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November 24, 2008

Chairman Dale E. Klein
U.S. Nuclear Regulatory Commission
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Washington, DC 20555-0001

Commissioner Gregory B. Jaczko
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Commissioner Kristine L. Svinicki
U.S. Nuclear Regulatory Commission
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Washington, DC 20555-0001

**Re: In The Matter of Calvert Cliffs 3 Nuclear Project, LLC,
and UniStar Nuclear Operating Services, LLC
(Calvert Cliffs Nuclear Power Plant Unit 3); Docket No. 52-016-COL**

Dear Commissioners:

On November 18, 2008, Nuclear Information and Resource Service, Beyond Nuclear, and Public Citizen's Energy Program (collectively "Petitioners") filed a response to Texans for Sound Energy Policy's petition to hold in abeyance the proceeding on the combined license ("COL") application for Exelon's Victoria County Station, Units 1 and 2, pending completion of the NRC Staff's review of the ESBWR design certification. Although the response was filed in and directed towards the Victoria County docket, Petitioners also filed their response on the docket for Calvert Cliffs Nuclear Power Plant Unit 3. The Petitioners implicitly acknowledge in their request for relief that their motion only applies to the Victoria County proceeding, yet ask "that the precedent be carried over to the licensing proceedings for which the EPR is the referenced design." This would include the combined license application proceeding for Calvert Cliffs Nuclear Power Plant Unit 3.

Calvert Cliffs 3 Nuclear Project, LLC, and UniStar Nuclear Operating Services, LLC ("Calvert Cliffs") are the applicants for the Calvert Cliffs COL. Clearly Petitioners' mere filing of a document on the Calvert Cliffs docket does not constitute a proper motion and does

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not warrant a formal reply.¹ Nevertheless, given the Petitioners' request we urge the Commission to disregard or deny the request. The Commission has previously addressed the very issue raised by Petitioners in CLI-08-15.² In that decision, the Commission concluded that NRC regulations explicitly permit applicants to rely on a certified design application that has been docketed, but not yet approved. The Commission further noted that this scenario was addressed in the Final Policy Statement on the Conduct of New Reactor Proceedings.³ Accordingly, the Commission can simply apply the policy and precedent that it has already established.

Sincerely,



David A. Repka
Counsel for Calvert Cliffs 3 Nuclear Project, LLC,
and UniStar Nuclear Operating Services, LLC

cc: Service List

¹ Petitioners have submitted a petition to intervene in the Calvert Cliffs 3 proceeding. *See* "Petition to Intervene in Docket No. 52-016, Calvert Cliffs-3 Nuclear Power Plant Combined Construction and License Application" (November 19, 2008). We will respond to that petition in accordance with the NRC's Rules of Practice.

² *Progress Energy Carolinas, Inc.* (Shearon Harris Nuclear Power Plant, Units 2 and 3), CLI-08-15, __ NRC __, slip op. at 3-4 (July 23, 2008).

³ 73 Fed. Reg. 20, 963 (April 17, 2008).