to contain sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact and does not include references to the specific portions of the application that a petitioner may dispute. *See Diablo Canyon ISFSI*, CLI-08-01, 67 NRC at 8.

Portions of claims 1 through 5 concerning safety and environmental impacts of DCPLNG upon that facility, its expansion, or Units 1 and 2, are outside of the scope of this proceeding and inadmissible pursuant to 10 C.F.R. § 2.309(f)(1)(iii). Claim 1, alleging that the Application does not consider impacts from the DCPLNG expansion, is inadmissible because the Application does consider those impacts, thus the Petitioner has failed to demonstrate a genuine dispute on a material issue, as required by 10 C.F.R. § 2.309(f)(1)(vi). Claim 2, alleging that Application does not discuss the effects of an LNG spill on water, including a delayed ignition vapor cloud, is also inadmissible, as the Petitioner has not properly identified a source substantiating their alleged omissions, and the Application does analyze that possibility.

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[13] In its "argument" section, although not in the contention, the Petitioner also alleges that the Application does not discuss construction phase risks, quoting the MD DNR study. As above, the Petitioner has not identified the reason it believes that this allegedly omitted information is required pursuant to 10 C.F.R. § 2.309(f)(1)(vi). In this case, the construction of the DCPLNG expansion was forecasted to complete approximately three years prior to proposed Unit 3 construction, and seven years prior to proposed Unit 3 operation. *See* FSAR, Section 1.1.5 at 1-7; MD DNR 1.2, at 2.

Claim 3, alleging that the Application does not discuss the effects of additional heat in the Chesapeake Bay from an LNG fire is inadmissible because the Application discusses increased Bay temperature in several locations, thus the Petitioner has failed to demonstrate a genuine dispute with the Applicant. Claim 4, alleging that the ER does not consider expansion of the DCPLNG offshore pier, is inadmissible because the Petitioner has provided no evidence that the pier is being expanded, nor has it demonstrated a basis for believing the allegedly omitted information is required. Lastly, Claim 5, alleging that the Application does not consider LNG unloading operations, is inadmissible because the Application does consider the impacts of those operations, as the MD DNR study it incorporates models those impacts extensively.

Accordingly, proposed contention 4 is inadmissible because it does not satisfy 10 C.F.R. § 2.309(f)(1)(iii)-(vi).

E. Proposed Contention 5:
The Application's Environmental Report is unacceptably deficient because it omits the combined and cumulative mechanical stress to Chesapeake Bay biota caused by the cooling water intake pumps for the proposed Unit 3, CCNPP units1 and 2 water intake pumps and the water ballast intake pumps of the LNG tanker ships that are operational during LNG unloading operations at the Dominion Cove Point LNG pier.

This contention is inadmissible because it does not include references to specific portions of the application, including the ER, that are relevant to the information that the Petitioner believes that the application omitted. The contention fails to identify how the alleged omission is a relevant matter required by law. 10 C.F.R. § 2.309(f)(1)(vi). This contention is also inadmissible because it does not provide a concise statement of the alleged facts or expert opinions that support the Petitioner's position on the issue and on which the Petitioner intends to rely at hearing, together with references to the specific sources and documents on which the Petitioner intends to rely to support its position on the issue. 10 C.F.R. § 2.309(f)(1)(v).

The Petition quotes sections of the FSAR that describe the DCPLNG facility and the Chesapeake Bay waterway. After quoting the FSAR, NIRS alleges that, "[t]he ER omits the CC3 water intake pumps and its mechanical stress impact to the Chesapeake Bay biota which affects the aquatic food chain." Petition at 33. A petitioner is required to read and cite the pertinent portions of the FSAR and the ER. NIRS does not indicate that it reviewed any portion of the ER and does not cite any portion of the ER to support this contention. Specifically, NIRS does not cite or reference the discussion in the ER in sections 3.4.2.1 (description of intake structure), 5.3.1.1 (hydrodynamic descriptions and physical impacts), 5.3.1.2 (aquatic ecosystems), and 10 (environmental consequences of the proposed action) and its subsections that discuss impacts of the water intake structure. ER section 5.3.1.2 reads in part:

