

April 3, 2009

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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

APPLICANTS' NOTICE OF APPEAL OF LBP-09-04

Pursuant to 10 C.F.R. §§ 2.311(a) and (c), Calvert Cliffs 3 Nuclear Project, LLC, and UniStar Nuclear Operating Services, LLC (“UniStar” or “Applicants”) file, together with an attached Brief, this Notice of Appeal of the Atomic Safety and Licensing Board’s March 24, 2009, Memorandum and Order, which, among other things, admitted for litigation in the above captioned proceeding three contentions related to UniStar’s application for a combined license (“COL”) for one U.S. EPR reactor at the Calvert Cliffs site in Calvert County, Maryland.

Respectfully submitted,

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UNISTAR NUCLEAR OPERATING  
SERVICES, LLC

Dated at Washington, District of Columbia  
this 3rd day of April 2009

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APPLICANTS' BRIEF IN SUPPORT OF APPEAL FROM LBP-09-04

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APPLICANTS’ BRIEF IN SUPPORT OF APPEAL FROM LBP-09-04

I. INTRODUCTION

Pursuant to 10 C.F.R. §§ 2.311(a) and (c), Calvert Cliffs 3 Nuclear Project, LLC, and UniStar Nuclear Operating Services, LLC (“UniStar” or “Applicants”) hereby appeal the Atomic Safety and Licensing Board (“Board”) decision on standing and contentions (LBP-09-04), dated March 24, 2009. That decision concerns UniStar’s application for a combined license (“COL”) for one U.S. EPR reactor at the Calvert Cliffs site in Calvert County, Maryland. The Board concluded that Petitioners had demonstrated standing in the proceeding and also that they had offered three admissible contentions. For the reasons discussed below, we disagree and urge the Commission to reverse the Board decision on both standing and admissibility of all contentions. The request for hearing should be wholly denied.

In their hearing request, the Petitioners provided no documented evidence or testimony to support their assertions that construction and operation of Calvert Cliffs Unit 3 would cause them any harm. Petitioners failed to demonstrate an injury-in-fact that could be redressed by a favorable decision. Instead, Petitioners relied on the proximity presumption,

which, as discussed below, is no longer consistent with contemporaneous judicial concepts of standing.

The proposed contentions also should be rejected. In its application, UniStar described its ownership structure, including EDF's ultimate 50% participation in the Calvert Cliffs 3 project, along with the measures in place to ensure that UniStar would not be owned, dominated, or controlled by foreign interests within the meaning of the Atomic Energy Act. The Petitioners' simplistic reference to EDF's participation is completely inadequate to demonstrate a genuine dispute with respect to ultimate control over Calvert Cliffs 3. Petitioners do not attack the adequacy of the governance provisions, acknowledge the additional controls proposed, or propose any additional measures. Petitioners do briefly discuss relative market capitalization and revenues of the two parents, but do not establish how these financial measures are relevant to the dispositive issue of operating authority and control. The proposed contention should be rejected for failure to establish that relief could be granted based on EDF's participation alone, and for failure to demonstrate any genuine dispute regarding governance and control of the applicants.

Although the Board admitted Contention 2 only with respect to a narrow legal issue, that legal issue was not raised by the Petitioners in the proposed contention. The two bases for the proposed contention provided by Petitioners were each rejected by the Board. Accordingly, the proposed contention should be rejected as a matter of law.

Finally, the Board erred in admitting a portion of the low-level waste contention (Contention 7). In addition to being contrary to a recent Commission decision regarding a low-level waste contention in the *Bellefonte* proceeding, the Petitioners failed to provide adequate support for the contention and failed to demonstrate the materiality of the issue.

Accordingly, the Commission should reverse the Board's findings on standing and the admitted contentions.

## II. FACTUAL BACKGROUND CONCERNING APPLICANTS' APPLICATION FOR A COMBINED LICENSE

On July 13, 2007, and March 14, 2008, as supplemented by numerous letters and as revised on August, 20, 2008, UniStar submitted an application for a combined license ("COL") for one U.S. EPR reactor at the Calvert Cliffs site in Calvert County, Maryland. The NRC accepted the two parts of the application for docketing on January 25, 2008, and June 3, 2008. 73 Fed. Reg. 5877; 73 Fed. Reg. 32606. The NRC published the "Notice of Hearing and Opportunity to Petition for Leave to Intervene" on September 26, 2008 (73 Fed. Reg. 55,876) ("Hearing Notice"). Petitioners timely filed the petition to intervene on November 19, 2008.

