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Docket Number: 52-016-COL; ASLBP: 09-874-02-COL-BD01

Location: Rockville, Maryland

Date: Friday, February 20, 2009

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UNITED STATES OF AMERICA
U.S. NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

+ + + + +

In the Matter of: : Docket No.
 CALVERT CLIFFS 3 NUCLEAR PROJECT, 52-016-COL
 LLC AND UNISTAR NUCLEAR OPERATING :
 SERVICES, LLC COMBINED LICENSE : ASLBP 09-874-
 APPLICATION FOR CALVERT CLIFFS 3 02-COL-BD01

Friday,
February 20, 2009
Rockville, Maryland

BEFORE:

RONALD M. SPRITZER, Chairman
GARY S. ARNOLD, Administrative Judge
WILLIAM W. SAGER, Administrative Judge

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PROCEEDINGS

9:57 A.M.

CHAIR SPRITZER: Good morning. My name is Judge Ron Spritzer. With me is Judge William Sager to my left, Judge Gary Arnold to my right.

We are here today in the matter of Calvert Cliffs 3 Nuclear Project, LLC and Unistar Nuclear Operating Services, LLC, combined license application for Calvert Cliffs Unit 3.

This is Docket No. 52-016-COL, ASLBP No. 09-874-02-COL-BD01.

And specifically, we are here to hear argument on the petition to intervene by the Nuclear Information and Resource Service and three other organizations and we will be hearing argument on standing and the admissability of their contentions in this proceeding.

We welcome the members, the numerous members of the public who are here today. We do ask that if anybody has a cell phone, as the sign says outside, please turn it off, please refrain from any conversation. We want to be able to listen carefully to the arguments that will be presented by the parties' representatives.

Would the representatives who will be

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1 presenting argument on any of the issues here please
2 identify themselves. Why don't we start with the
3 Petitioners who are to our right?

4 MR. MARRIOTTE: Hi, my name is Michael
5 Marriotte. I'm Executive Director of Nuclear
6 Information and Resource Service. To my left is Paul
7 Gunter from Beyond Nuclear. To my right is June
8 Sevilla from Southern Maryland Cares. And in the back
9 is Allison Fisher from Public Citizen. And we have
10 also Diane D'Arrigo from Nuclear Information and
11 Resource Service and I don't know if Ed Lyman is here
12 or not.

13 CHAIR SPRITZER: We can limit it to the
14 parties' representatives, those who will actually be
15 presenting argument.

16 And for the Applicant?

17 MR. REPKA: My name is David Repka with
18 the law firm of Winston and Strawn, representing the
19 Applicants. On my right is my colleague, Mr. Tyson
20 Smith, and on my left is Mr. Carey Fleming of
21 Constellation Energy Group. Mr. Smith and myself will
22 be doing the arguments.

23 CHAIR SPRITZER: And for the NRC staff?

24 MR. BIGGINS: Good morning, Your Honors.
25 My name is Jim Biggins for the NRC staff. With me

1 today is Adam Gendelman.

2 CHAIR SPRITZER: And for the State of
3 Maryland which is here as a state that we've admitted
4 as an interested state.

5 MR. BOLEA: Good morning, Your Honor.
6 Brent Bolea, Assistant Attorney General on behalf of
7 the State of Maryland, who is being represented
8 through the Power Plant Research Program here today.
9 Thank you for the opportunity to participate.

10 CHAIR SPRITZER: We're glad to have you.
11 We're also glad to have the members of the public who
12 have shown up today. We hope you'll find this an
13 interesting and educational proceeding.

14 For the benefit of the court reporter, for
15 those who are speaking, please try to avoid speaking
16 simultaneously. I doubt that will happen, but please,
17 when the Judges are asking questions, please wait
18 until we finish so we don't have overlapping questions
19 and answers.

20 The schedule for today, we'll try and go
21 I think about an hour, hour and 15 minutes. We'll
22 take a break. We'll then come back and go for another
23 hour, hour and 15 minutes and hopefully take a lunch
24 break around 12:30 which I would anticipate would be
25 about 45 minutes. And we hope to be finished by mid-

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1 afternoon today or around 3 o'clock, but we're
2 prepared to stay as long as it takes to get this
3 resolved, so we can go ahead and rule on the various
4 issues before us.

5 Okay, before we get started, are there any
6 procedural questions related to the conduct of the
7 hearing today? We had some other procedural issues.

8 MR. BIGGINS: Judge, I do have one
9 procedural matter.

10 CHAIR SPRITZER: Sure.

11 MR. BIGGINS: Regarding the certificate of
12 service that the Board uses when it issues its orders,
13 there are two people identified on the certificate of
14 service, William Johnston and Cathy Garger, that have
15 not entered appearances in this case and I wanted to
16 know, I would like clarification from the Board; if
17 possible, whether or not they would expect us to
18 include those two individuals on our certificate of
19 service when we do our filings.

20 CHAIR SPRITZER: I'll have to look into
21 that. I don't know the answer to that off the top of
22 my head, but we'll let you know some time today,
23 hopefully.

24 Anything else? Yes, ma'am.

25 MS. SEVILLA: Just one clarification, Your

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1 Honor. On the 15 minutes that the Petitioners have,
2 I'm assuming that we continue with the answers to the
3 questions and then they go first and then the
4 rebuttal?

5 CHAIR SPRITZER: The schedule we've
6 adopted is to try and keep things moving along. If we
7 do pepper you with questions, you can safely assume
8 we'll give you a little extra time to finish up your
9 time. However, for the Petitioners, we've allowed you
10 to reserve time for rebuttal during your arguments.
11 Please let us know when you start, if you want to
12 reserve five minutes, for example, tell us at the
13 start, I would like to reserve five minutes. That way
14 I can tell you, all right, you've now used 10 of your
15 15 minutes and it's time to move on to the next part.

16 I will be the time keeper here. Since
17 I'll also be asking questions and listening to your
18 arguments, that's going to involve a little dual duty,
19 but I'll try and keep things as close to the schedule
20 as we possibly can.

21 All right, we're at the first issue on
22 which we are going to hear argument is standing. By
23 the way, the order for the staff and the Applicant, I
24 don't know if you have talked among yourselves yet, I
25 think the normal order would be the Applicant,

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1 followed by the staff, but you're free to reverse that
2 if you want. That is, the staff could go before the
3 Applicant if you prefer to do it that way.

4 MR. REPKA: No, that order works for us.

5 CHAIR SPRITZER: All right, on standing,
6 Petitioners you have 10 minutes. You may reserve up
7 to five minutes for rebuttal if you so choose.

8 MR. MARRIOTTE: Thank you, and I do want
9 to reserve the five minutes of rebuttal. I just have
10 a brief statement.

11 I want to start first by apologizing for
12 the mixup caused by our initial filing of our petition
13 to intervene which was due to our unfamiliarity with
14 the EIE system and the fact that I personally was the
15 only one who had actually successfully installed the
16 digital certificate by that time and I hope we've
17 remedied that in our following reply brief and as you
18 can see, there are representatives from each of the
19 organizations here, if you do have any questions on
20 that issue.

21 CHAIR SPRITZER: I think you've clarified
22 to at least my satisfaction who the Petitioners really
23 are in this case, Maryland Public Interest Research
24 Group is not a Petitioner.

25 MR. MARRIOTTE: Correct.

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1 CHAIR SPRITZER: Southern Maryland Cares
2 is the Petitioner you intended to refer to in the
3 petition.

4 On the issue of signatures, I realize the
5 rules are somewhat complicated. The EIE procedure is
6 new. It's not intended to trip people up, but you do
7 need to look carefully at the rules for what you need
8 to do. You can submit a pleading with signatures from
9 parties other than the person whose computer is
10 actually submitting the document. Their signature
11 would be the electronic signature, but the rules say
12 you can type in signatures for other people. You have
13 to include language there that's set forth in
14 2.304(d), 10 CFR 2.304(d), saying that these people
15 have read the petition and there is some additional
16 language in there or read whatever the document has to
17 be. But you need to include that additional language
18 as well. So take a close look at the rules. We'll
19 deal with the -- it seems to me we may need to have
20 you resubmit the petition, because right now we have
21 a petition that only has your signature on it. But
22 when you do that, that winds up being the Board's
23 ruling on that issue, please pay careful attention and
24 have signature blocks for the other people. But they
25 have to have that language that the rule requires.

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1 MR. MARRIOTTE: Okay.

2 CHAIR SPRITZER: Go ahead.

3 MR. MARRIOTTE: On the actual issues on
4 standing, it's our belief that the standing criteria
5 proposed by the Applicant would be a radical departure
6 from the long-standing NRC proximity precedent and
7 moreover, even on its own terms, it's unpersuasive.
8 In our reply brief we provided an expert declaration
9 from Dr. Edwin Lyman that points out that even on
10 their terms when the mathematics are corrected, the
11 Applicant's position fails.

12 At this point I have to say that I just
13 learned this morning that Dr. Lyman wants to amend his
14 declaration. He found a minor mathematical error in
15 his declaration which does not change the outcome of
16 the declaration, the conclusion of the declaration,
17 but we will resubmit that early this next week.

18 CHAIR SPRITZER: All right, well, if
19 you're going to resubmit anything, you better include
20 a motion with it because the other parties, the
21 participants, may have some objection to a late-filed
22 declaration. They may or may not. I don't know. But
23 include a motion.

24 MR. MARRIOTTE: It doesn't change the
25 conclusion, but there is a minor mathematical error in

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1 it, apparently.

2 CHAIR SPRITZER: Okay, I think that's a
3 good idea to correct any mathematical errors. I'll
4 make a note of a motion.

5 I take it your position is though while
6 you've submitted Dr. Lyman's declaration, we don't
7 need to rely on that as declarations appear to do, to
8 fall within the 50-mile area where the Commission has
9 traditionally presumed standing.

10 MR. MARRIOTTE: Exactly. And even if they
11 were correct, if the Applicants were correct on their
12 assertions of core-melt frequency, there clearly are
13 and we listed them in our reply brief a number of
14 other potential scenarios that could cause radiation
15 release and harm to our members and our declarants.
16 It's not limited to core melt. There's all types of
17 things and we put them -- put some of them in the
18 reply brief and I'm sure everybody in this room could
19 think of some more. So for that reason, we think the
20 proximity presumption should remain.

21 As I say, and we've pointed this out too,
22 that these calculations, these core-melt frequency
23 calculations are based on incomplete, uncertified
24 design. It's never been built anywhere in the world
25 and doesn't necessarily reflect an as-built reactor or

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1 any kind of operational experience. So I think they
2 probably should be taken with a grain of salt to begin
3 with.

4 I think in our reply brief, you'll pretty
5 much -- it says it all and I'll just withhold the rest
6 of the time.

7 CHAIR SPRITZER: Okay, you've used your
8 five minutes.

9 The Applicant, Mr. Repka.

10 MR. SMITH: Actually, I'm going to be
11 doing the argument for the standing.

12 CHAIR SPRITZER: All right. I forgot to
13 check my outline for this one.

14 Okay, Mr. Smith. Thank you.

15 MR. SMITH: The Petitioners rely
16 exclusively on the fact that they live within 50 miles
17 of the proposed new unit, without explicitly stating
18 it, they're apparently relying on the NRC's proximity
19 presumption. Although this proximity presumption was
20 first developed back in the late 1970s, judicial
21 concepts of standing have evolved significantly since
22 then.

23 Under current standing case law, the
24 Petitioner must demonstrate some concrete, discernable
25 injury that's caused by the proposed activity, that

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1 is, they must affirmatively demonstrate that they are
2 in a personal and individual way immediately in danger
3 of sustaining some direct injury. This test ensures,
4 among other things, that resources are not expended
5 resolving generalized grievances.

6 Relative to current standing requirements,
7 the proximity presumption is outdated and does not
8 pass muster.

9 CHAIR SPRITZER: Let me ask as a threshold
10 issue there, we of course, are required to follow
11 Commission precedent and also Appeal board precedent.
12 Do you see that as leaving any room for us to tell the
13 Commission your 50-mile presumption is now outdated
14 and you ought to change it?

15 MR. SMITH: You're correct that the
16 Commission and the Appeals Boards have endorsed the
17 proximity presumption, but they've also stated that
18 Boards should follow contemporaneous concepts of
19 judicial standing. And here, those two principles are
20 in conflict. Relative to current standing
21 requirements, the 50-mile presumption is far outside
22 what any Court would find acceptable, particularly for
23 a low probability, hypothetical future event.

24 So unless this issue is raised in an
25 adjudicatory proceeding, the Commission is not really

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1 going to have a record on which to evaluate whether
2 the proximity presumption has outlived its usefulness.
3 And so that's where the Board's role here really is is
4 in evaluating that standing is, of course, a fact-
5 specific inquiry; whether the proximity presumption is
6 intentioned with contemporaneous concepts of judicial
7 standing, and if so, whether the affidavits submitted
8 would satisfy those current concepts.

9 CHAIR SPRITZER: Of course, the
10 Petitioners have responded with a declaration from Dr.
11 Lyman, but you haven't really had a chance to respond
12 to that since that was submitted with their reply.

13 What's your view of that? Doesn't that
14 answer your objection that they haven't shown a high
15 enough threshold of probability?

16 MR. SMITH: Well that actually just goes
17 -- there's a couple of points there. First, is that
18 it's really the Petitioners' responsibility to
19 demonstrate that there is some risk or harm to them.
20 They've got to demonstrate what their injury is. And
21 they haven't done so here. Merely picking at some of
22 the points we made in our brief, we're really just
23 illustrative of the fact that this is a low
24 probability event from an accident and that it does
25 warrant closer or a heightened scrutiny as to whether

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1 those risks are sufficient to satisfy the standing
2 inquiry in the first instance.

3 CHAIR SPRITZER: It's certainly accurate
4 to say that the type of accident that might result at
5 a nuclear power plant are low probability, but they
6 might also be very high in terms of potential harm.
7 Isn't that something that ought to be factored into
8 the analysis also?

9 MR. SMITH: Yes, that is something that
10 should be factored into the analysis and I think the
11 Board would benefit from a standing declaration that
12 goes into that analysis, that provides some basis for
13 concluding that the risks are substantial enough to
14 satisfy an injury in fact.

15 CHAIR SPRITZER: What are you proposing
16 that we do now? Right now, I don't -- we don't have
17 a declaration -- scientific -- we have, of course, the
18 information that's in the application. Are you
19 suggesting we should allow further declarations to be
20 submitted on this issue or hold an evidentiary hearing
21 or what precisely?

22 MR. SMITH: Well, certainly, further
23 declarations would be one way to address what we
24 perceive as the deficiencies in the current standing
25 affidavits. I do understand that proximity

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1 presumption has been accepted previously.

2 CHAIR SPRITZER: When you say proximity
3 presumption, that isn't really consistent with
4 contemporaneous concepts of standing. My
5 understanding of the presumption is that the Agency
6 is, in essence, saying if you live this close to a
7 nuclear power plant, we can safely assume that you
8 have sufficient enough risk of injury and that that
9 risk that you're relying on would be redressed by a
10 ruling from the Commission that either imposes more
11 stringent requirements on the Applicant or denies a
12 license entirely. In other words they're saying not
13 so much that we don't need to look into standing, but
14 that we'll just assume for people that live near
15 enough to a nuclear power plant that we don't have to
16 go into an individual by individual or Petitioner by
17 Petitioner type of inquiry. We can simply assume that
18 people live that close.

19 I realize that's not really the way
20 Federal Courts go about deciding standing. I'm not
21 aware of any presumptions of standing in Federal
22 Court, but the Commission has the expertise, I think,
23 to say we know enough about nuclear power that we can
24 see this as falling within the zone where people might
25 be affected, at least in a threshold that's sufficient

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1 for standing, although it may not be sufficient for
2 purposes of prevailing on a contention.

3 MR. SMITH: And that is what the
4 Commission has done in the past, but I think the
5 proximity presumption was really, initially came from
6 the risk of accidents. So it said the Petitioner may
7 base standing on a showing that his or her resident is
8 within the geographic zone that might be affected by
9 an accidental release of fission products.

10 But standing is not dispensed in gross.
11 You've got to show standing for each and every claim.
12 There's no showing here that an injury from an
13 accident is going to have any relationship to an
14 injury from extended storage of low-level waste at the
15 site. It's not clear how an accident has any --
16 satisfies an injury related to cumulative impacts on
17 aquatic biota. So the Petitioners must show standing
18 for each and every claim, perhaps for a claim related
19 to an accident in which, of course, you've got to make
20 some judgments as to whether the risk is adequate to
21 show an injury. The proximity presumption might be
22 able to continue in some form or another. But with
23 respect to the type -- certain types of claims,
24 particularly in this case, those related to foreign
25 ownership or those related to decommissioning or those

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1 related to cumulative impacts or storage of low-level
2 waste. The injury from the proximity presumption
3 would not satisfy the concepts of standing.

4 CHAIR SPRITZER: Thank you. That's your
5 time and certainly an interesting argument.

6 What does the staff think about this? Are
7 we free to and if we are free, should we jettison the
8 traditional 50-mile presumption. This is Mr.
9 Gendelman from the staff?

10 MR. GENDELMAN: Yes, Your Honors. The
11 staff believes that only the Nuclear Information and
12 Resource Service has actually shown standing here. We
13 do not agree with the Applicant's standing argument.

14 Recent Commission and Appeals Board cases
15 unambiguously adopt the proximity presumption and that
16 is the position that we believe controls here.

17 Such a change would need to be addressed
18 to the Commission, but the proximity presumption, we
19 think is the appropriate standard.

20 CHAIR SPRITZER: Why is that?

21 MR. GENDELMAN: First, in agreeing with
22 the Petitioners, the staff does not believe that the
23 Applicant's argument fully reflects contemporaneous
24 concepts of judicial standing. One of the cases
25 relied upon by the Applicants for a risk of harm that

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1 does not show standing, something in the order of 1 in
2 4.2 billion annualized risk, within a case that was
3 withdrawn and thus can't be relied upon for authority.

4 And another case, Florida Audubon v.
5 Benson was a procedural rights case which concerned
6 the IRS' failure to issue an EIS and language in that
7 case makes in inapposite to this sort of situation
8 where a more direct harm is alleged.

9 Also, while the Commission has
10 traditionally followed contemporaneous concepts of
11 judicial standing, it has not done so unambiguously
12 and has explicitly broken from those concepts where it
13 felt appropriate. Specifically, EnviroCare of Utah v.
14 NRC in 1999, Petitioner alleging only an economic
15 injury was found by the Commission to have Article 3
16 standing, but nonetheless was found not to have an
17 interest that was protected by Section 189(a) of the
18 Atomic Energy Act and that was affirmed by the D.C.
19 Circuit.

20 And so the staff therefore thinks that
21 this Board is not free to ignore Commission or Appeal
22 Board precedent and should follow the proximity
23 presumption.

24 CHAIR SPRITZER: And I take it you would
25 agree that or you have agreed in your papers that at

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1 least for the Nuclear Information and Resource
2 Service, they fall within that presumption. Were
3 there any -- leaving aside the objections as to
4 whether this or that document was signed by the right
5 person or had the right identifier in the title, and
6 those kind of objections, were there any of the
7 declarations that you think were insufficient to show
8 that they fell within the 50-mile presumption?