> {Aquatic impacts attributable to operation of the CCNPP Unit 3 intake structures and cooling water systems are impingement and entrainment. Impingement occurs when larger organisms become trapped on the intake screens and entrainment occurs when small organisms pass through the traveling screens and subsequently through the cooling water system. Factors that influence impingement and entrainment include cooling system and intake structure location, design, construction and capacity. Clean Water Act Section 316(b) requires that cooling water intakes represent "Best Technology Available" for these criteria. The U.S. Environmental Protection Agency (EPA) promulgated regulations implementing Section 316(b) in 2001 for new facilities (Phase I) (USEPA, 2001). The CCNPP Unit 3 intake and cooling water systems conform to these criteria.

COLA Revision 2, ER Page 10.5-5 Rev. 2. NRC's pleading standards require a petitioner to read the pertinent portions of the licensing request and supporting documents, including the FSAR and ER, state the applicant's position and the petitioner's opposing view, and explain why it has a disagreement with the applicant. Final Rule, 54 Fed. Reg. at 33,170 (Aug. 11, 1989); *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 1 and 2) CLI-01-24, 54 NRC 349, 358 (2001). Because the contention claims that the ER omits a discussion of the impacts from the water intake structure, but does not reference the pertinent portion of the ER

that discusses such impacts, the contention does not meet the requirements of 10 C.F.R. 2.309(f)(1)(vi), and is therefore inadmissible.

In support of this contention, NIRS cites to only one reference. The reference is to a "Notice of Intent to Sue for Failure to Comply with the Chesapeake 2000 Agreement, October 29, 2008." Petition at 34. However, NIRS does not explain how this reference relates to the contention, and NIRS does not cite any other reference, supporting document, or expert opinion to support its assertion that the mechanical stress of the intake structures at Calvert Cliffs Units 1 and 2, the intake structure for the proposed unit, and the intake structures associated with the LNG terminal and tankers are cumulative in a manner that merits analysis in addition to the analysis already present in the ER. A "bald assertion that a matter ought to be considered or that a factual dispute exists . . . is not sufficient;" rather, "a petitioner must provide documents or other factual information or expert opinion that set forth the necessary technical analysis to show why the proffered bases support its contention." *Private Fuel Storage, L.L.C.,* LBP-98-7, 47 NRC at 180 (*citing Georgia Tech Research Reactor*, LBP-95-6, 41 NRC at 305) (A petitioner is obligated "to provide the [technical] analyses and expert opinion" or other information "showing why its bases support its contention.")) The Notice of Intent to Sue describes how Chesapeake Bay water quality has diminished over time, but it provides no discussion of or support for a contention based on impacts from the water intake structures at the Calvert Cliffs existing or proposed units, or at the LNG terminal. NIRS Exhibit 14. NIRS must provide support for the assertions it makes upon which its claim of omission relies. Without providing supporting sources or expert opinion for the assertions in this contention, NIRS has not met the requirements of 10 C.F.R. § 2.309(f)(1)(v), and this contention is inadmissible.

F. Proposed Contention 6A:
The application is deficient in its discussion of high-level radioactive waste that would be generated by Calvert Cliffs-3. Failure to evaluate whether and in what time frame spent fuel generated by Calvert Cliffs Unit

> 3 can be safely disposed of. The ER for the Calvert Cliffs Unit 3 COLA is deficient because it fails to discuss the environmental implications of the lack of options for permanent disposal of the irradiated (i.e. spent) fuel that will be generated by the proposed new reactor if built and operated. . . . The ER for the proposed new reactor does not contain any discussion of the environmental implications of the lack of options for permanent disposal of the irradiated fuel to be generated by Calvert Cliffs Unit 3. Therefore, it is fatally deficient. Petition at 35.

