

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

Docket No. 52-016

Calvert Cliffs-3 Nuclear Power Plant
Combined Construction and License Application

**JOINT PETITIONERS' REPLY BRIEF TO APPLICANT'S RESPONSE TO
CONTENTION ON WASTE CONFIDENCE UPDATE**

Pursuant to 10 C.F.R. § 2.309(f)(2), Joint Petitioners hereby reply to UniStar Nuclear Operating Services, LLC's ("UniStar's") response to Joint Petitioners' New Contention regarding issues raised by Joint Petitioners in comments on the Waste Confidence Update. Applicant's Response to New Contention (March 18, 2009) ("UniStar Response").

Applicant first argues that the contention is unjustifiably late, because the information on which Joint Petitioners rely was available before we filed our comments on the U.S. Nuclear Regulatory Commission's ("NRC's") Waste Confidence Update. UniStar Response at 4. In fact, however, the timing of the contention was determined by the NRC's publication of a Federal Register notice, soliciting – for the first time in approximately ten years – comments on the Waste Confidence rule and the rule regarding the environmental impacts of spent fuel storage. Before that commenting opportunity opened, no meaningful purpose would have been served by performing the detailed

technical analyses of the spent fuel storage and disposal issues that are contained in the technical comments in which Joint Petitioners joined.

UniStar argues that Joint Petitioners' contention is barred by law on the grounds that it constitutes an attack on the Commission's regulations and that it is the subject of a rulemaking. UniStar Response at 5. According to UniStar, if the Joint Petitioners wish to appeal the Commission's decision in the Waste Confidence rulemaking proceeding, they can appeal the rulemaking decision at the appropriate time. *Id.* In making this argument, UniStar misses the fact that the purpose of the Waste Confidence rule and the related spent fuel storage rule is to support individual licensing decisions. Therefore it is appropriate for Joint Petitioners to take steps to ensure that the issues raised by their comments on those rulemakings are addressed before the NRC makes a licensing decision with respect to the Calvert Cliffs application. If the Commission issues a license for the Calvert Cliffs nuclear plant before those rulemakings are completed, then it will do Joint Petitioners no good to appeal the rulemaking decision.

Finally, UniStar argues that the contention should be rejected because the proposed contention does not identify the specific portion of the application disputed by Joint Petitioners. UniStar overlooks the fact that the purpose of the Waste Confidence Decision and the spent fuel storage rule is to exempt UniStar from having to address spent fuel storage and disposal issues in its application. And UniStar does not point to any part of the application where spent fuel storage and disposal issues are addressed, nor does it state that it does not rely on Table S-3.

For these reasons, the contention should be admitted and held in abeyance. If the Licensing Board believes that it does not have the authority to rule on the contention, Joint Petitioners request the Board to refer it to the Commission.

Respectfully submitted,

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This 25thth day of March 2009

Signed Electronically by _____

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Executed in Accord with 10 CFR 2.304(d) _____

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CERTIFICATE OF SERVICE

It is our understanding that all on the Calvert Cliffs-3 service list are receiving this motion through the submission I am making on March 25, 2009 via the EIE system.

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