The Board issued its decision on standing and contentions on March 24, 2009. The Board found that the Petitioners had standing and admitted portions of three proposed contentions (Contentions 1, 2, and 7). The Board's evaluation of standing and the admitted contentions is discussed further below.

## III. REGULATORY BACKGROUND

### A. Standing

Any person who requests a hearing or seeks to intervene in a Commission proceeding must demonstrate that he or she has standing. 10 C.F.R. § 2.309(a). The Commission has long applied contemporaneous judicial concepts of standing to determine whether a party has a sufficient interest to intervene as a matter of right. *Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), CLI-98-21, 48 NRC 185, 195 (1998). To establish standing, there must be an "injury-in-fact" that is either actual or threatened. *Id.*, citing *Wilderness Soc'y v. Griles*, 824 F.2d 4, 11 (D.C. Cir. 1987). The injury must be "concrete and particularized," not "conjectural" or

“hypothetical.” *Sequoyah Fuels Corp. & Gen. Atomics* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 72 (1994). Standing will be denied when the threat of injury is too speculative. *Id.*

Further, a petitioner must establish a causal nexus between the alleged injury and the challenged action. *Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 & 2), LBP-98-27, 48 NRC 271, 276 (1998). Standing cannot be based on a statistical probability that some of an organization’s members would be threatened with concrete injury. *See Summers v. Earth Island Inst.*, \_\_\_ U.S. \_\_\_, 07–463, slip op. at 11 (U.S. Mar. 3, 2009). And, a “realistic threat” of harm is not sufficient to substitute for the requirement that the harm be “imminent.” *Id.*, at 9 (emphasis in original).

B. Admissibility of Contentions

To gain admission to a proceeding as a party, a petitioner must submit at least one valid contention that meets the requirements of 10 C.F.R. § 2.309(f)(1). The contention rule is “strict by design,” and failure to comply with any of the requirements is grounds for dismissal. *Dominion Nuclear Conn.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 358 (2001). The Commission’s procedures do not allow “the filing of a vague, unparticularized contention, unsupported by affidavit, expert, or documentary support.” *N. Atl. Energy Serv. Corp.* (Seabrook Station, Unit 1), CLI-99-6, 49 NRC 201, 219 (1999).

To be admissible, contentions must fall within the scope of the proceeding. *See Florida Power and Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-00-23, 52 NRC 327, 329 (2000). A contention must present a genuine dispute with the applicant on a material issue, and any contention that fails directly to controvert the application or mistakenly asserts the application does not address a relevant issue can be dismissed. *Sacramento Mun. Util. Dist.* (Rancho Seco Nuclear Generating Station), LBP-93-23, 38 NRC 200, 247-48 (1993). The petitioner must present factual information and expert opinions to support its contention.

*Ga. Inst. of Tech.* (Georgia Tech Research Reactor), LBP-95-6, 41 NRC 281, 305 (1995). Neither mere speculation nor bare assertions alleging that a matter should be considered will suffice to allow the admission of a proffered contention. *Fansteel, Inc.* (Muskogee, Oklahoma Site), CLI-03-13, 58 NRC 195, 203 (2003). If a petitioner neglects to provide the requisite support for its contentions, it is not within the Board's power to make assumptions of fact that favor the petitioner. *Georgia Tech*, 41 NRC at 305.

#### IV.   GROUNDS FOR REVERSAL OF THE BOARD'S DECISION ON STANDING AND CONTENTIONS

For the reasons set forth below, the Board's conclusions on standing and admissibility of contentions are erroneous as a matter of law. The Commission should reverse the Board in all respects based on a misapplication of Commission precedent on standing and Petitioners' failure to satisfy the Commission's strict standards for contention admissibility.

##### A.   The Petitioners Have Not Demonstrated Standing

A petitioner must demonstrate that the alleged injury is "concrete and particularized," not "conjectural" or "hypothetical." In assessing whether a petitioner has set forth a sufficient "interest" within the meaning of the AEA and the NRC's regulations to intervene as a matter of right in a licensing proceeding, the Commission has long applied contemporaneous judicial concepts of standing. *See, e.g., Portland General Electric Co.* (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 613-14 (1976); *Yankee*, CLI-98-21, 48 NRC at 195. At one time, judicial concepts of standing were sufficiently flexible to permit a "presumption" of standing in cases where a petitioner lived within a certain geographic area near the plant. Thus, in proceedings involving nuclear power reactors, the Commission historically adopted a proximity presumption, whereby a petitioner could base its standing upon a showing that his or her residence, or that of its members, was within the geographical zone

(usually taken to be 50 miles) that might be affected by a potential accidental release of fission products. *Houston Lighting and Power Co.* (South Texas Project, Units 1 and 2), LBP-79-10, 9 NRC 439, 443 (1979); *see also*, *Detroit Edison Co.* (Enrico Fermi Atomic Power Plant, Unit 2), LBP-79-1, 9 NRC 73, 78 (1979).