9 MR. GENDELMAN: In the petition itself,
10 each of the Joint Petitioners allege that they are
11 within a certain proximity to the proposed plant, but
12 with the exception of the Nuclear Information and
13 Resource Service in the signature, don't allege their
14 addresses. And so to that extent, the proximity
15 allegations are not supported by factual allegations.
16 But because in the case of the Nuclear Information and
17 Resource Service, the address was contained within the
18 petition, the staff was able to confirm that that was
19 within the proximity presumption.

20 CHAIR SPRITZER: You had an objection, if
21 I remember correctly, to Mr. Warner's declaration. He
22 was the one -- in his declaration he initially said he
23 was filing it in support of the Nuclear Information
24 and Resource Service petition. He later amended it to
25 say it was in support of Southern Maryland Cares

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1 petition to intervene. And he does provide his
2 address. It looks like the only mistake he made was
3 or the only mistake that was made in his declaration
4 was the title was initially incorrect. Has that been
5 cured to your satisfaction by the amended declaration
6 that now makes clear he is supporting Southern
7 Maryland Cares and not the Nuclear Information and
8 Resource Service?

9 MR. GENDELMAN: It has not, Your Honor, to
10 the extent that this and many of the affidavits were
11 submitted with the reply. For example, the
12 Commission's recent Entergy case last year makes clear
13 that the reply is not the proper vehicle for those
14 cures to be submitted.

15 CHAIR SPRITZER: Even when -- I mean the
16 only mistake -- it is clear from the body of his
17 declaration he refers to himself as a member of
18 Southern Maryland Cares. He says he authorized --
19 this is the original declaration, dated November 18.
20 It's pretty clear reading the text of this that he is
21 a member of Southern Maryland Cares and that's the
22 organization he's authorizing to represent him. He
23 just seems to have made a mistake in the title.

24 You're saying Commission precedent
25 prohibits us from allowing that kind of correction?

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1 MR. GENDELMAN: In the case of Southern
2 Maryland Cares, that organization was also not a
3 signatory to the original petition and so as in our
4 answer, the staff believes that under 2.304(d)
5 Southern Maryland Cares is not a proper --

6 CHAIR SPRITZER: If I remember your answer
7 to the petition correctly, you did say I think in a
8 footnote that recognized that we could allow them to
9 refile the petition, correcting this -- we're talking
10 about the petition now, correcting the signatures or
11 adding the signatures of the people that really were
12 intended to be the Petitioners and not those that
13 might have been incorrectly referred to as the
14 Petitioner. Am I remembering your position correctly?

15 MR. GENDELMAN: That's correct, Your
16 Honor, and the staff certainly recognizes that under
17 prior versions of Part 2 that that has been done on a
18 case-by-case basis and --

19 CHAIR SPRITZER: Is there any prejudice
20 you can point to? There obviously a number of
21 technical errors in the petition and one or two in
22 some of the declarations. For any of those are you
23 able to identify any prejudice to the staff that's
24 resulted?

25 MR. GENDELMAN: I don't believe so, Your

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1 Honor, but the staff doesn't believe that prejudice is
2 the test announced under Part 2.

3 MR. GENDELMAN: All right. Well,
4 Petitioners you have an additional five minutes. You
5 may use it or not as you prefer. No one is required
6 to use all their allotted time.

7 MR. MARRIOTTE: I just want to say that I
8 think the Applicant's view of standing is
9 extraordinarily narrow and pretty much indefensible
10 and again, just on the -- and appreciate that the NRC
11 staff agrees with us on that part of it.

12 On the sort of mix-ups on the original
13 petition, I have to take responsibility for those
14 since I'm the one who filed it. They were
15 inadvertent. We're not lawyers here. We're doing
16 this pro se and we're doing the best we can and we
17 have taken every step we can to remedy those. I think
18 the attention in the original petition was certainly
19 clear and I hope we've made it more clear.

20 CHAIR SPRITZER: Judge Arnold had a
21 question for the Applicant?

22 ADMIN. JUDGE ARNOLD: Mr. Smith, assuming
23 if we were somehow to throw out the proximity standard
24 for standing, for a plant like EPR where the large
25 early release probability is very low, and basically

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1 would fall below the threshold for showing injury,
2 what type of circumstance would anyone be able to show
3 standing?

4 MR. SMITH: They might have a difficult
5 time showing standing from an accident, but they could
6 certainly show standing for any of the other
7 contentions that were out there for injury to aquatic
8 biota for showing -- visit the area near the plant
9 frequently. That's sort of the regular way in which
10 Petitioners often show standing.

11 With regard to a hypothetical accident, a
12 Petitioner would probably need to show somehow that
13 the risk was -- the risk that's in the design control
14 document was under estimated, show some reason why
15 their injury, their contention would increase that
16 risk sufficient to show an injury that would satisfy
17 the standing requirements.

18 Of course, they would need a substantial
19 probability that there would be a personal and direct
20 injury to you. So it would be difficult to show and
21 that's partially by design of the plant. It's
22 designed to be low and it's designed to be low enough
23 that no injury is substantially probable.

24 ADMIN. JUDGE ARNOLD: Thank you.

25 CHAIR SPRITZER: To follow up on that,

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1 we're dealing with standing under Section 1. Standing
2 for us is derived from Section 189(a) of the Atomic
3 Energy Act and from Article 3 of the Constitution
4 which gives interested parties a right to seek a
5 hearing before the Agency. Wouldn't this test that
6 you're proposing we adopt -- let me put it more --
7 would the test you're proposing that we adopt so
8 narrow the number of parties that could obtain a
9 hearing as to conflict with the intent of Section
10 189(a) which I take it to be that people can come
11 before us and challenge the Applicant's assurances
12 that its plant will operate safely without having to
13 make an upfront, without having to produce a detailed
14 evaluation at the very beginning of the case that
15 passes some minimum threshold of risk.

16 MR. SMITH: Well first, there's two
17 points. One is the Commission has said that they
18 generally do follow Article 3 standing. They're not
19 obligated to, but they generally do. And the second
20 point is again, there's different types of injuries
21 for different types of contentions. If you're talking
22 about an accident, it's in future, hypothetical
23 injury, it's possible that the proximity presumption
24 might make sense to leave it intact there and say
25 okay, if you're arguing about accidents that are

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1 remote risk we do want to have hearings on that.

2 We think it's important that the public be
3 able to participate. That might work, but for
4 injuries related to environmental impacts associated
5 with low-level waste storage or impacts to the Bay,
6 those are the types of injuries that have classically
7 been dealt with in standing inquiries in very
8 straight-forward ways and should pose a no-bar to a
9 Petitioner that would really be injured by the
10 proposed activity.

11 CHAIR SPRITZER: All right, well, that's
12 an interesting argument. Thank you for clarifying
13 those points.

14 I believe unless we have any other
15 questions on standing, we're ready to move on to
16 contention 1 and we'll hear first from the Petitioner.
17 You have 15 minutes. Marriotte or Marriotte?

18 MR. MARRIOTTE: Marriotte.

19 CHAIR SPRITZER: Mr. Marriotte for the
20 Petitioners.

21 MR. MARRIOTTE: And I will reserve five
22 minutes for rebuttal.

23 CHAIR SPRITZER: Very well.

24 MR. MARRIOTTE: Contention 1 is a very
25 straight-forward, admissible contention that meets all

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1 the standards of 10 CFR 2.309(f)(1). The Atomic
2 Energy Act --

3 CHAIR SPRITZER: If I could interrupt you
4 a minute. I had intended and I'll do this now, to
5 give members of the public at least a brief
6 description of what the contentions are in case they
7 don't have a copy of the petition with them.

8 Contention 1 essentially alleges that in
9 violation of the Atomic Energy Act, the proposed
10 facility would be owned, dominated, or controlled by
11 a foreign entity or foreign government in this case,
12 a company called Electricite de France or EDF. Sorry,
13 go ahead.

14 MR. MARRIOTTE: No problem. The Atomic
15 Energy Act is the fundamental underpinning of all NRC
16 activity and it very clearly states that ownership,
17 control, or domination of a nuclear power facility by
18 a foreign corporation or a foreign government is
19 prohibited. There are no ifs, ands, or buts.

20 Congress has certainly had over the years
21 ample opportunity to change the Act if it wanted to
22 encourage the kind of development that the Applicant
23 is proposing and Congress has never done so. It has
24 not been amended since -- that section of the AEA has
25 not been amended. It has held up.

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1 The basic facts in this contention are not
2 in dispute. A foreign corporation which is owned by
3 a foreign government, Electricite de France owns 50
4 percent of Unistar Nuclear. It owns an additional 9.5
5 percent of the other 50-percent owner, Constellation
6 Energy. Since our petition was first filed
7 Electricite de France has increased its involvement
8 with Constellation Energy by purchase 49.99 percent of
9 Constellation's five largest assets, its nuclear power
10 plants, existing ones at a cost of approximately half
11 the entire value of Constellation Energy.

12 The Applicant proposes to build a reactor
13 supplied by a foreign firm, AREVA, which is also owned
14 by the French government and financing for this
15 reactor is expected to come, some of the financing,
16 substantial amount is expected to come from COFAS
17 which is the French export/important bank. None of
18 this is in dispute. What is at issue is whether this
19 unprecedented foreign involvement in a U.S. nuclear
20 reactor project constitutes foreign ownership control
21 or domination and these are clearly three different
22 standards.

23 Our view, what we're submitting is that
24 this application does, in fact, run afoul of all three
25 standards, but the application need run afoul of only

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1 one of these to be rejected, and this is what is in
2 dispute and this is clearly an appropriate matter for
3 hearing before this ASLB.

4 In their reply briefs, it seems to us that
5 both the Applicants and the NRC staff are arguing the
6 content of the contention rather than its
7 admissability and we want to have that argument.
8 That's why we have submitted this contention is we
9 want to have that debate before the ASLB.

10 CHAIR SPRITZER: But before we do get to
11 that debate, I take it we have to admit the contention
12 before we can decide whether it's correct or not.

13 MR. MARRIOTTE: Absolutely.

14 CHAIR SPRITZER: For purposes of the
15 procedure we would follow, let's assume hypothetically
16 that we were to admit it, at least as far as I'm aware
17 the staff has not yet issued its own determination,
18 but they'll tell us during their argument whether I'm
19 correct on that or not.

20 How do you think we should go about --
21 assuming we were to admit the contention, what
22 procedures should we follow? In other words, should
23 we wait until the staff has made its determination
24 whether it thinks this test is or is not satisfied
25 that it's a test for foreign ownership, domination, or

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1 control, and then as we typically do with contentions,
2 proceed to decide the issue on the merits, once we've
3 had the benefit of the staff's analysis. Or should we
4 just go ahead and launch into it ourselves?

5 MR. MARRIOTTE: I would leave that to your
6 discretion. I mean obviously the staff's view is very
7 important. But the underlying basis of the contention
8 from our perspective is not going to change regardless
9 of which way the staff goes.

10 CHAIR SPRITZER: I understand your
11 position.

12 MR. MARRIOTTE: I mean from our
13 perspective, we could do it either way. It doesn't
14 change our opinion and the fact that the NRC staff has
15 argued against this contention, at this stage already
16 is to me an indication they plan to rule in favor of
17 Unistar here, so I don't know if something is gained
18 by waiting or not, but we certainly don't object to
19 that.

20 CHAIR SPRITZER: The other issue that
21 seems to be somewhat in flux is this question of
22 whether EDF or EDF -- one of the various EDF companies
23 is going to acquire a 49.99 percent investment
24 interest in Constellation Energy. They seem to be
25 going down that road, but the Applicant, I'm sure,

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1 will inform us during their argument where that
2 stands.

3 MR. MARRIOTTE: Right, they've not
4 received full approval of that. There's a hearing
5 before the Maryland Public Service Commission March
6 27th, for example, and I don't think the -- I think
7 there's probably a separate proceeding before the NRC.
8 You'll know better than I do about that.

9 CHAIR SPRITZER: Do any of the Petitioner
10 organizations here, are any of you participating in
11 the State of Maryland proceeding?

12 MR. MARRIOTTE: Yes.

13 CHAIR SPRITZER: You are.

14 MR. MARRIOTTE: Yes.

15 CHAIR SPRITZER: Can you tell me generally
16 what the issue is in those proceedings? Is it exactly
17 the same issue that we're dealing with here or --

18 MR. MARRIOTTE: No, I don't think they're
19 dealing with foreign ownership. And we're sort of
20 participating as interested bystanders, I guess. We
21 haven't submitted a brief at this point.

22 The issue there is whether this is best
23 for Maryland rate payers or not. Maryland was in a
24 position where they were expecting a deal with Mid-
25 American Energy and suddenly it changed and the Public

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1 Service Commission decided to assert its authority and
2 examine the deal.

3 CHAIR SPRITZER: Okay.

4 MR. MARRIOTTE: I do want to say one more
5 thing which is Revision 3 of their application which
6 we finally got to look at on January 27th does contain
7 a fairly substantial amount of new information on how
8 the Applicant proposes to essentially get out of the
9 foreign ownership restriction and we are willing to
10 amend our contention if the ASLB believes that
11 appropriate, but in looking, in reviewing it fairly
12 quickly, it's our view at this time that the changes
13 in Revision 3 should essentially come up at the
14 evidentiary stage after the Commission has admitted
15 because they don't change the fundamental underpinning
16 of our contention.

17 CHAIR SPRITZER: Well, as far as filing
18 amended contentions, that's your choice. We're not
19 going to tell you that you should or shouldn't.
20 That's your decision.

21 MR. MARRIOTTE: Okay.

22 CHAIR SPRITZER: We have indicated -- I
23 think I'm sure you read the order we issued on
24 February 10th, if you're going to do that, we'd advise
25 you to do it quickly because as we said in that order

1 we would regard any contention filed more than 60 days
2 after the Revision 3 became publicly available as late
3 filed and you'd have to meet some additional
4 requirements in that event.

5 So if you want to amend your existing
6 contention in any way or file new contentions -- which
7 I take it hasn't happened. We haven't seen anything.

8 MR. MARRIOTTE: No, and I do have some
9 things to say about that.

10 CHAIR SPRITZER: We'll cover that later,
11 but just since you brought up the issue I thought I'd
12 -- it's your call whether you do that. We can
13 certainly consider whatever evidence has been put
14 before this that's reflected in the record before us
15 without you amending your contention.

16 MR. MARRIOTTE: We'll be looking at it,
17 but I think for contention 1, we probably will not
18 file an amended contention, but we will look at it
19 again.

20 I do want to say on the issue of new
21 contentions since the Board has asked about new
22 contentions, one related to this issue is the -- in
23 Rev. 3 is the new in plate convoluted corporate
24 structure unveiled by the Applicants which includes no
25 less than seven limited liability corporations

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1 involved in the ownership structure of this reactor
2 and we are considering submitting a new contention
3 related to financial qualifications issues and its
4 corporate structure and if we do so we will do it
5 before March 27th which should be the 60th day, right?

6 CHAIR SPRITZER: Right. Are you going to
7 reserve five minutes for rebuttal at the end?

8 MR. MARRIOTTE: Yes.

9 CHAIR SPRITZER: Mr. Repka?

10 MR. REPKA: Thank you. I'd like to divide
11 my discussion of this issue into two pieces, first
12 addressing the existing contention which focuses on
13 EDF's interest in Unistar Nuclear Energy and then
14 second, address the issues related to the more recent
15 transaction involving the existing nuclear fleet of
16 Constellation Energy Group and within that construct
17 I promise I'll get to the Board's published questions
18 from earlier this week.

19 First with respect to the contention that
20 we have before us, that relates to the existing
21 interest in the EDF holds 50/50 interest in Unistar
22 Nuclear Energy and our position on the admissability
23 of the contention is that there is no sufficient basis
24 to demonstrate a genuine dispute that there is any
25 foreign domination or control based on that 50/50

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1 ownership share. The contention itself really offers
2 only three pieces of information: first, the 50/50
3 participation in and of itself; second, the relative
4 market capitalization of EDF compared to Constellation
5 Energy Group; and third, EDF's ownership of a 9.51
6 percent share of common stock of Constellation Energy
7 Group.

8 We've addressed each of those three things
9 in our reply brief and I don't want to go into all of
10 that in detail. But suffice it to say that the NRC's
11 precedent and the NRC's Standard Review Plan on
12 foreign ownership and control make it very clear that
13 the issue is one of the control, not mere ownership.
14 so the 50/50 participation of EDF and Unistar Nuclear
15 Energy alone does not establish control. And in fact,
16 all of the features that are discussed in the Rev. 3
17 of the COL application even further mitigate or negate
18 to use the terms of the Standard Review Plan any
19 control by EDF. So absent some specific basis or
20 showing that those governance controls are
21 insufficient or there's some de facto control, there
22 really is no genuine admissible contention. That's
23 with respect to the 50/50 ownership interest in and of
24 itself.

25 CHAIR SPRITZER: Well --

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1 MR. REPKA: Second, the contention points
2 to the market capitalization and there's no basis
3 provided at all as to how market capitalization
4 establishes control, so that's an interesting fact,
5 but not one that carries any particular weight in the
6 context of the contention in the statutory and
7 regulatory scheme of foreign control.

8 Third is the issue of the 9.51 percent
9 shares of common stock in Constellation Energy Group
10 that EDF holds and as we've discussed in our reply the
11 Petitioners' own contention included the exhibit with
12 the SEC filing related to that 9.51 percent share of
13 common stock which shows that EDF holds only a
14 beneficial interest in the stock and has no voting
15 shares based upon those -- or no voting power based
16 upon those shares. So that 9.51 percent doesn't
17 establish anything relative to the issue of importance
18 here which is control.

19 So I think the bottom line with respect to
20 this particular contention as it's written now really
21 has no basis, again to establish an admissible,
22 litigable issue.

23 CHAIR SPRITZER: Well, how far do they
24 have to go? We don't require them to prove their case
25 on the merits in order to get an admissible

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1 contention. They do have to provide some factual
2 support. It seems to me that the facts they pointed
3 to while perhaps not sufficient to win the issue or at
4 least move them at least a little bit down the path
5 towards where they would ultimately want to wind up.
6 It would at least raise a question in one's mind
7 whether there was an issue of foreign ownership or
8 control, even though it may not be legally sufficient
9 to prevail in itself.

10 MR. REPKA: I think the point is they
11 raise a fair question which has an easy answer which
12 is the 50/50 control. The 50/50 ownership does not
13 establish control on its face and the governance
14 structure is in place to further mitigate any
15 influence that 50/50 ownership could provide with
16 respect to nuclear safety matters and at that point
17 there really is a higher burden to show something, to
18 show some basis for a litigable issue and I think
19 that's precisely what's missing.

20 CHAIR SPRITZER: I'm trying to envision
21 what the opinion would say, but if we said you know,
22 essentially the facts point, raise an issue in our
23 minds, but the Applicant responded sufficiently to
24 show us that they've got sufficient mitigation in
25 place to offset whatever inference of control there

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1 might be just from the ownership that sounds like a
2 ruling on the merits, not a ruling on contention and
3 admissability.