The Petitioner indicates that the proposed contention is directed towards the environmental impacts of the proposed new reactors. *Id*. The Petitioner argues that the Waste Confidence decision applies only to plants which are currently operating, not new plants. *Id*. at 37. The Petitioner further asserts that the Commission has given no indication that it has confidence that repository space will be available for high level radioactive waste from new reactors licensed after December 1999. *Id.* The Petitioner also claims that the Commission no longer has confidence in the likelihood that more than one repository will be licensed. *Id*. The Petitioner argues further that the capacity of the proposed repository at Yucca Mountain, Nevada (63,000 metric tons of high-level waste and irradiated nuclear fuel) is too small to accommodate even the waste generated by currently operating reactors and cannot accommodate the waste that would be generated at new reactors. *Id*. at 38-41. The Petitioner therefore asserts that spent fuel may sit at the proposed reactor site for an indefinite period of time, and conclude that "[t]he environmental impacts of such indefinite [spent fuel] storage must be evaluated before a Combined Operating License can be granted." *Id*. at 43-44.

The Staff opposes admission of Proposed Contention 6-A, as it is an impermissible attack on the Commission's regulations. See 10 C.F.R. § 2.335; Entergy Nuclear Vermont Yankee LLC (Vermont Yankee Nuclear Power Station) and Entergy Nuclear Generation Co. (Pilgrim Nuclear Power Station), CLI-07-3, 65 NRC 13, 17-18 and n.15 (2007); Dominion Nuclear Connecticut Inc. (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 364 (2001); see also Dominion Nuclear North Anna, LLC (Early Site Permit [ESP] for the

North Anna site), LBP-04-18, 60 NRC 253, 268-70 (2004) (holding inadmissible an essentially identical set of contentions in the North Anna ESP proceeding, as impermissibly challenging the NRC's regulations); Progress Energy Carolinas, Inc. (Shearon Harris Nuclear Power Plant, Units 2 and 3), LBP-08-21, 67 NRC __ (2008) (slip op. at 39) (holding that many other licensing boards have considered identical contentions and squarely rejected them). As explained by the Board in the North Anna ESP proceeding, "[t]he matters the Petitioners seek to raise have been generically addressed by the Commission through the Waste Confidence Rule which states:

> [T]he commission believes there is reasonable assurance that at least one mined geological repository will be available within the first quarter of the twenty-first century, and sufficient repository capacity will be available within 30 years beyond the licensed life for operation of any reactor to dispose of the commercial high-level waste and spent fuel originating in such reactor and generated up to that time.

10 C.F.R. § 51.23(a) (emphasis added). Furthermore, when the Commission amended this rule in 1990, it clearly contemplated, and intended to include, waste produced by a new generation of reactors." North Anna ESP Site, LBP-04-18, 60 NRC at 269 (citing 55 Fed. Reg. 38,474, 38,504 (Sept. 18, 1990) ("The availability of a second repository would permit spent fuel to be shipped offsite well within 30 years after expiration of [the current fleet of] reactors' [operating licenses]. The same would be true of the spent fuel discharged from any new generation of reactor designs."); see also *id*. at 38,501-04.). Accordingly, Proposed Contention 6-A impermissibly attacks the Commission's regulations and is inadmissible. See North Anna ESP Site, LBP-04-18, 60 NRC at 269.

G. Proposed Contention 6B:

> The application is deficient in its discussion of high-level radioactive waste that would be generated by Calvert Cliffs-3. (Petition at 35). Even if the Waste Confidence Decision applies to this proceeding, it should be reconsidered. (Petition at 44). Even if the Waste Confidence Decision applies to this proceeding, it should be reconsidered, in light of significant and pertinent unexpected events that raise substantial doubt about its continuing validity, i.e., the increased threat of terrorist attacks against U.S. facilities. *Id.*

The Staff opposes admission of Proposed Contention 6-B, as it is an impermissible attack on the Commission's regulations and it is outside the scope of this proceeding. *See* 10 C.F.R. § 2.335; *Vermont Yankee* and *Pilgrim*, CLI-07-3, 65 NRC at 17-18 and n.15; *Millstone*, CLI-01-24, 54 NRC at 364; *see also Dominion Nuclear North Anna, LLC* (Early Site Permit [ESP] for the North Anna site), LBP-04-18, 60 NRC 253, 268-70 (2004) (holding inadmissible an essentially identical set of contentions in the North Anna ESP proceeding, as impermissibly challenging the NRC's regulations); *Progress Energy Carolinas, Inc.* (Shearon Harris Nuclear Power Plant, Units 2 and 3), LBP-08-21, 67 NRC __ (2008) (slip op. at 39) (holding that many other licensing boards have considered identical contentions and squarely rejected them). The Commission's rules provide as follows:

> [W]ithin the scope of the generic determination in [§ 51.23(a)], no discussion of any environmental impact of spent fuel storage in reactor facility storage pools or independent spent fuel storage installations (ISFSI) for the period following the term of the . . . reactor combined license . . . for which application is made, is required in any environmental report [or] environmental impact statement . . . prepared in connection with the issuance . . . of a combined license for a nuclear power reactor under [part 52].