The Commission’s “proximity presumption” has remained relatively unchanged since it was first developed in the late-1970s. However, judicial concepts of standing have changed dramatically since that time, effectively refuting the basis for the presumption. In *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992), the Supreme Court made clear that plaintiffs must suffer a concrete, discernible injury to be able to bring suit. This injury-in-fact requirement is case-specific, “turn[ing] on the nature and source of the claim asserted”<sup>1</sup> and “whether the complainant has personally suffered the harm.” *Wilderness Soc’y v. Alcock*, 83 F.3d 386, 390 (11th Cir. 1996) (emphasis added). Moreover, the alleged harm must be “concrete and particularized” and “actual or imminent, not conjectural or hypothetical.” *Lujan*, 504 U.S. at 560 (quoting *Whitmore v. Arkansas*, 495 U.S. 149, 155 (1990)) (internal quotations omitted); *see also* *Summers v. Earth Island Inst.*, \_\_\_ U.S. \_\_\_, 07–463, slip op. at 11 (U.S. Mar. 3, 2009) (“Standing, [the Supreme Court has] said, ‘is not an ingenious academic exercise in the conceivable’ . . . [but] requires . . . a factual showing of perceptible harm.”) (emphasis added); *id.* at 9, 11 (declining to rely on a “statistical probability” or a “realistic threat” to establish that individuals are threatened with concrete injury). These qualifiers ensure that courts address only cases and controversies in which the plaintiff is “in a personal and individual way”<sup>2</sup> “immediately in

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<sup>1</sup> *Raynes v. Byrd*, 521 U.S. 811, 818 (1997).

<sup>2</sup> *Lujan*, 504 U.S. at 560 n.1.

danger of sustaining some direct injury,”<sup>3</sup> thus avoiding advisory opinions in matters “in which no injury would have occurred at all.” *Lujan*, 504 U.S. at 564 n.2.

By requiring plaintiffs to demonstrate an injury in a concrete factual context, courts also avoid claims involving “only . . . generally available grievances” shared by other members of the public. *Valley Forge Christian Coll. v. Americans United for Separation of Church & State*, 454 U.S. 464, 472 (1982). When a Plaintiff’s “asserted injury arises from the government’s allegedly unlawful regulation (or lack of regulation) of *someone else*” — such as when a petitioner challenges a COL application but is not itself regulated by the NRC — “standing . . . is ordinarily ‘substantially more difficult’ to establish.” *Lujan*, at 562 (quoting *Allen v. Wright*, 468 U.S. 737, 758 (1984)). Indeed, the Supreme Court has held that “much more is needed” in terms of the “nature and extent of facts . . . averred” to show that the petitioner will be affected by the alleged injury “in such a manner as to produce causation.”<sup>4</sup> *Id.* The Supreme Court’s standing test is plainly inconsistent with the Commission’s now-outdated and overly-simplified proximity presumption, which is based on some speculative, hypothetical accident.

Recently, the Supreme Court issued a decision on standing that directly undermines the basis for the proximity presumption. *See Summers v. Earth Island Inst.*, \_\_\_ U.S. \_\_\_, 07–463, slip op. at 11 (U.S. Mar. 3, 2009). The Court began by reiterating many of the

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<sup>3</sup> *City of Los Angeles v. Lyons*, 461 U.S. 95, 102 (1983).

<sup>4</sup> Contrast this judicial requirement to demonstrate each step of the causal link with the NRC’s now-outdated holding in *Armed Forces Radiobiology Research Institute (Cobalt-60 Storage Facility)*, ALAB-682, 16 NRC 150, 153 (1982). There, the Appeal Board held that a petitioner who resided near a nuclear facility did not even need to show a causal relationship between injury to its interest and the licensing action being sought in order to establish standing. Clearly, causation now is a required element of any judicial standing determination, even in NRC matters. *See Sequoyah Fuels*, CLI-94-12, 40 NRC at 71-72.