4 MR. REPKA: I think it's a ruling on
5 whether there's a genuine dispute and I think that
6 50/50 as a matter of law doesn't establish control and
7 as an additional matter, the application itself
8 explains even further mitigation measures and there is
9 no challenge to date to those governance controls, no
10 showing, no attempt to show that they're insufficient.
11 So again, I think it's a threshold finding that
12 there's no genuine dispute.

13 CHAIR SPRITZER: What is the status of the
14 -- what was the term for it? The investment
15 agreement. I don't have your letter in front of me,
16 but the agreement you notified us of in your letter of
17 December 23rd. Has anything further happened?

18 MR. REPKA: Yes, there is an agreement by
19 which EDF would purchase a 49.99 percent interest in
20 Constellation Energy Nuclear Group and actually I did
21 circulate the organization chart and I'm happy to put
22 that up on DDMS, if that's --

23 CHAIR SPRITZER: That would be great.

24 MR. REPKA: I'm not sure I know precisely
25 how to do that.

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1 CHAIR SPRITZER: I think it's coming.

2 (Pause.)

3 We have our control booth over there. I'm
4 not sure if they --

5 (Pause.)

6 It came and it went.

7 MR. REPKA: I can make do without it
8 because the point --

9 CHAIR SPRITZER: We have the old fashioned
10 way. Fortunately, the audience -- there we go.

11 MR. REPKA: This is the organization chart
12 from Rev. 3 of the COL application for the new units
13 and what this will show you is that the two Applicant,
14 Unistar Nuclear Operating Services and Calvert Cliffs
15 3 Nuclear Project, LLC are subsidiaries of Unistar
16 Nuclear Energy, LLC which is the company that's owned
17 50/50 by EDF Development, Inc. and ultimately
18 Constellation Energy Nuclear Group. So that 50/50
19 arrangement already exists for the proposed new
20 reactor. What you don't see on this chart is the
21 existing Constellation fleet. And that's the
22 fundamental point is that what the new transaction
23 would do is it would create a 49.99 percent interest
24 of EDF in the existing reactor fleet. So in
25 Constellation Energy Nuclear Group in a branch that

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1 you don't see on this chart that would come off of
2 there.

3 And so what we have is a situation very
4 similar for the existing fleet that we're proposing
5 for the new plant. And that will require NRC approval
6 through a license transfer. That application was
7 submitted to the NRC, I believe, January 22nd was the
8 date of that filing. But again, that doesn't apply to
9 the Unit 3 because Unit 3 -- it doesn't affect Unit 3
10 number one, and number two, is the Unit 3 situation
11 stays exactly as proposed.

12 There will be a change to the corporate
13 structure in all likelihood with respect to where
14 Unistar branches off the Constellation Energy Group
15 organization chart because part of the transaction
16 with respect to Constellation Energy Nuclear Group is
17 that the 50/50 relationship relative to Unistar
18 Nuclear Energy will not change and that's included in
19 the transaction documents in Form 8K that were filed
20 with the SEC in conjunction with the transaction
21 itself and that is a public document.

22 So the bottom line is if that deal is
23 structured so that Unistar, there is no effect on
24 Unistar with respect to the 50/50 relationship and the
25 NRC regulatory approval process that will go on

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1 related to the new transaction is related entirely to
2 the existing fleet of Calvert Cliffs 1 and 2, Nine
3 Mile, and Ginna.

4 As a point of fact, that transfer
5 application does explain the corporate governance
6 controls that were put in place for the existing
7 reactors and they're very similar to what is in the
8 COL application for Unistar.

9 ADMIN. JUDGE ARNOLD: Will there be a COL
10 revision to reflect the latest corporate structure?

11 MR. REPKA: There will be a COL revision
12 at some point. It's not immediate. Again, the
13 transaction has not received any of its regulatory
14 approvals, including the NRC regulatory approval. It
15 certainly hasn't closed and so at this point it would
16 be premature to amend the COL application, but when
17 it's amended the only change it would be would be
18 something high up on the corporate level to ensure
19 that Unistar is, for example, a possibility. And this
20 is going to depend upon many things independent of NRC
21 considerations, but Unistar Nuclear Energy may become
22 a direct subsidiary of Constellation Energy Group,
23 Inc. which EDF is not purchasing an interest in.
24 EDF's 49.99 percent interest would be in Constellation
25 Energy Nuclear Group, LLC. And so that would preserve

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1 the 50/50 relationship with respect to Unistar Nuclear
2 Energy.

3 So at the very high level of the
4 organization chart, yes, there may be a change and the
5 COL application would be amended at the time that's
6 determined. Right now, simply that's premature, but
7 given where the transaction in regulatory space.

8 CHAIR SPRITZER: So I take it the bottom
9 line on that specific issue, this new agreement to
10 purchase 49.99 percent of Constellation Energy Nuclear
11 Group is its effect on this foreign ownership and
12 control for Calvert Cliffs Unit 3 is essentially
13 unclear at this point and it would be premature for us
14 to be speculating how that might affect the domination
15 and control issue?

16 MR. REPKA: No, I don't think that's it at
17 all. I think the question, for example, Question 2(a)
18 in the public questions was how will an increase in
19 the investment affect domination or control of Calvert
20 Cliffs Unit 3? And our answer is it will not. The
21 transaction documents in the SEC Form 8K, dated
22 December 18, 2008, specify and there's Section 6.13 of
23 one of the agreements that's included in there is that
24 the parties would adjust the ownership structure of
25 Unistar to assure that the beneficial interest in

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1 Unistar owned directly or indirectly by EDF and its
2 affiliates will not exceed 50 percent. So the 50
3 percent interest as presently outlined in the COL
4 application for Unit 3 will not change.

5 CHAIR SPRITZER: Okay.

6 MR. REPKA: So again, it's status quo.
7 The Board's third question was if a contention is
8 admitted, what should we do about it and the answer is
9 the current contention focuses on control based upon
10 a 50/50 relationship. We've put forward governance
11 controls. They haven't been challenged, but to the
12 extent that there is any issue admitted there, be it
13 a legal issue, a factual issue, whatever, I think we
14 can proceed to address that now without waiting to
15 find out what the ultimate structure change is with
16 respect to where Unistar Nuclear Energy, how that
17 joins into the Constellation Energy Group work chart
18 because the real issue before us is the one of control
19 at the Unistar level. The change -- whatever the
20 change is at the higher level, the 50/50 will be
21 preserved.

22 CHAIR SPRITZER: What about the question
23 of waiting for any staff report or finding on this
24 issue?

25 MR. REPKA: I think that might depend very

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1 much on what the precise issue is, what the issue
2 admitted is. I think we're always interested in the
3 staff's findings and that may be very important and --
4 but if the issue admitted is something more specific
5 about legal issues or what's possible under the
6 Standard Review Plan or what's possible under the
7 statute and regulations, I think those are issues we
8 can proceed to address, even before the staff review
9 is complete.

10 If there's some detailed questions, I
11 think the staff's review, like in any issue, is
12 something we would like to see, whether that be a
13 draft review or the final.

14 CHAIR SPRITZER: All right, I think that
15 about exhausts your time. We've had a lot of
16 questions about what the staff is or is not likely to
17 do on this issue. Maybe you could start off by giving
18 us the staff's view of what it's likely to do and
19 whether we should wait to hear from you before we --
20 if we were to admit the contentions, should we wait to
21 hear the staff's views before we proceed to address it
22 on the merits.

23 MR. BIGGINS: Certainly, Your Honor, I'll
24 start with that. While the Atomic Energy Act
25 prohibits foreign ownership, domination, or control of

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1 a facility licensed under Part 52, the Commission has
2 provided its interpretation for how an Applicant can
3 comply with the Atomic Energy Act in the Foreign
4 Ownership Standard Review Plan.

5 In this instance, the application contains
6 foreign ownership, domination, and control issues that
7 the staff will have to examine. There's no doubt
8 about that. The staff will make its determination
9 prior to issuance of the final Safety Evaluation
10 Report. The staff analysis may be documented in a
11 separate, proprietary agency record which would be
12 placed in ADAMS. However, the staff's conclusions
13 will be documented in the final Safety Evaluation
14 Report.

15 CHAIR SPRITZER: Okay.

16 MR. BIGGINS: Regarding the Board's
17 inquiries about the implication of the letter from the
18 Applicant's counsel and I get back to the contention
19 itself, that indicates that a percentage of the
20 foreign interest in the proposed plant may increase.
21 As of now, there's not been a change in the
22 application. So the only implication of the letter is
23 that the staff will have to conduct or will likely
24 have to conduct analysis in the future if a change
25 does occur to the application.

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1 A contention, I would point out, is not
2 valid where it challenges possible future changes to
3 the application and the Commission has held that the
4 expectation that the application will change is not a
5 matter for a contention. The Appeals Board in the
6 Catawba case addressed that issue, that a possible
7 future change to an application does not create a
8 material dispute with the application.

9 Regarding the contention itself, although
10 the Petitioner is proposing a contention that argues
11 that the Applicant has run afoul of the Atomic Energy
12 Act, the contention does not specify any information
13 that is not already addressed in Revision 3 to the
14 application. Further, Petitioner does not provide any
15 expert support for how the foreign interest identified
16 in the application violates the Atomic Energy Act.
17 The Petitioner makes a simple argument that a foreign
18 entity owns part of the parent corporation and part of
19 the subsidiary. While the Petitioner does not --
20 provides that information which is already contained
21 in the application, the Petitioner does not explain
22 how that violates the Atomic Energy Act. So your
23 question previously to the Applicant was what would
24 the Petitioner have to provide in order to have an
25 admissible contention and I would propose that the

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1 Petitioner would have to do more than simply identify
2 an issue that the staff will have to analyze in its
3 analysis of the application. Petitioner would have to
4 show that it has an actual dispute with the
5 application or in this particular case, a dispute with
6 how the Applicant has applied the Standard Review Plan
7 in forming its negation action plan to alleviate the
8 concerns of foreign ownership, domination, or control.
9 So at this point, the staff does not believe that this
10 contention is admissible as we explained in our
11 answer.

12 I want to make sure I answer your second
13 and third questions. In question 2(a) and 2(b), I'm
14 using the assumption that where you use the term
15 safeguards, you meant the negation plan. The staff
16 has not conducted its analysis of this issue and will
17 not consider the possible future increase and
18 investment interests unless and until the application
19 reflects such a change. And for question 3, if the
20 Board does determine that the contention meets the
21 requirement of 10 CFR 2.309, then the Board should
22 proceed with the litigation of the contention as it
23 normally would, understanding that changes to the
24 application could moot the contention or provide
25 justification for modifying it and also understanding

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1 that the staff would not be able to provide any input
2 in a hearing prior to conducting its analysis and
3 reaching its conclusions that will be documented in
4 the final Safety Evaluation Report.

5 CHAIR SPRITZER: If we were to go ahead
6 and decide the issue before the staff issued the
7 Safety Evaluation Report which would contain its
8 analysis of the foreign domination and control issue,
9 how would that affect -- wouldn't we be jumping the
10 gun and superseding the issue that the staff has the
11 right and the duty to opine on itself.

12 MR. BIGGINS: Yes, Your Honor. I believe
13 that would be jumping the gun to the extent that it is
14 the staff's responsibility to review the application
15 in that regard, not the Board's, and that if you do
16 believe that the contention is admissible, it would be
17 appropriate, as is normally done that any hearing be
18 delayed until the point where the staff has issued its
19 final determination.

20 CHAIR SPRITZER: In fact, if this is going
21 to be in the Safety Evaluation Report, that may even
22 be required under our regulations that we wait until
23 your SER is complete.

24 All right, I think I understand the
25 staff's position. Was there anything else you wanted

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1 to add?

2 MR. BIGGINS: Not on this matter.

3 ADMIN. JUDGE ARNOLD: I do have a
4 question. You mentioned the Commission's criteria for
5 foreign ownership is expressed in the Standard Review
6 Plan. Now my understanding of the Standard Review
7 Plan is that's really staff guidance. Is that an
8 exception? Has it been officially blessed by the
9 Commission?

10 MR. BIGGINS: That's correct, Judge, and
11 I will get you that citation.

12 In this particular instance, the final
13 Standard Review Plan on foreign ownership, control, or
14 domination was published in the Federal Register on
15 September 28, 1999. The Commission approved the
16 Standard Review Plan on August 31, 1999 in SECY 99-
17 0165.

18 ADMIN. JUDGE ARNOLD: One other question.
19 When the entire issue of foreign ownership is decided,
20 is that going to be decided by the staff or will that
21 actually go to the Commissioners to make the final
22 determination?

23 MR. BIGGINS: The staff will conduct its
24 analysis and document its conclusions, but ultimately
25 I believe the Commission intends to have the final say

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1 on whether a license is issued under Part 52.

2 ADMIN. JUDGE ARNOLD: Thank you.

3 CHAIR SPRITZER: All right, I believe the
4 Petitioner has reserved five minutes on this issue for
5 rebuttal.

6 MR. MARRIOTTE: Thank you, Your Honor.
7 The Applicant, in particular, but even the NRC staff
8 to a degree, seem to think that we have to make our
9 entire case at the contention level and that is, in
10 fact, not the case. We have to identify an issue
11 which we have identified. We have identified the law
12 which this would run afoul of. It's also in our
13 original petition. It also runs afoul of the Standard
14 Review Plan. We clearly have a genuine dispute over
15 this and I mean this is a situation with an
16 unprecedented level of foreign involvement. We've
17 never had a reactor in this country try to be licensed
18 with this kind of foreign involvement. And so it's
19 very appropriate for an ASLB to hear this as its first
20 case.

21 CHAIR SPRITZER: How precisely would you
22 define your dispute with the Applicant?

23 MR. MARRIOTTE: Our dispute is -- I was
24 actually -- maybe I can clarify it like this. The
25 Applicant kept talking about control which is one of

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1 the three underpinnings of the Atomic Energy Act,
2 ownership, control, or domination. Those are three
3 different standards. He spent a lot of time
4 explaining how their corporate structure is set up to
5- try to address the control issue. They know this is
6 a problem, clearly. There was not a word on whether
7 the French government dominates this project and the
8 French government has an enormous stake in this
9 project. In terms of dollars, it's a multi-, multi-
10 billion dollar stake in this project.

11 We also have argued and continue to argue
12 that the ownership itself should be reviewed by this
13 body. I don't know what constitutes ownership in this
14 sense. It is clear that and it's not in dispute that
15 EDF owns 50 percent of Unistar and EDF has additional
16 involvement in the other owner of Unistar. That's a
17 very clear ownership issue. So I think when you look
18 at the three different standards, we have raised
19 genuine issues. There is a genuine dispute and I
20 think it is incumbent upon this Board to hear our
21 case. I believe we've satisfied the admissibility
22 requirements. Perhaps we have not proven the entire
23 case as you suggested, but that's what the evidentiary
24 hearing is for.

25 CHAIR SPRITZER: Okay, I think I

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1 understand the parties' positions. I think this would
2 be an opportune moment to take our anticipated ten-
3 minute break. You all may remain seated. We'll be
4 back in ten minutes.

5 (Off the record.)

6 CHAIR SPRITZER: Thank you. You may be
7 seated.

8 I think we're ready to move on to
9 Contention 2 which deals with decommissioning funding,
10 whether the Applicant has satisfied requirements
11 related to the funds necessary to decommission the
12 facility, assuming it's licensed when it ceases
13 operation. And for the Petitioner, Mr. Marriotte?

14 MR. MARRIOTTE: Yes, thank you. And
15 again, I'll reserve five minutes for rebuttal.

16 CHAIR SPRITZER: Very well.

17 MR. MARRIOTTE: Although I'll be quick
18 here. We're still examining new information provided
19 in Revision 3 which was three weeks ago. And I will
20 say we will either submit an amended contention or
21 withdraw this contention by March 27th.

22 But I did want to answer your specific
23 questions. In response to those, first, we are
24 bringing this issue up at the COL stage because this
25 is the only stage at which Petitioners can bring up an

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1 issue with the legal protections provided by the NRC
2 hearing process. If we wait until the financial
3 assurance is actually provided, it would be impossible
4 to obtain an adjudicatory hearing on this issue. So
5 intervenors across the country are often put in this
6 quandary where we're either raising issues too early
7 or too late. Well, I'd rather be on the too-early
8 side, so I'm putting it in now.

9 We are not attempting to assert that the
10 ASLB can require an Applicant to -- and this is in
11 response to your other question, that the ASLB can
12 require an Applicant to adopt a particular method of
13 decommissioning funding when the Applicant meets the
14 requirements of different methods. Clearly, it's the
15 Applicant's choice as to which method it wants to
16 choose, wants to use if it meets the requirements for
17 the methods. What we're arguing is that in this case
18 and this is again based on the documents before
19 Revision 3 which the petition was based on, that
20 Unistar Nuclear did not meet the requirements of the
21 method it had chosen and that in fact, it could meet
22 the requirements of only one other available option
23 and that was our argument. Were we to prevail on that
24 argument we believe, yes, the ASLB has a duty to
25 prescribe the decommissioning method in that case

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1 because otherwise NRC regulations would be violated.

2 That said, revision 3 clearly does provide
3 some major changes in the funding mechanism and we're
4 still reviewing those and we will respond in a timely
5 and appropriate fashion.

6 CHAIR SPRITZER: Okay, for the Applicant
7 on this issue?

8 MR. REPKA: Okay, just for the benefit of
9 everybody to remind us of what we're talking about,
10 the contention asserted that the decommissioning
11 funding assurance was inadequate and that the
12 Applicants can't rely on apparent guarantee and must
13 use a prepayment method of decommissioning financial
14 assurance. And the only support offered at the time
15 the contention was filed was the recent decline in the
16 stock price of Constellation Energy Group. So as
17 background, Revision 2 of the COL application did say
18 that Unistar would utilize a parent company guarantee
19 to satisfy the funding assurance requirements. And
20 COL application Rev. 3 provides that approach to say
21 the Applicants would rely on a combination of a parent
22 company guarantee letters of credit and a sinking
23 fund.

24 All of those three methods and a
25 combination of methods are approved under proved

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1 methodologies under 10 CFR 50.75(e) and so a broad
2 challenge to the use of any of the three methods would
3 represent a challenge to the NRC's rules which
4 wouldn't be an admissible issue here.

5 To respond to Board question two on this
6 contention, there is no legal authority for the
7 proposition that an Applicant can be compelled to
8 adopt one of the approved methods. But be that as it
9 may, I wanted to talk a little bit about parent
10 guarantees because that is the focus of the
11 contention.

12 There's a financial test in the
13 regulations in 10 CFR Part 30, Appendix A, for
14 determining when a licensee can rely on a parent
15 guarantee. Neither the stock price nor the market
16 capitalization are factors in the test. So an
17 assertion that those factors must somehow be included
18 in the test would require a petition for rulemaking.

19 The test actually considers bond ratings,
20 tangible net worth of the entity that would give the
21 parent guarantee providing some minimum amounts and
22 some ratios relative to the cost of decommissioning as
23 computed by the formula or the guarantee amount.
24 There's a test for U.S. assets amounting to at least
25 90 percent of total assets and again, another ratio

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1 relative to decommissioning cost estimates or the
2 guarantee amount.