10 C.F.R. § 51.23(b). Since no discussion of this matter is required in this proceeding pursuant to Section 51.23(b), this aspect of Proposed Contention 6-B is not within the scope of this proceeding; thus the Petitioner fails to satisfy the contention requirements of 10 C.F.R. § 2.309(f)(1)(iii).

The Commission has provided litigants in an adjudicatory proceeding subject to 10 C.F.R. Part 2 the opportunity to request that a Commission rule or regulation "be waived or an exception made for the particular proceeding." 10 C.F.R. § 2.335(b). The Commission has specified that "[t]he sole ground for petition of waiver or exception is that special circumstances with respect to the subject matter of the particular proceeding are such that the application of the rule or regulation . . . would not serve the purposes for which the rule or regulation was

adopted." *Id.* The Commission requires that any request for such waiver or exception "be accompanied by an affidavit that identifies . . . the subject matter of the proceeding as to which application of the rule or regulation . . . would not serve the purposes for which the rule or regulation was adopted." *Id.* Additionally, "[t]he affidavit must state with particularity the special circumstances alleged to justify the waiver or exception requested." *Id.*

The Petitioner has failed to establish that it meets any of the requirements imposed by the Commission on litigants wishing that a rule be waived or an exception granted. *See* Petition at 44-47. The Petitioner has failed to establish that application of the Waste Confidence Rule in this particular proceeding would not serve the purpose for which the rule was adopted. To the contrary, 10 C.F.R. § 51.23 reflects, on its face, that the rule was designed to dispense with the need for NRC adjudications to address the impacts associated with the ultimate disposal of spent fuel and high-level waste. This is precisely the function it serves applied to the present proceeding.

In view of the foregoing, Proposed Contention 6-B and its supporting bases raise an issue that is not within the scope of this proceeding, and it impermissibly seeks to challenge a Commission regulation. *See* 10 C.F.R. §§ 2.309(f)(1)(iii), § 2.335; *Vermont Yankee* and *Pilgrim*, CLI-07-3, 65 NRC at 17-18 and n.15; *Millstone*, CLI-01-24, 54 NRC at 364. Absent a showing of "special circumstances" under 10 C.F.R. § 2.335(b), which the Petitioner has not made, this matter must be addressed through Commission rulemaking, and be found inadmissible here. *See North Anna ESP Site*, LBP-04-18, 60 NRC at 269-270.

H. Proposed Contention 7:

> The Application to build and operate Calvert Cliffs Nuclear Power Plant Unit 3 violates the National Environmental Policy Act by failing to address the environmental impacts of the waste that it will generate in the absence of licensed disposal facilities or capability to isolate the radioactive waste from the environment. The Environmental Report does not address the environmental, environmental justice, health,

> safety, security, or economic consequences that will result from lack of permanent disposal for the radioactive waste generated.

The Staff opposes the admission of this contention because NIRS raises an impermissible attack on a Commission rule. 10 C.F.R. § 2.335. This contention is also inadmissible because it does not include references to specific portions of the application, including the ER, which are relevant to the information that the Petitioner believes that the application omitted. The contention fails to identify how the alleged omission is a relevant matter required by law. 10 C.F.R. § 2.309(f)(1)(vi). This contention is also inadmissible because it does not provide a concise statement of the alleged facts or expert opinions which support the Petitioner's position on the issue and on which the Petitioner intends to rely at hearing, together with references to the specific sources and documents on which the Petitioner intends to rely to support its position on the issue. 10 C.F.R. § 2.309(f)(1)(v). The contention is inadmissible because it does not demonstrate that an issue raised herein is material to the findings that the NRC must make to support the action that is involved in the proceeding. 10 C.F.R. § 2.309(f)(1)(iv).