principles discussed above — standing requires a concrete injury-in-fact that is actual and imminent and not hypothetical or conjectural. The Court then found that the plaintiff’s “intention” to visit the National Forests in the future, without showing that the challenged regulations would affect a specific forest visited by the plaintiff, “would be tantamount to eliminating the requirement of concrete, particularized injury in fact.” *Id.*, slip op. at 7. The Court rejected a standing test that would have accepted a statistical probability that some of an organization’s members would be threatened with concrete injury.<sup>5</sup> *Id.*, slip op. at 9. The Court also declined to substitute the requirement for “imminent” harm with a requirement of a “realistic threat.” *Id.*, slip op. at 11 (emphasis in original). In doing so, the Supreme Court rejected a standing test that is substantially similar to the NRC’s proximity presumption.<sup>6</sup>

As noted above, the proximity presumption is based on “the geographical zone (usually taken to be 50 miles) that might be affected by an accidental release of fission products.” *South Texas Project*, LBP-79-10, 9 NRC at 443 (emphasis added). Here, the petitioners provide no information to suggest that they would be impacted by the project in the absence of an accident. And, they provide no information regarding the potential for an accident or methods by which they might be harmed by an accident.<sup>7</sup> The proximity presumption would

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<sup>5</sup> The Court also declined to reduce the threshold for standing because the case involved a procedural injury (such as a claim under NEPA). Specifically, the Court concluded that “deprivation of a procedural right without some concrete interest that is affected by the deprivation—a procedural right *in vacuo*—is insufficient to create [standing].” *Summers*, slip op. at 8.

<sup>6</sup> *Summers* also effectively forecloses the types of standing analyses that have recently been used in the Court of Appeals for the D.C. Circuit to permit a finding of injury-in-fact where harm was “substantially probable.” See *Fla. Audubon Soc’y v. Bentsen*, 94 F.3d 658 (D.C. Cir. 1996); *Nat. Res. Def. Council v. U.S. Env. Prot. Agency*, 464 F.3d 1 (D.C. Cir 2006).

<sup>7</sup> In contrast to the Petitioners’ focus on the risk of an accident as the basis for standing, the admitted contentions have little to no bearing on the potential for or causes of accidental

be “doubly” inadequate under Supreme Court precedent both because it relies on a statistical probability of an accident and because it requires a presumption that an accident would in fact lead to an injury to particular petitioners. The Petitioners are doing nothing more than speculating about a hypothetical accident that, in turn, poses some smaller likelihood of actually impacting them. This is plainly inconsistent with the judicial standing requirements that an injury be concrete and not hypothetical, and that a petitioner establish that he or she will personally be injured. Moreover, the use of the term “presumption” implies that there is no factual showing of any actual harm. This is inconsistent with the requirement that a party affirmatively “demonstrate” standing. *See, e.g.*, 10 C.F.R. § 2.309(a). For all of these reasons, the proximity presumption should be abandoned.

In LBP-09-04, the Board stated that various contemporaneous standing decisions find the “injury-in-fact” requirement satisfied without quantitative proof of harm. LBP-09-04, at 15. However, those cases involved actual discharges rather than speculative, hypothetical accidents. For example, application of the proximity presumption is unlike the situation in *Friends of the Earth v. Laidlaw Env’tl Servs.*, 528 U.S. 167, 182-184 (2000). In *Laidlaw*, it was undisputed that discharges into the river were occurring and that, in light of those discharges, an injury to the plaintiffs was reasonably threatened. Here, there is no ongoing or regular discharge related to an accident. Petitioners point to no actual harm from construction or operation of proposed Unit 3. Instead, the Petitioners are merely speculating that an accident may occur, which, in turn, may affect them. *See also Sierra Club, Lone Star Chapter v. Cedar Point Oil*

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releases. The foreign ownership and control restrictions that underlie Contention 1 relate primarily to security and control of special nuclear material, not accident risk. Certainly, neither the timing of financial tests for decommissioning funding nor low-level waste management relate to the risk of accidents.

Co., 73 F.3d 546, 556 (5th Cir. 2006) (standing based, in part, on existence of ongoing discharges).<sup>8</sup>

Further, in contrast to the conclusory and non-specific affidavits provided here, the Court in *Covington v. Jefferson County* found standing based, in part, on a factual showing of fires, of excessive animals, insects and other scavengers attracted to uncovered garbage, and of groundwater contamination. 358 F.3d 626, 638-641 (9th Cir. 2004). Here, there is no factual showing of harm — whether through an accidental release or through any other means — in the affidavits. Such incomplete, non-specific, and unsupported affidavits are plainly inconsistent with judicial standing principles. Petitioners have not met their obligation to “demonstrate” an injury.