3 Bottom line, stock price is not a factor
4 in any of those tests. And if, in fact, we were
5 required and did do the test, Constellation Energy
6 Group would meet that test today. But as we discussed
7 in our response, in reality, Constellation Energy
8 Group is not required at this time to meet the test or
9 to provide the decommissioning financial assurance.
10 10 CFR 1075(b) requires for an Applicant only the
11 certification that financial assurance will be
12 provided at the appropriate time using one of the
13 approved methods of 10 CFR 1075(e). The time that's
14 relevant to provide that assurance and conduct any of
15 the financial tests is under the regulations 30 days
16 after the NRC publishes the notice under 10 CFR
17 52.103(a), that's the notice required 270 days before
18 scheduled date for initial fuel loading. So the
19 obligation under the regulation to provide the
20 financial assurance and meet the financial test falls
21 on the COL holder, not the Applicant, but the COL
22 holder.

23 So Board question number one on this
24 contention was when must the test be performed? And
25 the answer is when financial assurance is provided and

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1 that's at the time immediately prior to initial fuel
2 loading.

3 CHAIR SPRITZER: So bottom line, this is
4 not within the scope of the COL application. It's
5 something that comes after the license is granted, is
6 that --

7 MR. REPKA: That's correct. And I think
8 one of the Board's questions was may a Petitioner
9 challenge the adequacy of that and the answer is yes,
10 but not in this proceeding and only through an
11 appropriate process. The actual provision of a
12 guarantee and meeting the test are confirmatory
13 matters. They're very objective and easily
14 verifiable. It certainly makes no sense to hold a
15 hearing now to speculate on what the company's
16 financial condition might be in several years and the
17 appropriate process may be a 2.206 enforcement
18 petition. It is possible, although I don't know this
19 for a fact that perhaps financial assurance would be
20 a subject of an ITAAC which would be the subject of an
21 ITAAC hearing opportunity. But the bottom line is
22 it's not currently in the scope of the application or
23 this proceeding.

24 ADMIN. JUDGE ARNOLD: Just to elaborate on
25 a question that you answered, I went through 10 CFR 50

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1 and determined, made a list of what's involved or what
2 are the components of financial assurance. And I
3 determined there's four things, primarily: an
4 estimate of cost of decommissioning, a determination
5 of the methods of assurance, there's the financial
6 tests and then there's appropriately signed financial
7 instruments. And if you look at the Code of Federal
8 Regulations, the cost estimate definitely comes with
9 the decommissioning report in the COL application that
10 determination of methods of assurance is also in the
11 decommissioning report in the COL. The final signed
12 financial instruments are in the certification that
13 are 30 days after the Federal Register notice, but you
14 won't find in there when the financial tests are
15 required or at least I could not find that.

16 So right now I remain up in the air as to
17 when the financial test are required because it's not
18 stated in there and we don't have a long history of
19 many plants doing this because this is only on the
20 Part 52 COLs that have been split out. So I would
21 really like to know when it should be done and why you
22 believe that?

23 MR. REPKA: Yes, and I believe the
24 financial tests which would apply to something like a
25 parent guarantee or a self guarantee. A financial

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1 test doesn't apply to every form of decommissioning
2 funding, but with respect to a parent guarantee, it
3 would. I think it's only logical to infer that that
4 would be performed at the time that your providing
5 that financial assurance, and so if that's not
6 specifically stated in the regulation I think that one
7 has to make that logical inference.

8 ADMIN. JUDGE ARNOLD: Alternative logic is
9 with the COL application you have to tell them how
10 you're going to cover decommissioning costs and
11 wouldn't it be logical or equally logical that when
12 you tell them how you're going to do it you should
13 also provide some indication that you're going to be
14 able to use that method?

15 MR. REPKA: I think certainly you need to
16 state at this time what your intent is and what your
17 financial assurance will be and Unistar has met that
18 requirement. Again, the contention itself doesn't --
19 is based on market capitalization which is not part of
20 the test at all and stock price. And as I said this
21 morning, if we were to perform that financial test,
22 Constellation Energy Group would meet that test at
23 this time. I just continue to believe it's not
24 necessary to do that at this time.

25 ADMIN. JUDGE ARNOLD: Thank you.

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1 CHAIR SPRITZER: All right, we'll hear
2 from the staff on this issue. This will be Mr.
3 Biggins again?

4 MR. BIGGINS: That's correct, Judge.
5 I will go directly to responding to your questions,
6 particularly regarding when the financial test must be
7 met. It is the staff's position that would be when
8 the financial assurance mechanism is provided. The
9 Applicant must provide the updated certification and
10 copy of the financial instrument, in this case, parent
11 guarantee, when the financial assurance is provided.
12 And because this is a post-COL issuance matter, no
13 specific provision is made for a hearing. The issue
14 is not material to the findings that the NRC must make
15 for COL issuance.

16 Regarding the financial test itself, the
17 staff's expectation is that those tests would be
18 reviewed when the draft instrument is provided to the
19 staff and verified when the signed instrument would be
20 provided to the staff at that time. We consider that
21 more of a verification matter or a ministerial matter.
22 And in that regard, to respond to the Board's question
23 really the only way a Petitioner could challenge the
24 financial assurance mechanism at that time would be
25 through 2.206 petition.

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1 CHAIR SPRITZER: Okay.

2 MR. BIGGINS: Regarding the Joint
3 Petitioners' legal authority and whether or not it is
4 the Applicant's choice as to which mechanism is used,
5 the staff's position is that the Applicant has a
6 choice of financial mechanisms and that is made clear
7 in 50.75(e)(1) where it provides that the Applicant
8 can use a listed financial mechanism or any other
9 mechanism or combination of mechanisms.

10 The ultimately limitation on an
11 Applicant's choice of mechanism is whether the staff
12 determines that the proposed mechanism provides the
13 reasonable assurance of decommissioning funding.

14 CHAIR SPRITZER: Very well, anything
15 further on this from the Petitioner?

16 MR. MARRIOTTE: Just very quickly.
17 Because the Applicant does have to describe this in
18 the COL stage, it's our belief that we have to bring
19 this up at the COL stage and not wait until some
20 future dates. Clearly if we brought this up at some
21 future date, they would tell us well, you didn't bring
22 it up at the COL stage. So we are bringing it up now
23 and we think it's appropriate to bring it up that way.
24 We should be planning for this kind of stuff in
25 advance.

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1 In terms of content and because we will
2 either be revising or withdrawing the contention, I'll
3 be very brief, but yes, we used the financial data
4 that was available to us. Their financial data is
5 proprietary. We can't use that, but certainly market
6 value of a corporation does have some bearing on their
7 overall financial health and you have to remember that
8 at the time we filed this petition, Constellation
9 Energy had just been rescued from bankruptcy by Warren
10 Buffett throwing in a few billion dollars at them.
11 This company was going to go under. And for a company
12 that's about to go under to say well, we're going to
13 cover a billion or two billion dollar decommissioning
14 bill down the road, that raises concerns with us.

15 And finally, the other additional thing
16 about this particular plant is that it's our belief
17 that one of the options of external sinking fund on
18 its own a merchant plant, a deregulated plant should
19 not be eligible for that because there is no guarantee
20 that a plant that's outside the rate base will ever
21 sell its electricity or how much electricity it will
22 sell, therefore there's no guarantee on a purely
23 financial level of how much money it could accumulate.
24 So part of our concern with it, an external sinking by
25 itself and merchant plants don't go well together.

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1 Now again, we do understand that they are
2 now proposing a sort of a combination of methods and
3 again, we'll be looking at those and we'll get back to
4 you on that.

5 CHAIR SPRITZER: Very well. Let's move on
6 to contention 3. Contention 3 concerns cumulative
7 impacts to the Chesapeake Bay, particularly a
8 cumulative impact of the proposed new Calvert Cliffs
9 Unit 3 when added to the effects of existing nuclear
10 plants in the Bay watershed and two additional plants
11 that are proposed that have pending applications for
12 licenses before the Nuclear Regulatory Commission.

13 This will be for the Petitioners, Mr.
14 Gunter?

15 MR. GUNTER: Yes.

16 CHAIR SPRITZER: And you have 15 minutes.
17 Do you want to reserve five minutes for rebuttal?

18 MR. GUNTER: There are several questions
19 here. Can we see how we do in responding to those
20 several questions?

21 CHAIR SPRITZER: All right.

22 MR. GUNTER: The first question has to do
23 with should the cumulative impact analysis focus on
24 the cumulative impact of one specific industry? And
25 the Petitioners respond basically that this is a

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1 matter of NRC authority and jurisdiction over its
2 licensees through the licensing and regulatory
3 oversight and as an Environmental Impact Statement,
4 the need for an Environmental Impact Statement
5 triggers this.

6 We believe that the NRC is federally
7 authorized with sole licensing jurisdiction over the
8 nuclear power industry and we contend that this Board
9 has the discretion to review the cumulative
10 environmental impacts of all past, present, and
11 reasonably foreseeable future actions involving its
12 licensees and I think that's what brings this
13 particular industry into the scope of this particular
14 proceeding.

15 Question 2, shouldn't it instead analyze
16 the incremental impact of Calvert Cliffs 3 when added
17 to all other past, present, and reasonably foreseeable
18 future actions that may affect the health of the Bay?
19 The Petitioners respond that the Board has the
20 discretion to require a hard look at all other past,
21 present, and reasonably foreseeable federal actions as
22 they may relate to this proceeding, as other federal
23 actions may affect the EIS from the proposed
24 construction operation.

25 The Petitioners are asking the Board,

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1 however, to exercise its discretion within their
2 mandated authority over the nuclear power industry.

3 CHAIR SPRITZER: What we were trying to
4 convey in that question was are you suggesting they
5 need to do within their cumulative impact analysis
6 that was submitted in the environmental report that it
7 will eventually be included in the Environmental
8 Impact Statement that they have to separately break
9 out the nuclear industry and somehow do a separate
10 section, separate analysis of the cumulative impact of
11 nuclear power plants or can they fold that into the
12 entire cumulative impact analysis?

13 MR. GUNTER: As I proceed here, I think it
14 will become clear that you know we're asking that the
15 Environmental Impact Statement look broadly, more
16 broadly than the limited view that the licensee has
17 taken in its environmental review and through this
18 application. And that it is a matter of within the
19 scope, what's within the scope of this proceeding?
20 And what this particular licensing board has within
21 its jurisdiction and authority to review in the scope
22 of this proceeding.

23 The Board asks why shouldn't we follow the
24 CEQ guidance in this case? The Petitioners read the
25 reference CEQ guidance document as providing the

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1 licensing board with the discretion to legitimately
2 require a regional analysis of the watershed for the
3 environmental review as is necessary to inform the
4 required Environmental Impact Statement.

5 In the discussion, CEQ sites that its
6 regulations are consistent with the Supreme Court
7 decision in Kleppe v. Sierra Club. In that decision,
8 the Supreme Court held that "unless there is a
9 regional plan of action, it is not practical to
10 prepare a regional EIS."

11 On the subject of cumulative impact of
12 proposed new projects, the Supreme Court further
13 states in Kleppe v. Sierra Club that "when several
14 proposals for actions that will have cumulative of
15 synergistic environmental impact upon a region or are
16 pending concurrently before an agency, their
17 environmental consequences must be considered
18 together.

19 In the case before this licensing board,
20 the Petitioners point out that Unistar is also in
21 partnership with Pennsylvania Power and Light to
22 pursue an additional combined operation license
23 application for an AREVA EPR at Bell Bend,
24 Pennsylvania on the Susquehanna River in the
25 Chesapeake Bay watershed region.

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1 Dominion Nuclear, a separate applicant,
2 but industry partner, is also proceeding with an
3 application to build a nuclear power plant at Mineral,
4 Virginia on North Anna River, at Lake Anna, also on
5 the Chesapeake Bay watershed. Together, the three
6 COLA applications, including the two joint
7 applications by the Applicant, this Applicant, along
8 with the 11 operating reactors on the watershed,
9 constitute more than a mere contemplation of major
10 federal actions in the Chesapeake Bay watershed
11 region. Therefore, the Petitioners contend that the
12 Licensing Board should use its discretion to
13 incorporate these past, present, and foreseeable
14 future federal actions in an analysis for the
15 Environmental Impact Statement.

16 The fourth question, do Petitioners
17 contend that nuclear power plants in the Chesapeake
18 Bay watershed are causing a specific problem that is
19 contributing to the decline of the Bay? It is the
20 concern of the Petitioners that the cumulative impacts
21 on the Bay may not receive the necessary detailed
22 attention due to the dispute as we view it as to what
23 needs to be addressed in the Environmental Impact
24 Statement. Because the Bay is in significant decline
25 and not yet established on an effective path toward

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1 recovery, without an inclusive and thorough
2 Environmental Impact Statement the operation of
3 Calvert Cliffs Nuclear Power Plant 3, in combination
4 with all operating nuclear power plant stations and
5 planned reactors, we're concerned that a tipping point
6 cannot be ruled out as a contributor to the further
7 decline and complicated recovery of the Bay.

8 We contend that Unistar has not provided
9 complete and sufficient information for the NRC staff
10 to make a determination with reasonable assurance in
11 an Environmental Impact Statement that the cumulative
12 and additive effect of Calvert Cliffs Nuclear Power
13 Plant Unit 3 would not exacerbate the decline of the
14 Bay.

15 Again, the cumulative impact of nuclear
16 power plant in operation and new licensing
17 applications on the Chesapeake Bay watershed has not
18 been properly qualified or quantified in a Unistar
19 application per the definition of 10 CFR -- or 40 CFR
20 1508.7.

21 CHAIR SPRITZER: Can you point us to --
22 what is it you think that Calvert Cliffs 3 may do, may
23 contribute to the Bay that would push us past this
24 tipping point?

25 MR. GUNTER: And I think that's raised in

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1 question five. As indicated in the Unistar
2 application, nuclear power plant stations routinely
3 release thermal pollution, chemicals, heavy metals,
4 biosides, and radioactive to aquatic systems which the
5 Petitioners contend can have a deleterious effect.
6 For example, certain commercially important shellfish
7 can concentrate these heavy metals and radioactivity
8 in their body tissue, this exposure can result in
9 their decline or potentially even make them unfit for
10 human consumption.

11 The Chesapeake Bay Foundation has brought
12 lawsuit as pointed out by the Petitioners in their
13 filing to document a significant decline in shellfish
14 and among other Bay biota and an overall decline in
15 the water quality of the Bay.

16 So in other words, you know, the
17 Applicant's filing, already indicates that the
18 cumulative impact from the operation of Units 1, 2 and
19 3 are adding a number of potentially harmful agents
20 although their argument that they are insignificant.
21 But again, it's our concern that they have essentially
22 put a set of blinders on that limits the scope of the
23 environmental report and the information going into
24 the EIS to a very narrow margin of the Bay down in the
25 southern portion of the Bay when, in fact, these same

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1 discharges are coming from a number of discharge
2 points along the watershed.

3 The record before the Board shows that the
4 cumulative and added releases are being assessed only
5 in individual sources and limited in this case to
6 Calvert Cliffs Units 1 and 2 and those projected for
7 Unit 3. The cumulative impact and added quality of
8 Unistar at Bell Bend is other operation and planned
9 nuclear power plants are excluded from the
10 environmental report, despite the fact that these
11 environmental impacts can reach the Chesapeake Bay
12 through the Susquehanna River and other tributaries.

13 The Petitioners therefore have contended
14 that the combination of the cumulative effects of
15 temperature, metallurgical biocidal, and radioactive
16 routine releases from all operating have proposed
17 nuclear stations on the watershed are being emitted
18 and ignored.

19 Question 6 asks what is the evidence that
20 the currently proposed nuclear reactors within the
21 Chesapeake Bay watershed will have a cumulative or
22 synergistic environmental impact upon Chesapeake Bay?
23 As the application incidents, chemicals, biosides, and
24 radioactivity are to be discharged in the course of
25 routine operations. The referenced application,

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1 however, is only site-specific, and restricts its
2 analysis in its environmental report to the local area
3 of the Bay.

4 More basic analysis is needed to assess
5 the cumulative, additive, and synergistic effects on
6 the Bay from these other sources. The Petitioners
7 argue that the absence of this basic research and
8 environmental analysis does not equate to a no-
9 finding. The onus of the analytical work still
10 necessary for this environmental application and
11 evaluation should be on the power company and included
12 in its environmental report.

13 So the final question, does the
14 environmental report provide the NRC staff with
15 sufficient information to make this determination and
16 the simple answer is no. Based upon the submitted
17 information and the lack thereof, the Petitioners have
18 contended that the environmental report does not
19 provide the NRC staff to make a determination with
20 reasonable assurance.

21 CHAIR SPRITZER: All right, we'll hear
22 from the Applicant.

23 ADMIN. JUDGE SAGER: I had a question
24 there. In the petition, there's a mention of -- and
25 you just mentioned it and I forget the particulars of

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1 a lawsuit. What is the relationship of that lawsuit
2 to the nuclear power industry?

3 MR. REPKA: The Chesapeake Bay Foundation
4 lawsuit, I believe, is relevant to this proceeding
5 because it's indicated that the Bay is in significant
6 decline. It's in trouble. It's dying. And that the
7 mitigation efforts have stalled so we're now adding as
8 this application has been submitted, a potential
9 burden to an already significant decline to the Bay
10 which has, at this point, not resolved how it will
11 mitigate a recovery plan. So we're raising this
12 contention in the context of this proceeding to --
13 which we believe is because of the condition of the
14 Bay right now, it amplifies the concern of this
15 contention and the need for a much broader analysis
16 than to look just at the southern part of the Bay and
17 confine and cumulative and additive impact to only
18 three of the reactors that we believe are actually
19 contributing and should get a hearing on.

20 CHAIR SPRITZER: All right. We'll next
21 hear from the Applicant on this issue.

22 Mr. Repka?

23 MR. REPKA: Thank you. Stepping back
24 again to what's actually in the petition, the
25 contention itself alleges that the environmental

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1 report hasn't sufficiently addressed the cumulative
2 environmental impacts on the Bay, considering 11
3 operating reactors and two proposed new reactors.

4 And the only support included with the petition was
5 this Chesapeake Bay Foundation notice of intent to sue
6 which was filed with EPA and the Department of
7 Justice.

8 The Petitioners' contention itself
9 acknowledge that that notice does not name any
10 operational or proposed nuclear power stations and I
11 think in response to the question Judge Sager just
12 asked, in fact, the notice of intent to sue doesn't in
13 any way focus on toxic or radioactive discharges. It
14 focuses instead on low oxygen levels caused by
15 elevated nutrient levels and poor water clarity, none
16 of which have to do with nuclear power stations.

17 So the contention itself really with no
18 support directed at nuclear power plants really raises
19 simply a rhetorical question quoting from the
20 contention, can the Chesapeake Bay in decline further
21 tolerate or recover from the added environmental
22 burden? But no other detail is given to respond to
23 that rhetorical question. So in the context of what
24 we're about here today which is to apply the
25 admissability criteria of 10 CFR 2.309(f) that showing

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1 is completely insufficient to demonstrate a genuine
2 dispute on a material issue of law or fact.

3 Now in fact, looking at the COL
4 application, the NRC does have a standard, an
5 Environmental Standard Review Plan, NUREG-1555 that
6 establishes a framework for analyzing a geographic
7 area to be considered in cumulative effects analysis,
8 as well as an analysis of past, present, and known
9 future federal and private actions that could, have
10 meaningful cumulative impacts with respect to the
11 proposed action. And the Standard Review Plan
12 references the CEQ guidance memorandum that the
13 Licensing Board itself identified in its questions.