The Petitioner concedes that Contention 7 raises a challenge to a Commission rule by challenging Table S-3 of 10 C.F.R. § 51.51. Petition at 47, n. 7. Moreover, the Petition does not meet the criteria for properly challenging a rule under the provisions of 10 C.F.R. § 2.335. In summary, section 2.335 requires:

(1) A party to an adjudicatory proceeding may petition for a rule waiver or exception;

(2) That special circumstances with respect to the subject matter of the particular proceeding are such that the application of the rule would not serve the purposes for which it was adopted;

(3) The petition is accompanied by an affidavit that identifies the specific aspect or aspects of the subject matter of the proceeding as to which the application of the rule would not serve the purposes for which the rule was adopted; and

(4) The affidavit must state with particularity the special circumstances alleged to justify the waiver or exception requested.

NIRS has not shown that special circumstances exist with this application in this proceeding, or that Table S-3 would not serve the purposes for which it was adopted. The Petition only mentions "new and significant information" but does not identify what the new and significant information is, or how it creates special circumstances that exist in this proceeding but not in other proceedings. Petition at 47 n. 7. NIRS includes the unsigned affidavit of Diane D'Arrigo. The affidavit contains a discussion of low level waste along with Ms. D'Arrigo's unsupported assumption that no storage facility will be available for low level waste even in a long term period. However, the only reference to the Commission's rules in the affidavit is a reference to 10 C.F.R. Part 61. D'Arrigo Affidavit at 3. As such, even if the affidavit were properly signed, it would be insufficient to support a petition under 10 C.F.R. § 2.335 for waiver of or exception to a rule since it neither asks for a waiver or identifies a rule to waive.

The Petition claims that "the applicant provides no detail regarding the ongoing onsite management and potential impact from permanent or very long term- storage of all the B, C and >C radioactive waste from operations on the site of generation." Petition at 48. In support of this claim of omission, NIRS cites only Sections 3.5 (general description of radwaste system and source term) and 3.5.4 (solid radioactive waste system) of the ER. A petitioner is required to read and cite the pertinent portions of the FSAR and the ER. NIRS does not indicate that it reviewed any other portions of the ER. Even when read with the unsigned affidavit of Ms. D'Arrigo, the affidavit does not cite any additional sections of the ER. Specifically, NIRS does not cite or reference the discussion in the ER in Sections 3.5.4.3 (solid waste storage system), 3.5.4.4 (expected volumes), Table 3.5-10 (regarding waste volumes), 3.8.3 (low level waste packaging and shipment), Table 3.8-1 (annual generated volumes and shipments), 5.4 (radiological impacts of normal operations), 5.4.1.3 (direct radiation from station operations), and 5.7.6 (radioactive wastes). NRC's pleading standards require a petitioner to read the

pertinent portions of the licensing request and supporting documents, including the FSAR and ER, state the applicant's position and the petitioner's opposing view, and explain why it has a disagreement with the applicant. Final Rule, 54 Fed. Reg. at 33,170 (Aug. 11, 1989); *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 1 and 2) CLI-01-24, 54 NRC 349, 358 (2001). Because the contention claims that the ER omits a discussion of the impacts from the long term storage of low-level radioactive waste, but does not reference the pertinent portions of the ER that discuss LLRW, NIRS does not demonstrate that there is an omission in the ER given its discussion of the quantity of LLRW, rate of waste generation, quality of LLRW, storage capacity of the proposed facility, design of the storage, or analysis of radiation dose. Thus, the contention does not meet the requirements of 10 C.F.R. 2.309(f)(1)(vi), and is therefore inadmissible.