14 CHAIR SPRITZER: What was the NUREG cite
15 you gave, I'm sorry? It may be in your brief.

16 MR. REPKA: It's NUREG-1555, the
17 Environmental Standard Review Plan.

18 CHAIR SPRITZER: Okay.

19 MR. REPKA: And the cumulative effects
20 analysis is discussed in Section 4.7 is the cumulative
21 impacts related to construction activities and Section
22 5.11 is cumulative impacts related to station
23 operation. And I would say that framework is
24 generally consistent with the CEQ guidance as well as
25 the Kleppe decision that's already been discussed.

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1 Unistar had available to it in preparing
2 its COL application in that framework and in fact,
3 followed that framework in preparing and presenting
4 cumulative effects analysis which is in the
5 environmental report, Section 10.5.

6 Section 10.5.2 of the application
7 environmental report discusses potential cumulative
8 impacts of withdrawal of water from the Bay, aquatic
9 impacts attributable to the operation of cooling water
10 systems which includes impingement of organisms and
11 entrainment of fish, chemical and radiological
12 discharges associated with operation of the facility,
13 and describes the plant will conform to NPDES permit
14 conditions, applicable water quality criteria,
15 concludes that only a small amount of entrainment
16 demonstrates that the incremental impact will not lead
17 to cumulative adverse impacts. Concludes that
18 potential radiological doses combined with those from
19 Calvert Cliffs Units 1 and 2, and exposures, will
20 remain within NRC limits. Be as low as reasonably
21 achievable programs that will exist all three Calvert
22 Cliffs units will continue apply. And exposures to
23 key species should result in no observable effects.

24 There is no substantive challenge to any
25 of this in the proposed contention and the supporting

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1 exhibit.

2 CHAIR SPRITZER: In terms of the guidance
3 along cumulative impacts, suppose if you're
4 environmental report had said nothing about Calvert
5 Cliffs Units 1 and 2 and the petition pointed that
6 out, that would probably be sufficient -- that would
7 seem to be -- you're dealing with units in sufficient
8 proximity that they probably wouldn't need to point to
9 any additional evidence I wouldn't think to have an
10 admissible contention.

11 I take it though when we're talking about
12 plants that are removed by distances of 50, 100 miles
13 or more from the Calvert Cliffs 3 Unit, that your
14 position would be they need to do something more than
15 just say well, this is somewhere in the watershed of
16 the Chesapeake Bay. They need to have some evidence
17 to suggest there really is a cumulative impact other
18 than just presence in the same water shed.

19 MR. REPKA: I think that's correct. I
20 think that the environmental report is first you
21 establish an environmental baseline and the
22 environmental baseline would implicitly include the
23 effects to the extent they exist from both the nearby
24 facilities and from the more distant facilities. So
25 the cumulative impacts analysis already starts with

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1 some broad consideration.

2 But in the context of NEPA, a rule of
3 reason always prevails and with respect to looking at
4 prospective future activities, those at far distant
5 locations I think need some reasonable basis to
6 conclude that there would be some impact.

7 Here, the environmental baseline did
8 include and implicitly include the effects of any of
9 the currently operating plants, as well as other
10 nearby industrial facilities. In fact, that's
11 addressed in environmental report, Section 2.8.6 and
12 the nearby industrial facilities could include
13 something like the Cove Point LNG terminal that we're
14 going to talk about a little bit later.

15 So the ER does, in fact, provide analysis
16 essentially as you described, with some reasonable
17 look at what could be an impact. Bell Bend is a
18 potential future plant. There was a reference this
19 morning to that being another Unistar project. In
20 reality, just a point of clarification, the Applicant
21 for the Bell Bend facility is PPL Bell Bend, LLC.
22 That is not an affiliate of either Constellation
23 Energy Group or Unistar. It is a US EPR, but it's not
24 an affiliated company.

25 So Bell Bend is located on the Susquehanna

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1 River over 200 miles from Calvert Cliffs Unit 3.
2 North Anna, which is not an affiliated project in any
3 way is downstream on the James River. So there's no
4 expert opinions or references or anything concreted
5 provided that would suggested that there would be any
6 cumulative impacts from those stations, particularly
7 given that what is provided has really no correlation
8 to nuclear power plants.

9 The Board's first question focused on the
10 CEQ guidance of 40 CFR 1408.7. And the Board's
11 question was why shouldn't we follow this guidance and
12 our answer is we should. And we believe that's
13 exactly what's done in establishing the environmental
14 baseline for Calvert Cliffs Unit 1 in the
15 environmental report. The Board -- in specific
16 response, the Board's question two, which is is there
17 a specific problem or evidence and the answer is no
18 specific problem or evidence at existing nuclear
19 plants contribute to the decline in the Bay was
20 identified in either the petition or the exhibit.

21 In Board question three, the Licensing
22 Board asked consistent with the Kleppe decision cited,
23 what is the evidence that the currently proposed new
24 reactors will have a cumulative or synergistic
25 environmental impact on the Chesapeake Bay. Our

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1 answer is there is no evidence that the proposed new
2 reactors will have any such cumulative or synergistic
3 effect and that the environmental report provided in
4 the application provides sufficient information.

5 The bottom line is as a result, there is
6 insufficient specificity provided in the petition and
7 insufficient basis to establish a genuine dispute as
8 required by 10 CFR 2.309.

9 CHAIR SPRITZER: Very well, for the staff
10 again, Mr. Biggins.

11 MR. BIGGINS: Thank you, Your Honor. The
12 Agency staff acting as the subject matter experts for
13 the environmental analysis determined, based on their
14 expertise, the extent of the inquiry and the
15 appropriate level of explanation for each impact. The
16 subject matter experts will examine the cumulative
17 impacts from the perspective of the resource being
18 impacted. The cumulative impacts analysis should
19 assess the incremental impact of the proposed action
20 on the potentially impacted resource by adding it to
21 all other past, present, and reasonably foreseeable
22 future actions.

23 In this case, the incremental impact of
24 the Calvert Cliffs 3 proposed plant added to all other
25 past, present, and reasonably foreseeable future

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1 actions affecting the Chesapeake Bay and its aquatic
2 biota, if the subject matter expert on the staff
3 identified potential resource impacts unique to the
4 proposed action in similar facilities, it is possible
5 that the extent of the inquiry could be more narrowly
6 focused.

7 CHAIR SPRITZER: Have you done that yet
8 for nuclear power plants? Is there any reason to
9 think that you need to focus your EIS on the nuclear
10 industry as opposed to the cumulative impact of this
11 facility when added to every -- all kinds of
12 industrial activities impact, Chesapeake Bay, I
13 imagine?

14 MR. BIGGINS: And that's a very good
15 point. In this case, the staff has not conducted its
16 analysis, so I can't say whether it would or would
17 not. But if they do, based on their expertise, that
18 particular resource would be potentially impacted by
19 radiological effluents if that example, if the staff
20 looked at that.

21 They would also determine whether or not
22 a more general examination did or did not adequately
23 identify the cumulative impact, so --

24 CHAIR SPRITZER: The question I was trying
25 to get at with Mr. Repka was it seems to me if you had

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1 a situation where something -- there was another major
2 industrial facility very close, as there are in fact,
3 with Calvert Cliffs Unit 3 and the two other reactors.
4 There's the Cove Point natural gas facility. And they
5 didn't even mention those. Would that be an omission
6 of some concern to the staff in the environmental
7 report?

8 MR. BIGGINS: Again, that kind of factual
9 situation would have to be examined by the staff in
10 their expertise and it would come down to their expert
11 opinion as to whether or not more narrowly focused
12 analysis is necessary or a general impact analysis
13 would be sufficient.

14 I would point out that here in this case,
15 the Petitioner asked for a more narrowly focused
16 analysis, but doesn't identify either a particular
17 resource being impact in a particular way or provide
18 a study or any expertise or expert opinion supporting
19 the argument that considering all of the past,
20 present, and reasonably foreseeable future actions
21 would be insufficient here. So at this stage of
22 whether or not the contention is admissible, it's not
23 necessary to know whether the staff would more
24 narrowly focus their analysis. Rather, the Board
25 should focus on whether or not the Petitioner has

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1 properly supported the contention with a justification
2 that the broader analysis would be insufficient.

3 Regarding the Board's second question, I
4 believe this highlights a flaw in the Petitioner's
5 proposed contention. That is, the proposed contention
6 does not identify how the alleged omission is a
7 relevant matter required by law. None of the
8 information provided by the Petitioner in support of
9 this proposed contention identifies a specific
10 resource in the watershed being impacted specifically
11 by nuclear power plants or how the incremental impact
12 of the proposed plant analysis in the application will
13 be insufficient. As provided in our answer, no facts
14 or expert opinion again has been provided to support
15 the contention.

16 In response to question three, the
17 Petitioner has not provided those facts or expert
18 opinion to support the premise that the currently
19 proposed new reactors within the watershed will have
20 a cumulative of synergistic environmental impact on
21 the Chesapeake Bay. In other words, where you have
22 previously asked today whether or not the distance
23 matters or those other proposed or existing plants,
24 the answer would be again that's up to our subject
25 matter experts to determine based on the facts of this

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1 case, but in this situation, the Petitioners don't
2 provide any support showing that those plants matter
3 in this analysis. And they do have the burden under
4 10 CFR 2.309 to properly support their contentions.

5 The staff regarding their inquiry can
6 inform their determination in response to your last
7 question with information both contained within and
8 found outside of the environmental report. Under 10
9 CFR 51.41, the staff must independent evaluate and is
10 ultimately responsible for the reliability of the
11 information upon which it bases its conclusions and at
12 this time, as I said, the staff has not completed its
13 analysis of the potential cumulative impacts, but the
14 staff's analysis is not necessary to determine that
15 the Petitioner has not met the requirements of 2.309.

16 CHAIR SPRITZER: Is that it?

17 MR. BIGGINS: That's all I have. Thank
18 you.

19 CHAIR SPRITZER: Does the Petitioner have
20 anything further on this point?

21 MR. GUNTER: Just quickly. I just want to
22 point out that in Kleppe v. Sierra Club, the decision
23 doesn't define necessarily a distance per se, but it
24 is quite specific again that when several proposals
25 for actions that will have cumulative and synergistic

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1 environmental impact upon a region or are pending
2 concurrently before an agency, their environmental
3 consequences must be considered together. And you
4 know, I think the whole issue of distance is really
5 irrelevant here when we're talking about water and how
6 water from all these discharge points does come into
7 the Chesapeake Bay.

8 So to limit the environmental review for
9 an Environmental Impact Statement to a very small
10 region of the Bay that is receiving water and the
11 discharge from these other facilities and the proposed
12 facilities, I think is -- it's too narrow. It doesn't
13 really give you an accurate view of the cumulative and
14 additive impacts that are actually happening in the
15 Bay. As far as experts go, we're -- should the
16 Applicant provide an analysis, I think that we would
17 then have the ability to -- and the wherewithal to
18 have an expert review that. But given that we believe
19 that this is a contention of omission, the omission
20 being that a full and proper analysis, as needed,
21 hasn't been provided, we're simply going to reserve
22 the right for an expert to review that when the
23 application is complete.

24 CHAIR SPRITZER: Okay. All right. I
25 think we've heard what we need to hear on contention

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1 3, unless anybody has any violent objections, let's
2 see if we can get contention 4 done before we go to
3 lunch. Any problem with that from our
4 representatives?

5 Content 4 for the audience's benefit deals
6 with the relationship between the Calvert Cliffs Unit
7 3 and the Dominion Cove Liquified Natural Gas facility
8 and whether there's been sufficient consideration of
9 how an accident at that facility might conceivably
10 interfere with, impact operations and safety at the
11 proposed new reactor.

12 And for the Petitioner, we will be hearing
13 from Ms. Sevilla?

14 MS. SEVILLA: That's right, Your Honor.
15 Thank you.

16 I'm June Sevilla. I'm a chemical engineer
17 and I also specialize in research and document the
18 composition. I live adjacent to Dominion Cove Point
19 LNG in Calvert and I'm in Calvert Cliffs Emergency
20 Management Zone 3. So I live roughly less than four
21 miles from Calvert Cliffs, but adjacent to Dominion.

22 Contention 4, since the questions 1, 2,
23 and 4 are related, I would like to answer question 3
24 first. The discussion of toxic gases states that
25 there is no toxicity limit for natural gas. The

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1 contention mentions both natural gas and combustion
2 products. Can natural gas combustion products be
3 toxic? I would just like to say that I'd like to
4 reserve five minutes for rebuttal. Thank you.

5 And the answer to question 3 is yes.
6 Impurities in natural gas are a major source of toxic
7 air pollution and criteria air pollutants such as
8 nitrous oxides, volatile organic compounds, carbon
9 monoxide, oxides of sulphur and lead, particulate
10 matter and Calvert Cliffs also produces over a
11 thousand tons of particulate matter per. year,
12 especially the PM 2.5 which is the worst kind since it
13 is very microscopic and it is inhaled deep in the
14 lungs and goes directly into the blood stream. A
15 natural process known as atmospheric aerosol reactions
16 produce toxic particulate matter. The interaction
17 between Dominion's toxics and Calvert Cliffs' air and
18 water emissions for atmospheric aerosol and
19 radioactive reactions and interactions has not been
20 addressed by the application. Therefore, inadequate.

21 Now LNG vaporization releases large
22 amounts of at least 10 toxic air pollutants such as
23 benzene, formaldehyde and acetaldehyde and which are
24 known carcinogens, cause damage to body organs, our
25 reproductive systems and so much more other health

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1 hazards. Toxic air pollution from Dominion Cove Point
2 LNG, currently exceeds Maryland toxic air pollution
3 thresholds between 200 percent over the thresholds for
4 benzene, up to 92,163 percent for formaldehyde. These
5 are from Dominion's records.

6 Therefore, the assumption of the
7 application and the ER and I would include the FSAR
8 along with this, the toxicity limit for natural gas is
9 erroneous since it does not address these cumulative
10 and toxic analysis.

11 On Question 1 and 2, it is about the PPRP
12 report and the PPRP caveats and inaccurate data render
13 the PPRP study out of date for applicability. The
14 Maryland State email response to the Board on these
15 questions does not address the deficiencies. The
16 words in Section 4.4 do not support the numbers used
17 for calculations and the words "tank" as in a single
18 tank and the word "tanker" as in total ship are used
19 interchangeably in the study and that is erroneous and
20 misleading.

21 One fifth of a ship's cargo is not a total
22 loss of the tanker. Therefore, the volume of LNG
23 spilled in the study is approximately 80 percent
24 understated and this affects the size and spread of
25 the hazard and the factors affecting it.

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1 Volume spilled is a separate assumption
2 from the probability of occurrence. The PPRP
3 conclusion that catastrophic loss of a ship's
4 inventory is very low probability, is contradicted by
5 the 2005 expert study done for the Attorney General of
6 Rhode Island. The Sandia study also is citing a
7 three-tank reach is probable and the fact that the LNG
8 ships are constructed using tons of highly flammable
9 polystyrene insulation are factors not addressed by
10 the PPRP. These facts are significant in determining
11 the extent of a catastrophic LNG spill over water. On
12 its face, the assumptions and conclusions of the PPRP
13 study are from LNG land-based risk assessments.
14 Therefore the PPRP is deficient in that it lacks
15 emphasis in the marine catastrophe, a material and
16 critical issue for this contention and I can support
17 my statements with documented expert opinion.

18 Now keeping this in mind, the answer to
19 Question 4 is that the PPRP does not reflect the
20 correct magnitude of the emissive power of fire
21 because the volume of LNG in the PPRP study is 80
22 percent understated. The volume of LNG spilled over
23 water determines the size and spread of the flammable
24 vapor cloud, the pool fire size, the duration and
25 extreme radiant heat of the ensuing fire and the

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1 distance affected by the danger zones.

2 The PPRP study which grossly understates
3 the potential LNG catastrophe in a marine environment
4 erroneously considered Calvert Cliffs at a quote
5 unquote safe distance from the danger of this radiant
6 heat that will continue to burn intense until the fuel
7 is consumed.

8 Natural gas, when it's gassified will not
9 burn like jet fuel and oil. It is much more intense
10 than that and it will not stop until the whole fuel is
11 consumed.

12 Calvert Cliffs is the only nuclear power
13 plant that is immediately adjacent to an LNG operating
14 facility and the largest LNG material terminal
15 gassification plant in the U.S. The LNG pier
16 expansion for large tankers brings the hazard of LNG
17 spill larger and closer to Calvert Cliffs 3
18 exacerbating the fire and extreme radiant heat hazard.
19 If the PPRP had used figures that considered accurate
20 order of magnitude, the results would place Calvert
21 Cliffs well within the danger inclusion zone that
22 could affect the plant operations and design criteria
23 for the reactor.

24 Calvert Cliffs is relying on this PPRP
25 study that concludes no imminent danger to the reactor

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1 facility and to the nearby population, but it has a
2 caveat on page 40 on risk scenarios. The 1980s SSRRC
3 criteria they used are exceeded and that the PPRP
4 authors were not aware of current and widely-accepted
5 criteria directly applicable to this facility. On its
6 face, the assumptions and conclusions of the PPRP
7 study again are from LNG-based risk assessments and is
8 out of date. The PPRP is deficient in its emphasis of
9 a marine catastrophe which is a material and critical
10 issue for contention 4 and again, I can support my
11 statements with documented expert information.

12 On Question 5, it says the Petitioners
13 should identify the regulations they contend require
14 specific information, that according to contention 4
15 should have been included in the application.
16 Regulations are cited in the application that the
17 compliance are based on a PPRP report that by order of
18 magnitude is at least 80 percent deficient and needs
19 reassessment. Just for example, some of the
20 regulations that need to be examined like NUREG 0800
21 Standard Review Plan for the review of safety analysis
22 reports for nuclear power plants, it should emphasize
23 a marine environment which is a very unique situation
24 in Calvert Cliffs and I would like to note that
25 Washington, D.C., White House, and the President

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1 and/or everybody else of importance is 40 miles within
2 that plume of the 50-mile radius.

3 Other regulations are NEPA on air and
4 water quality, 40 CFR and the NAAQS which is the
5 National Ambient Air Quality Standards, the Maryland
6 State Implementation Plan, Federal Clean Water Act,
7 Section 3.16(b) regulations; CFR Title 10 on Energy,
8 especially 10 CFR Part 52.650.33; 50.17; 50.47; U.S.
9 Coast Guard Regulations for Waterfront Facilities
10 handling the LNG and the National Pollutant Discharge
11 Elimination System or NPDES.

12 Some of these are mentioned in the
13 application, but the compliance issue is what is
14 deficient because the marine environment is very
15 deficient. Thank you.

16 CHAIR SPRITZER: I take it this issue or
17 the potential risk of an explosion connected with a
18 natural gas facility or tankers using that facility
19 has been an issue before the Federal Energy Regulatory
20 Commission? Have you all been involved with that at
21 all?

22 MS. SEVILLA: I was involved in all of the
23 hearings. FERC was not very apparent. I was involved
24 mostly in the MBE hearings.

25 CHAIR SPRITZER: Who?

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1 MS. SEVILLA: I was not even aware of the
2 PPRP at that time until I attended the Calvert Cliffs
3 PSC hearing has August. I didn't realize there was
4 such a report. And I was glad there was a report, but
5 after I had examined what the assumptions were and
6 what studies were used, although the Sandia National
7 Laboratories was mentioned and cited as a reference,
8 I didn't see any reference to any of the Sandia water
9 analysis in there as well. A lot of these studies
10 that I mentioned were available at that time. So I
11 believe the application is deficient in its analysis
12 and this is the reason for this contention.

13 CHAIR SPRITZER: All right, we'll move on
14 and hear from the Applicant.

15 Mr. Smith?

16 MR. SMITH: Thank you. In this proposed
17 contention, the Petitioners assert that the ER is
18 deficient because it omits analysis of certain issues
19 associated with an accident at the Cove Point LNG
20 facility.

21 However, the Applicant and the PPRP study,
22 which is referenced in the application, it contained
23 an extensive and comprehensive analysis of the risks
24 associated with the expanded LNG facility. For each
25 and every alleged omission, the application actually

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1 contains the allegedly omitted analysis.

2 But even beyond the alleged omissions, the
3 Petitioners failed to demonstrate a genuine dispute on
4 a material issue because they failed to present any
5 information that calls into question the conclusions
6 that are in the application and the associated PPRP
7 study.

8 With respect to the Board's specific
9 questions, the State of Maryland provided input on the
10 pedigree of the PPRP study, and I will not repeat all
11 that here. I would just add that, I say Maryland
12 prepared as part of the FERC proceeding, which they
13 intervened because they were concerned with some
14 deficiencies in the FERC analysis. So they engaged
15 environmental resource management, which has over 30
16 years' experience in LNG analyses, to prepare an
17 independent risk assessment of the risks of the LNG
18 facility on Calvert Cliffs and nearby communities.

19 I would also add the PPRP study
20 corroborates an earlier report that was prepared back
21 in the early 1990s, the Arthur D. Little report that
22 was prepared to evaluate the risks of the earlier Cove
23 Point facility on the existing units at Calvert
24 Cliffs. The NRC staff reviewed that and evaluated
25 that and accepted it as part of, with respect to the

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1 currently operating units.

2 CHAIR SPRITZER: This may be in the
3 briefs, but is the FERC proceeding concluded, and if
4 so, what was the result of it?

5 MR. SMITH: The FERC proceeding is
6 concluded and they approved the terminal expansion
7 project, yes.

8 CHAIR SPRITZER: And in the context of
9 that, they looked at, among other things, the
10 potential impact of the liquified gas facility and
11 ships using that facility on Calvert Cliffs?

12 MR. SMITH: Yes, they did, and that's
13 where the State of Maryland got involved. They did
14 not believe that the FERC had done the same quality of
15 job that Maryland wanted, and that's why they engaged
16 and got the PPRP study prepared.

17 CHAIR SPRITZER: Okay.

18 MR. SMITH: The question also asked about
19 how the adequacy of the PPRP, or whether the adequacy
20 of the PPRP study can be challenged in this
21 proceeding. And the answer is that it can, but only
22 to the extent that it is relied upon in the
23 application. Again, that doesn't mean that any
24 challenge is sufficient. You've got to introduce some
25 expert testimony or factual support showing that the

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1 PPRP study itself is deficient in some way.

2 Simply pointing to other studies, which
3 are made in entirely different contexts, different
4 sites, different types of facilities, that's not
5 adequate to show a genuine dispute with the
6 application on an issue.

7 CHAIR SPRITZER: If I understood the point
8 about the Sandia study, the Petitioners are alleging
9 that that would require consideration of more than
10 just one tank exploding on a ship, that you should
11 look at the possibility that several more might all
12 simultaneously explode at the same time?

13 MR. SMITH: Yes, I'm not sure that the
14 Sandia study actually looked at that precisely, but I
15 would add that yes, the PPRP study only looked at the
16 loss of one tank on a tanker ship. It's a 25,000
17 cubic meter tank, which are these spherical tanks
18 where an LNG ship might have one or more of these
19 tanks depending on the size of the tanker.

20 But the analysis considered the total
21 scope from only one tank because that has been
22 accepted before in various state and federal
23 proceedings involving LNG facilities, including by the
24 NRC with respect to Calvert Cliffs 1 and 2. The NRC
25 concluded that the probability of a release from more

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1 than one tank is two orders of magnitude less than the
2 probability of a release from a single tank. And as
3 your question, and in response to one of the questions
4 from the Board, that's too low of a probability to
5 consider in this proceeding. The NRC threshold for
6 such events is 10^{-7} .

7 The loss of a single tank off Calvert
8 Cliffs is between 3 and 4 times 10^{-7} , and when you're
9 talking about the loss of multiple tanks, you are two
10 orders of magnitude below that. That is well beyond
11 what a design basis event that you have to consider in
12 the NRC proceeding.

13 Just as a matter of, a point of
14 clarification, the type of impact that it would take
15 to puncture multiple LNG tanks is not likely to occur
16 in the Chesapeake Bay. It would require a high speed
17 collision by a ship traveling at a higher speed as I
18 said. In the Chesapeake Bay, the types of ships that
19 carry LNG are limited to between 10 and 12 knots, and
20 it is very improbable that you could puncture multiple
21 tanks at that speed.

22 You also asked about the potential
23 toxicity associated with natural gas combustion
24 products. Now liquified natural gas is a particularly
25 pure type of natural gas. It is over 99 percent

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1 methane, and the only combustion products of methane
2 are water vapor and carbon dioxide.

3 Now carbon dioxide itself does have a
4 toxicity limit. NUREG, I'm sorry, NRC reg guide 1.78
5 recommends a toxicity limit of 40,000 ppms, and that
6 is a relatively high concentration of carbon dioxide,
7 particularly when you're talking about the low
8 percentages of concentration of natural gas that it
9 would take to combust.

10 Again, a CO₂ is going to disperse quickly
11 in the environment, so it is very unlikely that any
12 vapor cloud could ever reach Calvert Cliffs. But even
13 if it did, the control room at Calvert Cliffs is
14 designed, or Unit 3, would be designed to maintain
15 isolation and habitability in the event of a CO₂ vapor
16 cloud. This is already built in, because there are
17 fire suppression systems at the site that rely on CO₂
18 to address electrical fires, so these have already
19 been built into the design of the site. Petitioners
20 have not introduced any evidence to call into question
21 the adequacy of that design.

22 I think the bottom line point is that the
23 application and the PPRP study are comprehensive
24 analysis of the risks associated with the LNG
25 facility. For each of the alleged omissions, it is

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1 clear that the PPRP study, where the Applicant have
2 taken a hard look at those issues, have examined them
3 and they have addressed the risk associated with those
4 facilities.

5 To be admissible, a contention must show
6 either that there is some violation of regulatory
7 requirements or some unresolved or unaddressed safety
8 issue, and they have not done that here, and as a
9 result, contention 4 should not be admitted.

10 Thank you.

11 ADMIN. JUDGE ARNOLD: Just one question.

12 In the summary of the PPRP study, it says that the
13 risk to CC and PP is quantified at 6.6 times 10^{-9} .
14 How much would that risk have to increase before you
15 treated it qualitatively different in your safety
16 analysis?

17 MR. SMITH: Well, the NRC threshold for
18 events that you have to consider is this. The
19 identification, you have to identify design basis
20 events resulting from hazardous materials or
21 activities in the vicinity of the plant, which is the
22 LNG facility. The risk from that is acceptable if all
23 types of accidents are included for which the rate of
24 occurrence of exposures are dose in excess of those in
25 10 CFR Part 100. It's estimated to exceed the staff

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1 objection of 10⁻⁷. So it would have to be two orders
2 of magnitude or greater to even be within the
3 threshold of activities that the staff would consider.

4 CHAIR SPRITZER: All right. From the
5 staff, Mr. Gendelman?

6 MR. GENDELMAN: Yes, Your Honors. First
7 is the matter of clarification. The staff, and I
8 believe the Applicant also, in one of the portions of
9 proposed contention 4 discussing proposed expansion to
10 appear at Cove Point, our understanding is that
11 subsequent to our answer, Dominion has actually
12 applied to the Federal Energy Regulatory Commission
13 for that expansion which was not the case when we
14 answered in one of our claims was that some of the
15 Petitioners' concerns regarding the expansion was
16 speculative. I wanted to update the Board with that
17 information.

18 CHAIR SPRITZER: All right.

19 MR. GENDELMAN: Without repeating what's
20 contained in our answer, the proposed contention is
21 inadmissible because it hasn't raised genuine dispute
22 with the application. NRC rules require that a
23 Petitioner read the application and identify those
24 parts of the application where either necessary
25 information was omitted or whether there was a genuine

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1 dispute with other information and that wasn't done
2 here.

3 With respect to the Board's question,
4 again, referring to what's already been said about the
5 PPRP study, the Petitioners are free to challenge the
6 application or any studies it relies upon to the
7 extent provided by our rules. It is the staff's
8 responsibility, as was noted before, to determine the
9 reliability of claims made in the application
10 including studies relied upon in the application and
11 if some of that information is found to require
12 elaboration, the staff will conduct further
13 investigation as appropriate.

14 I'm not sure if this was actually
15 addressed. The three different scenarios addressed by
16 the Board in Question 2, SHERT, SHERTP, and SHDBL
17 refer to losses with the LNG facility in different
18 proximities to the dock as I understand it, one en
19 route, on en route near the facility, Calvert Cliffs,
20 and one while at berth.

21 With respect to toxic gases, it's true
22 that there's no limit. There are some small amounts
23 of volatile organic compounds that can be emitted in
24 natural gas combustion. With respect to impacts for
25 the control room habitability, staff is undertaking

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1 its review, and again, that information, if it's found
2 incomplete, can be followed up on.

3 The staff would also like to just reorient
4 that a lot of the Petitioners' concerns about the PPRP
5 study in particular, but the application more
6 generally, are objected to by the staff not on the
7 grounds that they meritoriously do or do not carry,
8 but rather that they have not presented a proper
9 contention under 2.309(f)(1) and that is the basis of
10 the staff's position.

11 CHAIR SPRITZER: Very well. Any rebuttal
12 from the Petitioners?

13 MS. SEVILLA: I would like to, Your Honor.
14 Thank you.

15 Regarding the Applicant's statement about
16 CO₂ vapor cloud, that is, I believe an erroneous
17 statement. The vapor cloud is made up of flammable
18 methane and whatever else is contained in there
19 including the toxics. The analysis methane alone is
20 not sufficient because the problem here is the way the
21 liquid natural gas, or LNG, in liquid form vaporizes
22 and that's really where the hazardous pollutants and
23 toxic air pollutants are generated. And the LNG spill
24 over water, if you read all of the expert opinions,
25 you cannot really apply conventional risk scenarios.

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1 An LNG spill over water cannot be
2 contained. You cannot put it out. You are basically
3 at the mercy of the volume spilled and the fire that
4 ensues and there's a lot of factors affecting the
5 radius of that hazard and the concern that I had
6 actually in one of the hearings I was one of those
7 Petitioners that brought up my concern about a
8 kamikaze pilot targeting an LNG spill and that was at
9 the opening. And everybody was laughing at me and
10 they said June, nobody does that. That's World War
11 II. And then 9/11 happened and all of these things
12 now are under heightened security.

13 So PPRP is heavily relied upon in the
14 application. As far as the facility, nearby
15 facilities are concerned, and the fact that it is a
16 unique siting, there's nothing else that I know of in
17 the United States or in the world that is sited like
18 this. I think the emphasis is that in an intentional
19 breach which is very likely -- as a matter of fact,
20 that study that I cited, that was done by an expert on
21 counterterrorism and it was done because in
22 Narragansett Bay, it's another estuary. It's very,
23 very similar to what we would face here at Chesapeake
24 Bay. And that doesn't even have a nuclear power plant
25 right next to it.

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1 So I think these things plus the fact that
2 the LNG tankers have this highly-flammable insulation
3 to keep the temperature, that is a factor. So all of
4 those were not taken into consideration and that's the
5 reason why that I believe that in this contention I
6 pointed out the many, many issues that make the PPRP
7 study short and out of date.

8 And let's see here. I would like to just
9 say that one-fifth of the tank is 25,000. The
10 smallest tanker has five tanks and it's 148,000 cubic
11 meters of LNG. So for a full-tank breach, that's what
12 you're looking at which changes when you change the
13 volume assumptions, your calculations for everything
14 else changes. And the reason that they are
15 retrofitting and expanding the LNG by 150 feet on each
16 side, they are currently dredging or have the permit
17 to dredge that because the largest LNG tankers are
18 267,000 cubic meters of LNG. And again, the pier
19 brings the CC3 site closer to the shipping lanes and
20 the danger for an LNG spill over water is ripe either
21 when they're docking or at berth. And we don't mean
22 collisions.

23 And I really need to emphasize that to
24 everybody who is listening because when this incident
25 happens, there is no going back. As a matter of fact,

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1 as a fire fighter, when you try to put out a fire, if
2 this ever happens, you're going to be probably putting
3 out either water or some sort of foam or something to
4 the surrounding area because you couldn't even get
5 close. And water is a vaporizer. Air is a vaporizer
6 for LNG. And this is why it is very, very difficult
7 and you cannot rely on the industry safety standards
8 to say that it can never happen. Because all it takes
9 is one time.

10 Thank you.

11 CHAIR SPRITZER: Very well. This is an
12 opportune moment to break for lunch. Our cafeteria is
13 reasonably efficient at this hour. We think 45
14 minutes is sufficient so we can get you out of here
15 hopefully in a reasonably early hour. We'll reconvene
16 at 1:15.

17 (Whereupon, at 12:26 p.m., the hearing was
18 recessed, to reconvene at 1:15 p.m.)
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AFTERNOON SESSION

1:16 P.M.

CHAIR SPRITZER: Thank you. Good afternoon, everybody. You may be seated.

We seem to be missing the Petitioners at the moment.

(Pause.)

We are going to see if we can locate the Petitioners.

MR. BIGGINS: Judge, they were down in the cafeteria when I saw them ten minutes ago.

(Pause.)

CHAIR SPRITZER: All right, I think we're ready to move on to Contention 5. Again, this deals with cumulative impacts to Chesapeake Bay. This contention focuses more on the issue of withdrawing water from the Bay for both the nuclear reactors at Calvert Cliffs and also for the ships at the Liquefied Natural Gas facility. Again, Ms. Sevilla for the Petitioners on this contention?

MS. SEVILLA: That's correct, Your Honor. Thank you. I'd like to reserve five minutes for rebuttal.

CHAIR SPRITZER: Very well.

MS. SEVILLA: Cumulative effect of water

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1 intake pumps in Chesapeake Bay biota, what do
2 Petitioners mean when they refer to mechanical stress?
3 Mechanical stress to Bay biota is not a theory. It is
4 a fact. Our plants, including Calvert Cliffs 1 and 2
5 are currently under the National Pollutant Discharge
6 Elimination System or NPDES, and Unit 3 will have to
7 meet the same NPDES permit and the Federal Clean Water
8 Act Section 316(b) regulations for new power plants.

9 The Code of Maryland Regulations, COMAR
10 26.08.03.04 and .05 establish procedures for
11 determining adverse environmental impacts due to the
12 impingement and entrainment at cooling water intake
13 structures or CWIS which are inclusive of the intake
14 pumps.

15 CWIS issues are not simply technology and
16 structural issues and many factors beyond simply the
17 structure influences the biological consequences of
18 the operation of the CWIS.

19 Location of the CWIS is critical, both in
20 terms of the ecosystem and the area of biota it is
21 affecting. The location and siting of Calvert Cliffs
22 3 CWIS is close to the shipping lane and closest to
23 the area of the LNG pier which is scheduled to undergo
24 dredging and construction of their pier expansion near
25 term.

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1 Water quality of the plant intake water
2 and the cooling water effluents, especially
3 radionuclides, affect the behavior and life expectancy
4 of Bay biota at the CWIS intake. In addition to
5 radioactive effluents being discharged from the Bay,
6 the mixing of effluents, elevated water temperature of
7 the discharged water from the reactor and the anti-
8 fouling chemical effect, dissolved oxygen essential to
9 Bay biota. Intake pumps stir up sediment and cause
10 turbidity which affect biota survival behavior. This
11 is why contention 3 that Mr. Gunter said this morning
12 is as important as contention 5. Contention 5 is
13 site-specific, adds cumulative mechanical stress to
14 the Unit 3 CWIS intake location, is further
15 exacerbated by LNG ship water intake pumps adding to
16 the mechanical stress and entrainment in the same
17 area.

18 Since LNG tankers are foreign flagged,
19 compliance to requirements is difficult to enforce.
20 The same area of the Bay at Calvert Cliffs and Cove
21 Point will be overburdened by these additional pumping
22 and churn of the water and the sudden and cumulative
23 effect is not conducive to survival of Bay biota.
24 While Dominion LNG is dredging the Bay area around
25 their pier for expansion, Unit 3 construction is also

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1 going to have dredging and construction disturbance to
2 Bay biota. All this cumulative activity would
3 eliminate any chances for recovery of the already
4 depleted Bay biota. This plus adding more potent
5 radionuclides from CC3 which incidentally is a lot
6 more potent and more radioactive than the U.S. EPR
7 design and I would say that it's even more potent than
8 any certified U.S. EPR design and that's in the
9 application, is going to put more -- all these
10 radionuclides into the water because the Applicant is
11 also seeking justification as to why they should be
12 allowed to do this.

13 Now this is going to seal the fate of the
14 Bay in the area of Calvert Cliffs and Cove Point which
15 affects Maryland aquatic commerce and recreational Bay
16 harvesting in that area. Now contention 3, this is
17 unique to power plants and especially nuclear reactors
18 because they do the same process and they empty into
19 the same Bay and the Susquehanna and all, all flow
20 through the Bay.

21 So is there any evidence before the Bay
22 that identifies if any of these organisms including,
23 but not limited to endangered species? Now in 2003,
24 the PPRB conducted a CWIS study for three plants which
25 included Calvert Cliffs 1 and 2, but these were not

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1 all inclusive since that study did not include
2 endangered species.

3 And the results were as follows: the
4 studies indicated major impingement episodes were
5 related to low-dissolved oxygen conditions, the reason
6 for which I stated already in the answer to question
7 one and nuclear power plants are a contributor to
8 that. At its highest points, one of the units at
9 Calvert Cliffs impinged in one hour 146,000 fish. In
10 one year, Calvert Cliffs impinged fish to the tune of
11 9.7 million and lost 2.3 million fish annually. Large
12 impingement episodes are primarily menhaden in the
13 summer and fall. Eleven of the most abundant species
14 have survival rates of less than 50 percent.

15 CHAIR SPRITZER: Are you reading from a
16 document that's in the record or is this --

17 MS. SEVILLA: This is a PPRP study that
18 was conducted for Calvert Cliffs 1 and 2 and since the
19 question was asked, I provided the answer.