Further this contention does not provide a concise statement of the alleged facts or expert opinions which support the Petitioner's position on the issue and on which the Petitioner intends to rely at hearing, together with references to the specific sources and documents on which the Petitioner intends to rely to support its position on the issue. 10 C.F.R. 2.309(f)(1)(v). The contention assumes that no offsite disposal facility will ever be available or will not be available for a long period of time. "No explanation is offered for how the applicant will meet this plan [for offsite disposal] in the absence of a licensed disposal site. Applicants apparently assume that they will be able to send its Class B, C, and Greater-Than-Class-C radioactive waste offsite." Petition at 49. The Petition further states, "[t]hus it is reasonable to expect that all Class B, C, and Greater-than-C radioactive waste from the proposed Calvert Cliffs Unit 3 nuclear reactor will remain onsite indefinitely." NIRS does not offer a reference, source, or expert opinion to support this assumption underlying its contention. A "bald assertion that a matter ought to be considered or that a factual dispute exists . . . is not sufficient;" rather, "a petitioner must provide documents or other factual information or expert opinion that set forth

the necessary technical analysis to show why the proffered bases support its contention." *Private Fuel Storage, L.L.C.,* LBP-98-7, 47 NRC at 180 (*citing Georgia Tech Research Reactor*, LBP-95-6, 41 NRC at 305) (A petitioner is obligated "to provide the [technical] analyses and expert opinion" or other information "showing why its bases support its contention.")) Although a "Declaration of Diane D'Arrigo" was filed by NIRS, it is unsigned, provides no more support for the assumption than the Petition, and is not referenced in the Petition in support of this contention. NIRS must provide support for the assertions it makes upon which its claim of omission relies. Without the proper support, this contention is not admissible pursuant to 10 C.F.R. 2.309(f)(1)(v).

The Petition provides one additional issue in support of this contention where it states, "The Environmental Report should also evaluate the impacts of licensing the site itself under 10 CFR Part 61" Petition at 50. The Board in the recent North Anna proceeding analyzed a similar claim in that proceeding, finding:

> [The Petitioner] assumes that, if [the Applicant] cannot find an off-site disposal facility for the LLRW generated by its existing reactors and proposed Unit 3, [the Applicant] might eventually need a permit under Part 61 for the extended on-site storage of LLRW. In [the Petitioner's] view, long-term storage on site is equivalent to disposal. We doubt that this theory is correct. A Part 61 permit for the land disposal of radioactive waste is required for those who 'receive from others, possess and dispose of wastes containing or contaminated with source, byproduct or special nuclear material.' [citation omitted] Thus, the Part 61 regulations apply to disposal of LLRW, not to storage, and the possibility that storage may last longer than originally planned would not necessarily constitute disposal.

North Anna Unit 3, LBP-08-15, slip op. at 26. As the Board in the North Anna proceeding concluded, the nature of this issue at present is too speculative and therefore is not material to the findings that the NRC must make to support the action that is involved in the present proceeding. Thus, the contention is not admissible based upon this issue pursuant to 10 C.F.R. § 2.309(f)(1)(iv).

VI. NIRS' PROVIDES REASONABLE JUSTIFICATION TO EXTEND THE TIME TO INTERVENE

The Petition notes that it is based on the application materials posted on the NRC's website, but takes exception with the unavailability of application materials that were submitted to the NRC but which were not available for review. Petition 4-5. In analyzing this issue, highlights of the submissions and notice of hearing period are helpful:[14]

June 12, 2008	Responses to environmental requests for additional information (RAIs) submitted on DVDs. The files did not meet NRC formatting guidelines, therefore the contents of the disks were not put in ADAMS. The cover letter was placed in ADAMS and copies of the disks were available from the NRC File Center.
August 1, 2008	Submittal of Revision 3 to the COL application. The packing slip was incorrect. The files were not placed in ADAMS. The cover letter can be accessed using ML082770641.
August 20, 2008	Submittal of corrections to Revision 3 to the application. The packing slip was incorrect. The cover letter can be accessed using ML082390786.
September 12, 2008	Submittal of corrected Revision 3 to the COL application. The files on the DVDs were not formatted correctly. The cover letter and files were not placed in ADAMS.
September 26, 2008	Notice of Hearing published in the *Federal Register*
October 10, 2008	Responses to environmental RAIs submitted on DVDs as replacements for disks submitted June 12, 2008. The files were not added to ADAMS because the disks contained data and/or executable files which are not supported by ADAMS. A copy of the cover letter is available in ADAMS using ML082950642 and copies of the disks are available from the NRC File Center.
October 13, 2008	Submittal of Revision 3 to the COL application. The files on the DVDs were not formatted correctly. The cover letter and files were not placed in ADAMS.