20 CHAIR SPRITZER: Very well.

21 MS. SEVILLA: Impinged were 14 species of
22 fish identified and half of them have survival rate
23 between 19 percent for croaker to 68 percent of Bay
24 anchovy. Menhaden had 52 percent. The curtain wall
25 blocked the oxygenated exit for fish concentrated in

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1 the embayment. The lethality of the screen wash
2 system initially was not known. Now just to name the
3 most common species that were impinged which is
4 different from entrainment: blueback herring. Bay
5 anchovy, Atlantic menhaden, weakfish, threespine
6 stickleback, skilletfish, spot, Atlantic silverside,
7 Atlantic croaker, summer flounder, northern searobin,
8 winter flounder, northern pipefish and hogchoker.

9 Entrainment of Bay biota is also affected
10 by the CWIS, but I'm not aware of studies that have
11 been conducted at Calvert Cliffs on entrainment.
12 However, entrainment impacts are as follows:
13 entrainment is usually a fatal event whereby smaller
14 aquatic organisms enter the power plant's cooling
15 water system and organisms are and can be entrained at
16 the various pumps and cooling water intake. Large
17 numbers of organisms are entrained in the cooling
18 water intake designed at the outset and at the intake
19 canal. The organisms then enter and pass through the
20 entire cooling system.

21 The smaller organisms generally consist of
22 plankton, fish, and invertebrates in the many early
23 life stages. One sucked into the intake system,
24 entrained organisms are subjected to numerous and
25 often fatal insults including thermal shock from the

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1 sudden increase in water temperature, between the
2 external water temperatures and the temperatures
3 inside the station; shear and pressure forces from
4 water velocity and trapped air; mechanical stress from
5 contact with machinery, pumps, and other equipment
6 within the system; lethal levels of chlorine if that's
7 used as the -- which is a commonly-used antifouling
8 agent injected daily or periodically to reduce
9 biofouling.

10 In addition, increased water usage and
11 thus the flow and entrainment potential during plant
12 operations requiring such an increase which happens in
13 power plants and especially in the summer months which
14 coincides with peak concentrations of eggs, larvae,
15 and plankton in the water column. Consequently,
16 increased numbers of organisms are entrained at both
17 the intake canal and the pumps, dilution pumps during
18 the summer months.

19 The application, briefly states --
20 mentions MPDES and CWIS, but no details and no facts
21 which are required for evaluation, especially under
22 the condition of dying Chesapeake Bay is omitted.
23 Unit 3 must have technological or operational measures
24 for minimizing entrainment of entrainable life stages
25 of fish and shellfish; determine if they are

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1 threatened, endangered or otherwise protected species
2 potentially impacted and determined if there would be
3 undesirable, cumulative stressors affecting
4 entrainable life stages of species of concern.

5 The CWIS intake pumps and their mechanical
6 stress on Bay biota are an important element of the
7 CWIS and in the environmental report and I would say
8 also the FSAR have not taken this cumulative effect of
9 impingement and entrainment at the CWIS site area for
10 CC3, Calvert Cliffs 3 which is where the LNG ships
11 also stress the Bay biota in their unloading of LNG;
12 in order to maintain balance for the ship, the water
13 is pumped into their water ballasts. And they take
14 this away, statistically, they take \$66 billion a
15 year, they take that away forever, while the power
16 plants cycle through and return some of the Bay, but
17 lose some of this to evaporation.

18 This cumulative effect right at where the
19 CWIS intake for CC3 is located which is near the pier,
20 okay, and so the area around there is the one that's
21 highly affected.

22 Now other power plants have the same CWIS,
23 but more so in Calvert Cliffs because of this
24 scenario. So therefore, if there's no -- even if the
25 words of the application say that they will do this,

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1 that, and the other, when there is no sufficient
2 information and detail for an evaluation, I find it
3 deficient.

4 CHAIR SPRITZER: Okay, I think you said
5 you wanted to reserve five minutes for rebuttal, so
6 why don't we move on to the Applicant, Mr. Smith.

7 MR. SMITH: Thank you. The proposed
8 contention alleges that the ER omits a discussion of
9 the cumulative impacts from the combined operations of
10 the Cove Point LNG terminal and the existing Calvert
11 Units 1 and 2. Contrary to the proposed contention,
12 the application clearly considers the cumulative
13 impacts of those facilities on Bay biota and
14 Petitioners have not challenged any of the information
15 provided in the application.

16 As we pointed out in our response, ER
17 Section 2.8.6 describes nearby associated non-federal
18 projects such as the Cove Point LNG terminal and its
19 related activities. It then specifically discusses
20 the potential for cumulative impact of those projects
21 in Calvert Cliffs 3. It concludes that the impacts
22 are low, in particular, because the low volumes at
23 issue. The 50,000 gallons per minute for the LNG
24 ballast tankers and for Unit 3 are very small relative
25 to that of the existing units which is on the order of

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1 2.4 million gallons per minute. So there's no reason
2 to think that there would be any considerable impacts
3 due to entrainment or impingement.

4 With respect to existing Units 1 and 2,
5 Chapter 10.5 of the ER specifically discusses the
6 cumulative impacts of Units 1, 2, and 3. It notes
7 that Unit 3 includes a closed-cycle cooling, which is
8 significantly less water than that required for once-
9 through cooling. And the closed-cycle cooling system
10 that's going to be in place for Unit 3 meets or
11 exceeds EPA and state requirements for impingement and
12 entrainment.

13 Our knowledge is that there will be some
14 aquatic impacts, but discusses those impacts and
15 particularly cumulative impacts related to the volume
16 of water that's withdrawn, the screen size and the
17 velocity of the intake structure, the fact that
18 withdrawals are not occurring in areas that are
19 critical habitat for aquatic species, and then finally
20 concludes that the operation of Calvert Cliffs Unit 3
21 should not result in a cumulative adverse ecological
22 impact.

23 So I think in light of the discussion of
24 the cumulative impacts of the LNG terminal and Units
25 1 and 2, there is no omission in the application. But

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1 beyond the lack of any omission, the Petitioners have
2 not provided any factual or expert support to show
3 that there's anything in the application that's
4 inadequate. The only support they provided was the
5 notice of intent to sue and it does not allege that
6 impingement or entrainment are factors causing harm to
7 Chesapeake Bay, nor does it mention Calvert Cliffs.
8 As we mentioned earlier, it focuses on dissolved
9 oxygen levels and increased nutrient levels and water
10 clarity. There simply is no basis for this proposed
11 contention.

12 Again, there's no omission and there's
13 been no challenge to the substance of the evaluation
14 in the application and as a result this proposed
15 contention is inadmissible.

16 ADMIN. JUDGE SAGER: I have one quick
17 question. In reading the application, I do remember
18 seeing the part where it addresses impingement and
19 entrainment in one section, but you mention the LNG
20 terminal and I understand that there is also a part of
21 that where the impacts, but specifically address the
22 entrainment/impingement impacts of the LNG terminal
23 which seems to be the source of the contention here?

24 MR. SMITH: It discussed, in general, all
25 of the environmental and cumulative environmental

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1 impacts. It does not go into a specific discussion of
2 the impacts of entrainment relative to the LNG
3 terminal as opposed to Calvert Cliffs, but it does
4 draw broad conclusions about the volume of water and
5 how it's low, relative to the amount that's currently
6 withdrawn and states that based on that volume of
7 water, there's not expected to be any significant
8 cumulative impacts. So yes, it is addressed, although
9 not explicitly called out in the discussion of the
10 cumulative impacts of non-federal projects.

11 CHAIR SPRITZER: All right, we'll move on
12 and hear from the staff.

13 Mr. Biggins?

14 MR. BIGGINS: Thank you, Your Honor.
15 Rather than repeat what we've stated in our answer, I
16 will focus directly on the Board's questions. In
17 response to the Board's first question, the staff
18 assumed for the purpose of responding to the
19 contention that the Petitioner meant the effects of
20 impingement and entrainment when it referred to
21 mechanical stress. This seemed like the most obvious
22 meaning, although the Petitioner did not define the
23 term mechanical stress.

24 The Petitioner does not reference the
25 discussion in the environmental report that discusses

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1 the effects of impingement and entrainment on the
2 Chesapeake Bay aquatic biota, nor does the
3 Petitioner's one reference in notice of intent to sue
4 discuss the water intake structure at Calvert Cliffs
5 plant.

6 As to the Board's second question,
7 although the Petitioner does not cite it, the
8 Applicant submitted a report containing
9 characterization data for Calvert Cliffs Units 1 and
10 2 indicating which species have been impacted by
11 entrainment at the existing intake structure and I can
12 provide that ML number, that is ML-082-760-508. And
13 that was submitted September 29th --

14 CHAIR SPRITZER: Could you say that again?

15 MR. BIGGINS: Certainly. ML-082-760-508.

16 And that was submitted September 29 of 2008.

17 I have nothing further.

18 CHAIR SPRITZER: This is a report on what
19 sensitive, endangered or threatened species that
20 happen to be in the area of the plant?

21 MR. BIGGINS: It's a report specifically
22 characterizing the effects of entrainment at the
23 existing intake structure.

24 CHAIR SPRITZER: Okay, not at the LNG
25 terminal, just at the --

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1 MR. BIGGINS: Correct.

2 ADMIN. JUDGE SAGER: If I may, please,
3 does that report in any way contradict what's in the
4 application? The application basically says there are
5 no sensitive species that are being affected.

6 MR. BIGGINS: Judge, the staff have not
7 conducted their analysis, so I cannot answer that at
8 this time.

9 CHAIR SPRITZER: All right, we'll hear the
10 rebuttal from the Petitioners.

11 MS. SEVILLA: Yes, Your Honor. The
12 dissolved oxygen factor that they categorically deny
13 is not produced by the nuclear power plants. That's
14 an assumption. Dissolved oxygen doesn't necessarily
15 mean that only the nutrients from farms and plants and
16 they're saying that the injury to Bay biota is
17 dissolved oxygen and that power plants do not
18 contribute to it.

19 However, the effects that I had mentioned
20 earlier, so I don't have to repeat them, they do
21 contribute to the dissolved oxygen and turbidity which
22 the Bay biota reacts to that and therefore there's a
23 lot more entrainment and impingement. If you closely
24 look at the studies of the behavior of Bay biota
25 through -- when they are in that intake water

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1 structure which includes temperatures and all that,
2 their behavior is affected exactly by their
3 environment. So to say that nuclear power plants do
4 not contribute to that is misleading and is erroneous.
5 It's an opinion and it is not based on any studies at
6 all that say that it isn't.

7 So just to conclude that the general
8 public and farmers and everything else is the cause of
9 the turbidity and the dissolved oxygen does not take
10 into consideration that why do you think there isn't
11 enough after all that impingement and entrainment
12 earlier if they are not finding enough, what do you
13 think is the cause of that? And that's the reason why
14 there are no submerged aquatic vegetation around that
15 area is because of that continual stress. And in this
16 environment, the 200 tanks a year of LNG tankers
17 coming in and you add Unit 3 in that same area and
18 already also being stressed by Calvert Cliffs 1 and 2,
19 you have to look at that particular area.

20 Now the size of screen alone is not a
21 solution. As a matter of fact, in some of the tests
22 that I've been reading from expert studies and studies
23 conducted by PPRP and other organizations that the
24 size of the screen, the speed of the pumps, the type
25 of the pumps, the structure, they all contribute to

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1 it. That's why it's called CWIS. And to disregard
2 the environment that it's in, whatever churn that's
3 going on in there with the LNG ships and even if the
4 water intake is smaller, that doesn't necessarily mean
5 it's less.

6 So you cannot isolate the fact and make a
7 conclusion that because the amount of water is less,
8 the amount of radioactive effluence that are emitted,
9 according to what I've read in the application is more
10 with Calvert Cliffs 3. So this analysis and even by
11 the admission of staff, you've got to look at them all
12 together, and that's just one area of the Bay. And if
13 the next power plants that are going to be using this
14 kind of design are going to be on the Bay as well, you
15 can see that what we said in contention 3 and what
16 we're saying here is they are, yes, they are unique to
17 power plants and nuclear power, especially.

18 So the fact that this hasn't been done and
19 generalities don't make it. When we present data here
20 and they say well, we're not specific enough, I'm
21 saying you're not specific either, when you take just
22 a general overview, it doesn't mean you really have
23 taken into consideration the fact that the Bay is
24 already dying. Maryland depends on the Bay for its
25 commerce.

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1 I'm surprised that the watermen are not
2 even informed about this and I myself was not aware of
3 how terrible this is, this operation is doing to the
4 Bay and unless all of these plants are examined and
5 made sure that their cumulative effects and every one
6 of them is following the ground rules, we're going to
7 lose the Bay. And that's evident.

8 CHAIR SPRITZER: Okay, well, we understand
9 your position.

10 MS. SEVILLA: Thank you.

11 CHAIR SPRITZER: All right, I think we're
12 ready to move on to the last of the contentions we'll
13 be hearing argument on today, that is contention 7.
14 Basically, this deals with the management of low-level
15 radioactive waste and the fact that recently, I
16 believe in June of 2008, the facility in Barnwell,
17 South Carolina which previously had received low-
18 level, Class B and Class C waste from facilities in
19 various states, including Maryland, is no longer
20 available to the State of Maryland and what impact
21 that will have, if any, on management of waste at
22 Calvert Cliffs Unit 3.

23 Mr. Marriotte?

24 MR. MARRIOTTE: Thank you, Your Honor. I
25 also have my colleague, Diane D'Arrigo, here who is

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1 our expert on this and --

2 CHAIR SPRITZER: We're here to hear your
3 legal presentation.

4 MR. MARRIOTTE: Right. I was just saying
5 if there are questions that I can't answer as a
6 nonexpert, I would like --

7 CHAIR SPRITZER: You are welcome to
8 consult with her and pass her thoughts on to us
9 through you.

10 MR. MARRIOTTE: Thank you. Calvert Cliffs
11 3, obviously, would generate significant amounts of
12 so-called low-level radioactive waste if it operates.
13 It's been almost 30 years since we first passed the
14 Low-Level Waste Policy Act and we still have no
15 disposal site for this reactor's Class B, C, or
16 greater than Class C waste. That's a given. This
17 issue obviously has come up at other sites at several
18 other reactor applications.

19 In this specific case, while the
20 application contains some discussion of low-level
21 waste storage our argument is it does not provide a
22 plan that will assure that the Applicant can safely
23 store the full amount of its radioactive waste that it
24 will generate over its lifetime.

25 It's our belief that in the absence of a

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1 disposal facility, in the absence of any progress
2 toward a disposal facility, that should be -- that is
3 the criteria. In addition, the environmental report
4 does evaluate transport risks of waste, assuming off-
5 site disposal, but if there's no off-site disposal
6 that's an irrelevant evaluation. It doesn't evaluate
7 the long-term storage and disposal risks.

8 CHAIR SPRITZER: We have a threshold issue
9 here and that is whether we can entertain this
10 contention without running into a conflict with Table
11 S-3. You presumably have read the Bellfont, got a
12 copy of the Bellfont decision?

13 MR. MARRIOTTE: Yes, I'm about to get to
14 those.

15 CHAIR SPRITZER: Fine, let me help you a
16 little bit there. Suppose we were to state your
17 contention, the essence, the substance of your
18 contention something like this, that what you say is
19 deficient is that the Applicant has failed to include
20 in its environmental report an explanation of how it
21 will manage low-level waste in the event it can't
22 locate an alternative off-site disposal facility by
23 the time it opens and explain in the ER how it will be
24 able to manage its waste consistent with NRC
25 regulations and public health and safety and

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1 environmental protection.

2 Would such -- does that contention, if
3 that were to be the way we were to state your
4 contention, would that conflict with Table S-3?

5 MR. MARRIOTTE: Maybe I should go ahead
6 and finish this. The answer is probably yes and no.

7 (Laughter.)

8 There have been events since our initial
9 filing of the petition, as you know, including this
10 week's decision which read in the past two days. In
11 our reading of it, it seems to forbid contentions
12 based on disposal issues and so we understand that
13 now. but we obviously continue to support the part of
14 our contention that addresses the storage issues and
15 the site-specific issues and the issues that you just
16 mentioned.

17 But as for Table S-3, there also has been
18 activity on that front and this actually, I know you
19 said you didn't want to hear about contention 6, but
20 this actually relates to contention 6 as well as
21 contention 7. And that is, it mirrors submitted
22 comments on the waste confident rule on February 6,
23 2009. In our comments we raise a number of serious
24 deficiencies in the waste confidence decision, the
25 NRC's finding regarding the environmental impacts of

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1 interim fuel storage and Table S-3 which depends on
2 the waste confidence decision.

3 The deficiencies in Table S-3 include and
4 we stated this an adequate generic assessment of the
5 environmental impacts of disposing of low-level
6 radioactive waste. And we've taken the position in
7 our comments and other submitted comments too, by the
8 way, that the NRC may not license any new nuclear
9 power plants, including Calvert Cliffs 3 until those
10 deficiencies are resolved.

11 We considered it in finding our comments
12 on the waste confidence rule and asking for
13 reconsideration of both the rule and Table S-3 that we
14 have satisfied the NRC's requirement to seek
15 reconsideration of Table S-3 in a generic proceeding.
16 And so we want to inform the Board that we will be
17 submitting a contention in the very near future which
18 calls for resolution of the issues raised in our
19 comments before license may be issued for Calvert
20 Cliffs 3. So that will be a separate contention and
21 basically what we're trying to do is break that part
22 out from the site-specific on-site storage issues.

23 CHAIR SPRITZER: Okay, well, the separate
24 contention you haven't filed yet. Are you tell us you
25 may file or expect to file?

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1 MR. MARRIOTTE: We expect to file.

2 CHAIR SPRITZER: Would be in substance a
3 claim that would go to Table S-3 and whether it's
4 valid or not or adequate under current circumstances.
5 But for purposes of what we're looking at now we can,
6 I think, narrow your existing contention 7 through an
7 essentially site-specific contention. There's enough,
8 I think, in there to allow us to do that.

9 MR. MARRIOTTE: Right, and that's what
10 we're trying --

11 CHAIR SPRITZER: If we're just dealing
12 with a site-specific contention, namely, what is the
13 impact of potentially extended site storage of low-
14 level radioactive waste at Calvert Cliffs, can we
15 address that without putting ourselves in conflict or
16 tension with Table S-3? I'll ask this question of
17 everyone, so you'll all get a chance to address it.
18 It seems to me that's an important threshold issue
19 we're going to have to resolve.

20 MR. MARRIOTTE: The short answer is yes,
21 we believe you can do that.

22 CHAIR SPRITZER: Okay. Is that -- if we
23 proceed with the contention of that nature, would that
24 address the mature concern you have?

25 MR. MARRIOTTE: On the site-specific

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1 issues, yes.

2 CHAIR SPRITZER: Okay.

3 MR. MARRIOTTE: And we're taking other
4 issues out and we'll bring them back.

5 CHAIR SPRITZER: Okay, well, maybe we
6 should move on to the Applicant and let them respond
7 to the question I just asked the Petitioners and if
8 you need me to restate or was it reasonably clear what
9 --

10 MR. SMITH: I think I understood your
11 question to be is it is possible to have a contention
12 that's focused on site-specific or I guess design-
13 specific issues without running afoul of Table S-3.

14 CHAIR SPRITZER: That would be a broad way
15 of putting it. More specifically I was suggesting
16 that we could restate their existing contention 7 to
17 be in substance that the environmental report does not
18 presently explain how the Applicant will deal with the
19 management of low-level radioactive waste in the event
20 as appears to be at least a realistic possibility at
21 this point that when Unit 3 opens, assuming it does
22 open, that there will be no off-site facility
23 available and that therefore you will have to store
24 Class B and C waste for a longer period of time than
25 at least appears to have been anticipated in your

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1 existing environmental report.

2 MR. SMITH: Yes, that is a potential
3 contention, but that contention itself is not
4 admissible. Importantly, the environmental report is
5 not premised on disposing of material, volatile waste
6 that's generated on site and storing it indefinitely
7 until it can be shipped to a disposal site. Instead,
8 the ER contemplates that the waste could be stored on
9 site before disposal or it could be sent to a third-
10 party processor. And in fact, that's permitted under
11 NRC regulations and that's specifically discussed in
12 several portions of the application.

13 The design for the plant is designed to
14 store several years of low-level waste, several years
15 of Class B and C low-level waste, but after that, it
16 can ship the waste through a third-party processor who
17 will take title to the waste, be responsible for
18 ensuring that environmental and safety standards are
19 met, so of course, it will be done pursuant to a
20 license. And then they'll be responsible for the
21 ultimate disposal. So there's no need, if we're
22 talking about what are the site-specific impacts
23 environmental or safety impacts from storage of low-
24 level waste, those have clearly been discussed in the
25 application. There's no need to consider indefinite

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1 storage at the site.

2 And this actually goes to one of the other
3 questions the Board asked which is --

4 CHAIR SPRITZER: Let me back up a moment.
5 Is there a distinction between an off-site disposal
6 site and what was it you referred to, an off-site
7 processing --

8 MR. SMITH: A third-party processor --
9 correct.

10 CHAIR SPRITZER: What is that difference?

11 MR. SMITH: The difference is a third-
12 party processor is not a disposal facility. It's not
13 a licensed facility under Part 61, but they are
14 licensed to possess waste or radioactive material and
15 they may process it to reduce the volume, to reduce
16 its activity, to do any other sort of processing that
17 they may do to make it more amenable to whatever it is
18 they want to do with it, and at that point it's no
19 longer the responsibility of Calvert Cliffs.

20 Once it goes to a third-party processor,
21 now we're falling under the Table S-3 impacts. So
22 that means we're taking it off of the site. We're no
23 longer in site or design-specific considerations.
24 That's Table S-3. And again, this is specifically
25 mentioned in the application.

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1 One of the Board's other questions was
2 would there have to be any changes to the ER or their
3 design if there's no disposal site available when this
4 facility begins operation. And the answer is no.
5 They've accounted for this and they've made
6 arrangements to have this material sent to a third-
7 party processor.

8 ADMIN. JUDGE ARNOLD: You do have a third-
9 party processor in mind?

10 MR. SMITH: Correct. Yes. In the
11 existing units, Calvert 1 and 2 are already doing
12 that. So it's just the same activity that they're
13 already doing for the existing units.

14 CHAIR SPRITZER: On the other hand it
15 would seem that this third-party processor is
16 ultimately dependent on having someplace else to send
17 the waste that it's processed.

18 MR. SMITH: Yes, that's correct, but
19 again, those impacts are evaluated in Table S-3 and
20 I'll also add since the time these contentions were
21 first filed, there's been a new facility that's been
22 licensed to accept B and C waste. It's not yet --
23 compact waste, so you couldn't send the waste directly
24 from Calvert there, but it just goes to show that
25 there are some changes in what type of facility is

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1 available. Indeed the third party processor that we
2 have in mind has an agreement with this new Class B
3 and C disposal site. So there's clearly a disposition
4 path. It takes it out of the site-specific
5 consideration and into the more generic issue that's
6 been addressed in Table S-3.

7 CHAIR SPRITZER: All right.

8 MR. SMITH: The Commission's decision in
9 CLI 09-03 really supports the notion that contention
10 7 is inadmissible. The contention, the Commission
11 said, yes, the only types of contentions you could
12 have are based on site and design-specific
13 information. The Commission looked at the safety
14 aspect of the contention that had been proposed in
15 Bellfont and concluded that it did not meet the
16 contention admissability criteria.

17 The proposed contention 7 here is nearly
18 identical to that contention that the Commission
19 rejected in Bellfont. It had the same bases, sites
20 the same provisions, same chapters of the design
21 control document as Petitioners have here. So even
22 just comparing apples to apples, this contention
23 should not be admitted. And with respect to the NEPA
24 portion of the contention in Bellfont, the Commission
25 also noted that you can't have challenges at Table S-3

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1 and they noted that the Petitioners there had
2 specifically styled their contention as a challenge to
3 S-3, and again, that's exactly what we have here. In
4 footnote 7 of their initial petition, and again, in
5 their reply, they specifically recognize that they're
6 challenging the generic assumptions in Table S-3 and
7 that means that the environmental aspect of the
8 contention, as a whole, is inadmissible.

9 CHAIR SPRITZER: Well, certainly we can't
10 admit it, but contend that the challenge is S-3. We
11 do have some authority to narrow their contention
12 below the way they formulated it, particularly if it
13 appears to be the case here, you could have an
14 environmental contention that is more narrowly focused
15 and doesn't lead or at least doesn't appear to lead
16 into an obvious conflict with Table S-3. That is the
17 one that focuses on the site-specific issues.

18 I don't know whether -- with respect to
19 this off-site processor, I don't know if we're getting
20 into confidential business information or something of
21 that nature. You don't need to answer my question,
22 but is this something located in Maryland? Is it
23 something --

24 MR. SMITH: Oh no, it's located in another
25 state. It's not in Maryland.

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1 CHAIR SPRITZER: Is it one you're
2 currently using or one you would anticipate using --

3 MR. SMITH: It's one that there's an
4 agreement in place with the current units and would
5 include the proposed new unit, although the unit is
6 not built yet, so we haven't specifically evaluated
7 that. It's a facility, Studsvik. We noted it in our
8 response. It's in Tennessee. They accept waste now
9 and process it currently.

10 CHAIR SPRITZER: Okay.

11 MR. SMITH: Final point, and with respect
12 to specific contention focused on the specific site
13 aspects, the Petitioners haven't raised any dispute
14 with the application that's recognizable under the
15 Commission's admissability criteria in 2.309. They've
16 just pointed to various aspects of the application,
17 but they haven't said where any of that is wrong or
18 incorrect or that any impacts were under evaluated.

19 What they really said is you didn't look
20 at indefinite storage because there's no long-term
21 storage. And so there's a fundament error in their
22 assumption there as the facility has fully evaluated
23 the impact from the length of storage that is
24 necessary at the site.

25 CHAIR SPRITZER: What I got from their

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1 contention was that -- reading the environmental
2 report, I can some question too that you would -- it
3 seemed to rely, there's, for example, a diagram that
4 has various arrows showing the flow of low-level waste
5 and the potential life of those arrows eventually wind
6 up pointing to an off-site disposal facility. I think
7 what their concern is or my concern if I were a member
8 or living down in Calvert County and reading this is
9 all right, what are you going to do now? You told, I
10 think, a good part of what you're going to do now, I
11 guess the question we're going to have to figure out
12 is is that in the environmental report in sufficient
13 detail now or may it need to be amended to deal with
14 that?

15 MR. SMITH: Perhaps I can help.

16 CHAIR SPRITZER: Okay.

17 MR. SMITH: The environmental report
18 mentions the option of either shipping it to a
19 disposal site or to a third-party processor in several
20 places and perhaps I can highlight some of those for
21 you here.

22 CHAIR SPRITZER: That would be helpful.

23 MR. SMITH: Sure. Section 5.11.3.3
24 discusses the shipment, the transportation of the
25 material to a processor. Section 3.8.3 discusses --

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1 CHAIR SPRITZER: Wait, slow down.

2 MR. SMITH: Sorry. 3.8.3 discusses
3 radioactive waste other than spent fuel. And Section
4 3.5.4.4 discusses solid radioactive waste.

5 And again, the point is there's no need
6 for long-term -- defined as indefinite storage of this
7 waste at the site. Instead, there is a disposition
8 path to get this material off-site, so there's no need
9 to expand storage or make any changes to design or the
10 ER to accommodate low-level radioactive waste. All
11 this has been considered in the application and
12 Petitioners haven't shown what's in the application is
13 inadequate to protect public health and safety or
14 inadequate to address the environmental impacts that
15 limited the amount of storage on site.

16 CHAIR SPRITZER: All right, the staff, Mr.
17 Biggins?

18 MR. BIGGINS: Thank you, Your Honor. In
19 this case, the environmental report does assume that
20 Class B and C waste will not be permanently disposed
21 of on site. Rather, after some period of time the
22 application indicates that those waste classes will be
23 disposed of off-site. If the Applicant intended to
24 dispose of the waste on-site, rather than eventual
25 off-site disposal, the analysis in the environmental

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1 report would have to be different.

2 Although the application identifies the
3 expected amount of solid waste to be generated per
4 year, the staff has not completed its analysis yet and
5 so it does not have the position regarding the Board's
6 question of how much operational time could be
7 supported by the waste storage facility described in
8 the application.

9 I would bring to the Board's attention,
10 however, that the design certification application
11 states that the waste storage facility has several
12 years' volume of storage.

13 Although the Petitioner has not raised
14 this in its proposed contention, the Applicant
15 incorporate by reference the design of the waste
16 storage facility and describes in the environmental
17 report the processing and storage of radioactive waste
18 on-site at the commencement of operation without
19 regard to the possible unavailability of off-site
20 disposal.

21 In response to question 3, the proposed
22 contention does raise an impermissible attack on Table
23 S-3 and improperly sites licensing under Part 61 as
24 necessary for issuing the combined license. As the
25 Commission recently ruled in CLI 09-03, this similar

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1 contention in the Bellfont was inadmissible. And the
2 reasoning provided for admitting the contention in
3 North Anna -- in the North Anna case was incorrect.

4 Here, as was true in those cases,
5 Petitioner has not sought a waiver for the prohibition
6 of collaterally attacking the regulation in an
7 adjudication. The Commission also indicated that such
8 a waiver would not have been granted. The Commission
9 further upheld the rejection of the proposition that
10 a license under Part 61 is necessary. Therefore, for
11 proposed contention 7, neither basis provided by the
12 Petitioner supports admission of this contention.

13 To directly respond to your question that
14 you posed to each of us today, I would say that if the
15 petition had included enough site-specific information
16 to formulate a contention, an admissible contention
17 could have been proposed for the Board's consideration
18 and that would be admissible in line with the
19 Commission's recent decision. However, the petition
20 does not provide that site-specific information. It
21 does not address the information in the environmental
22 report and to that extent I don't believe that there
23 would be anything for the Board to go back and
24 separate out an attack on Table S-3 from admissible
25 site-specific information.

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1 CHAIR SPRITZER: Well, if their position,
2 if I could attempt to reformulate it again, attempt to
3 reformulate a position that I think reflects at least
4 part of what they're trying to get at in their
5 petition, if their concern is that right now they
6 can't tell looking at the environmental report how the
7 Applicant would manage low-level waste from CC,
8 Calvert Cliffs Unit 3 in the absence of a low-level
9 disposal facility and they think the environmental
10 report should contain that information, something
11 along the lines of what's been described. Applicant
12 argues it's already there, in substance. But if
13 that's their contention that the -- they don't think
14 the information is there or at least isn't there in
15 sufficient detail, is there a conflict between that
16 type of contention in Table S-3 in your view?

17 MR. BIGGINS: Well, Judge, I think the
18 primary disagreement between the staff's position and
19 the Petitioner's position would be that once you
20 subtract out the attack on Table S-3, there would not
21 be enough left to meet the admissibility criteria of
22 2.309. So even if the Board did attempt to read in a
23 light most favorable to the Petitioner, the
24 information in the petition, there's nothing left to
25 form an admissible contention.

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1 CHAIR SPRITZER: Let me just ask you, you
2 have Table S-3 with you?

3 MR. BIGGINS: I do.

4 CHAIR SPRITZER: At least for a
5 nontechnical expert, it's not the most immediately
6 clear sort of document. It seemed to me with low-
7 level radioactive waste the most relevant provision
8 would be solids (buried on site other than high level)
9 which presumably indicates low level. And it proceeds
10 to give us a figure of 11,300 curies. Do you see what
11 portion I'm referring to? If you have the CFR it's
12 the second part of the table that continues up to the
13 top of the next page?

14 MR. BIGGINS: I see it. Solids buried on
15 site other than high-level, shallow 11,300, yes. I
16 see that.

17 CHAIR SPRITZER: By the way, the
18 parentheses buried on site, you know what that's
19 referring to? Is that assuming burial at the site of
20 the facility that generates the waste or just buried
21 on site of a disposal facility of some sort?

22 MR. BIGGINS: I don't know specifically
23 what it's referring to, but I would take it at its
24 plain meaning that it means buried on site, Judge.

25 CHAIR SPRITZER: And do I interpret this

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1 correctly, this is basically telling us the low-level
2 waste, assuming that it's buried on site in a shallow
3 receptacle of some sort, can be expected during its
4 lifetime to generate 11,300 curies, that is the waste
5 that would result, low-level waste that would result
6 from the annual fuel requirements of the specified
7 type of reactor? In other words, it's giving us kind
8 of a light history of the low-level waste that would
9 be generated from a given amount of fuel at a given --
10 I guess what I'm getting at it's not really site-
11 specific information at all. It's just telling us
12 this is the total amount of curies this type of waste
13 will generate during its lifetime.

14 MR. BIGGINS: Judge, I believe this is
15 essentially an index figure that yes, the
16 environmental report my understanding is, the
17 environmental report will multiply that by the
18 appropriate factor based on the level of power
19 generation at the site. And so, in regard to whether
20 it is site-specific, the point at which the analysis
21 becomes site-specific would be are they using the
22 correct multiplication factor and in this particular
23 case, the staff again hasn't conducted its analysis,
24 but neither has the Petitioner attacked such a site-
25 specific characterization to say that multiplication

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1 factor is incorrect.

2 So at no point did the Petitioners in
3 their proposed contention raise any kind of site-
4 specific information that would result in admissible
5 contention.

6 CHAIR SPRITZER: Okay, I think I
7 understand your position.

8 All right, do you have anything else?

9 MR. BIGGINS: I have nothing else. Thank
10 you, Your Honor.

11 CHAIR SPRITZER: All right, let's move
12 back to the Petitioners. Do you have any rebuttal on
13 this issue?

14 MR. MARRIOTTE: Other than -- I mean,
15 first, we stand by the contention as we stated this
16 afternoon. We do have site-specific aspects to the
17 contention. We mentioned the Chesapeake Bay
18 specifically. The fact that the environmental report
19 does not adequately address the long-term storage and
20 I'm hearing the Applicant making an assertion that
21 well, we've got a contract with Studsvik that's going
22 to take care of everything. This, to me, is so
23 frustrating. It shows to me why the public is so
24 upset over the lack of a coherent radioactive waste
25 policy in this country.

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1 I mean here we have an Applicant that's
2 going to generate this waste and say well, we'll take
3 care of it, we'll send it to somebody else who has no
4 place to put it. And there's no details about the
5 contract, about how long it might last, will they take
6 all the waste? Will they continue to take the waste
7 if they don't have a place to put it because otherwise
8 they're going to run into the same problems that this
9 utility is running into. So that absent some more
10 information, and it's certainly not in the application
11 about this, that is not an answer. It's just a --

12 CHAIR SPRITZER: It's a potential
13 solution, but they haven't really spelled it out
14 sufficiently.

15 MR. MARRIOTTE: It's moving the waste
16 around with no real solution in sight is what it is,
17 but it's a potential way to get around the
18 regulations, yes.

19 In terms of our contention, it's not an
20 answer to our contention at this point. It might in
21 evidentiary hearings, but it's not at this point, but
22 there's certainly no real information attached to it.
23 And the contention itself I'm convinced does meet the
24 requirements for admissibility. It's specific. It's
25 site-specific. We have agreed that we are not

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1 challenging Table S-3 through this restated
2 contention. We will challenge that in a separate
3 matter, but in this one, we are not. I think it
4 passes the test.

5 CHAIR SPRITZER: I take it it turns out
6 that there are problems with storing this material in
7 this facility in Tennessee. That's not really the
8 issue your clients are concerned with. If Calvert
9 Cliffs can get this off-site reprocessing center to
10 take their waste, it's their problem and it's not
11 going to affect your clients any longer, even if it's
12 not a good solution from the standpoint of the problem
13 as a whole.

14 MR. MARRIOTTE: We like to think we're not
15 all NIMBYs here, that we actually care about other
16 communities as well. But yes, I mean, from the rolls,
17 I suppose you know, maybe so. I don't see why a
18 processing company is going to take 40 to 60 years'
19 worth of radioactive waste if they have nowhere to put
20 it. And currently, they have nowhere to put it
21 either.

22 CHAIR SPRITZER: Is that the case with
23 Tennessee? I've lost track. I don't remember all the
24 compact agreements and all those that exist, but waste
25 in Tennessee does not have an -- do they have --

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1 MR. MARRIOTTE: They are in the same
2 position as every other state or nearly every other
3 state. They were also cut off at Barnwell so waste
4 from Tennessee would also have to find an eventual
5 home.

6 CHAIR SPRITZER: All right, well, it's
7 certainly an interesting issue and one that's going to
8 be before us and other Boards in other cases in all
9 likelihood.

10 All right, the last issue we were going to
11 talk about today was the possibility of your amended
12 contentions, but we don't have any at present. I
13 think we probably -- do the Petitioners have anything
14 else they want to bring up as far as new or amended
15 contentions or filing of new or amended contentions?

16 MR. MARRIOTTE: I think during the course
17 of the day we've mentioned all the ones that we intend
18 to bring up.

19 CHAIR SPRITZER: Okay, so we'll just deal
20 with those in the ordinary course. The rules, of
21 course, provide schedules for staff and Applicant
22 responses, when and if new or amended contentions are
23 filed. As we've indicated, at least twice already,
24 but I'll say it one more time, keep in mind that after
25 60 days we will strictly apply the rule on late

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1 contentions.

2 MR. MARRIOTTE: Your Honor, may I clarify
3 60 days is March 27th. Is that correct?

4 CHAIR SPRITZER: Sounds about right, but
5 you better check your calendar. Count 60 calendar
6 days from the 27th which is I believe the date that it
7 was publicly, that Revision 3 was made publicly
8 available.

9 All right, is there anything else we need
10 to do today, cover today?

11 MR. BIGGINS: I have nothing further,
12 Judge.

13 CHAIR SPRITZER: Anything from the
14 Applicant?

15 MR. REPKA: No, sir.

16 CHAIR SPRITZER: Okay, well, thank you for
17 your participation. It's been very helpful to us and
18 hopefully for you and also for the members of the
19 public that were here. Thank you.

20 (Whereupon, at 2:09 p.m., the hearing was
21 concluded.)

22

23

24

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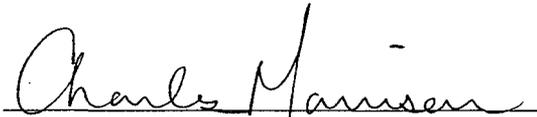
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Docket Number: 52-016-COL;

 ASLBP: 09-874-COL-BD01

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