[14] *See* Attachment 1: Affidavit of John Rycyna. Mr. Rycyna is the Lead Project Manager. His affidavit supports the highlights of the submissions provided herein.

October 31, 2008	Submittal of Revision 3 to the COL application. The packing slip was incorrect. The cover letter and files were not placed in ADAMS.
November 25, 2008	Period to petition for leave to intervene ends.
December 4, 2008	Submittal of corrected DVDs for Revision 3 to the application. The submittal could not complete processing based on file naming conflicts. At the time of drafting this Response, the files for Revision 3 to the COLA are not available to the public.

Normally, information submitted by an applicant after the expiration of the filing period provided in a notice of hearing is subject to the late filed contention requirements of 10 C.F.R. § 2.309(c) and (f)(2). This rule provides that non-timely petitions and contentions must address additional balancing factors not applicable to timely filed petitions. While some of the applicant's submissions the Petitioner claims were not available could have been obtained from the Public Document Room, Revision 3 of the application has not been available since its initial submission on August 1, 2008. As shown in the chronology above, the public files for Revision 3 would likely have been available during the period provided for filing timely petitions in this proceeding if there had not been difficulties with the files. In order to ensure fairness, NIRS could be allowed to modify or add contentions based strictly on new information in Revision 3. Under the specific circumstances in this case, the Staff would have no objection to allowing NIRS time to amend its Petition. The time period should commence from the time that the Staff is able to make Revision 3 of the application available in ADAMS. Any amendment to the contentions should be limited to the information that has changed in Revision 3 of the application because the unchanged information was available during the period allowed by the Notice of Hearing for filing petitions.

CONCLUSION

In view of the foregoing, NIRS has demonstrated representational and organizational standing to intervene in this proceeding. However, as discussed above, Beyond Nuclear, Public Citizen, So MD CARES and MD PIRG have not. The present Petition, however, should be denied because, pursuant to the requirements of 10 C.F.R. § 2.309(f)(1), NIRS has not submitted an admissible contention.

Because of various delays in making public the most current version of the Application, the Staff does not oppose granting NIRS an extension of time to amend its Petition, so long as that amendment is limited to changes in the not-yet-public revision. Any other changes should be governed by the requirements of 10 C.F.R. § 2.309(c) and (f)(2).

Respectfully submitted,

/Signed (electronically) by/

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Dated at Rockville, Maryland
this 15th day of December, 2008

December 15, 2008

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

AFFIDAVIT OFJOHN RYCYNA IN SUPPORT OF THE NRC STAFF'S ANSWER TO PETITION

I, John Rycyna, do hereby state as follows:

1. I am employed as a Project Manager in the EPR Projects Branch 1 of the Division of New Reactor Licensing in the Nuclear Regulatory Commission's (NRC) Office of New Reactors. I serve as Lead Project Manager for the NRC's review of the Combined License Application submitted by UniStar Nuclear Operating Services, LLC and Calvert Cliffs 3 Nuclear Project, LLC, at issue in this proceeding.

2. I have knowledge of the facts asserted in the "NRC Staff's Answer to Petition to Intervene in Docket No. 52-016, Calvert Cliffs-3 Nuclear Power Plant Combined Construction and License Application." The information provided in the highlights of the submissions and notice of hearing period found in Part VI. "NIRS Provides Reasonable Justification to Allow Additional Time to Revise or Submit New Contentions" is accurate and complete to the best of my knowledge and belief.

3. I hereby certify under penalty of perjury that the foregoing is true and complete to the best of my knowledge, information, and belief.

Executed in Accord with 10 CFR § 2.304(d)

John Rycyna
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Executed in Rockville, MD
this 15th day of December, 2008

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the "NRC STAFF'S ANSWER TO PETITION TO INTERVENE IN DOCKET NO. 52-016, CALVERT CLIFFS-3 NUCLEAR POWER PLANT COMBINED CONSTRUCTION AND LICENSE APPLICATION," and "AFFIDAVIT OFJOHN RYCYNA IN SUPPORT OF THE NRC STAFF'S ANSWER TO PETITION" have been served on the following persons by Electronic Information Exchange on this 15th day of December, 2008:

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Dated at Rockville, Maryland
this 15th day of December, 2008