Taken together, the relatively recent developments in judicial concepts of standing dictate a significantly increased level of scrutiny and an increased showing necessary to establish standing.<sup>9</sup> Under these standards, petitioners fail to demonstrate standing. The affidavits submitted by Petitioners are substantively identical. Each asserts the same, insufficient bases for intervention. Petitioners rely on: (1) residency within 50 miles of the Calvert Cliffs site; and (2) the concern that “construction and operation of the proposed nuclear plant could adversely effect [Petitioners’] health and safety and the integrity of the environment in which [Petitioners] live.” Specifically, the affidavits express concern about “the risk of the accidental

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<sup>8</sup> In the absence of an actual discharge, there could be no standing based on a “risk of an accidental release” or fear from an accidental release. *See, e.g., Metropolitan Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766 (1983) (holding that fear of an accident is not a cognizable injury under NEPA).

<sup>9</sup> Application of contemporaneous concepts should not be a significant bar to establishing standing. Courts find standing regularly and Licensing Boards in materials cases frequently evaluate standing without resort to the proximity presumption. Rather than rely simply on a geographical proximity, petitioners should affirmatively demonstrate that they would be directly impacted by construction or operation of Unit 3.

release of radiation into the environment and the potential harm to groundwater and surface waters.” That, however, is the extent of Petitioners’ alleged injuries. There is no information regarding frequency of use of Chesapeake Bay or the extent of contacts with areas potentially impacted by Unit 3, other than the geographical location of their offices or residences and their generalized fear of health or environmental impacts.<sup>10</sup> And, obviously, any asserted risk of an accident is especially attenuated for the organizational petitioners, which live just inside the 50-mile radius from the facility. By not providing any specific information, or by describing activities only using vague terms such as “near,” “close proximity,” or “in the vicinity” of the facility at issue, a petitioner fails to carry his burden of establishing the requisite “injury in fact.” *Atlas Corp.* (Moab, Utah Facility), LBP-97-9, 45 NRC 414, 425-26 (1997). Other than a general opposition to nuclear power plants, Petitioners have established no direct personal interest in the construction or operation of the proposed new unit.<sup>11</sup>

Likewise, there is no discussion about how construction and operation of Unit 3 might *cause* any harm to Petitioners. There is no discussion of potential release mechanisms or accident sequences. There is simply no information regarding causation. Conclusory allegations about potential radiological harm from the facility in general are insufficient to establish standing. *White Mesa*, CLI-01-21, 54 NRC at 251. Unlike the regulatory framework at the time

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<sup>10</sup> Even with the proximity presumption, a petitioner that bases its standing on its proximity to a nuclear facility must still describe the nature of its property or residence and its proximity to the facility, and should describe how the health and safety of the petitioner may be jeopardized. *Northern States Power Co.* (Pathfinder Atomic Plant), LBP-89-30, 30 NRC 311, 315 (1989).

<sup>11</sup> Likewise, mere “concern” about the “risk” of accidental releases is insufficient injury for standing. *See, e.g., Metropolitan Edison*, 460 U.S. at 766 (holding that fear of an accident is not a cognizable injury under NEPA); *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 & 2), CLI-85-14, 22 NRC 177, 180 (1985) (holding that mere exposure to the risk of full power operation of a facility does not constitute irreparable injury when the risk is so low as to be remote and speculative).

that the proximity presumption was first adopted, the NRC now (after Three Mile Island) has in place specific emergency planning regulations that are intended to avoid or mitigate any injury from an accidental release. Therefore, the presumption that an accident would necessarily cause an injury to Petitioners can no longer be sustained as a factual or regulatory matter.

Finally, Licensing Boards have consistently interpreted the Commission's intent to be firmly directed to deciding what is "remote and speculative" by examining the probabilities inherent in a proposed accident scenario. *Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant), LBP-00-19, 52 NRC 85, 97 (2000). Petitioners provided no information to suggest that an accident is probable or that it is likely to impact Petitioners personally. Even if Petitioners had made the argument, the risk of an accidental release of radioactive material to the environment referenced in their affidavits would be too vague and non-specific to support a concrete showing of actual harm to Petitioners. In any event, as discussed above, judicial concepts of standing require a showing that the challenged action result in imminent and actual harm; a statistical probability of harm or even a "realistic threat" is not sufficient. *Summers*, slip op. at 9, 11. Hence, in accordance with contemporaneous judicial concepts of standing, the risk of the alleged harm is too speculative to support a concrete injury for standing purposes.

The Commission should grant the appeal to bring Commission standing jurisprudence into line with contemporaneous concepts of judicial standing. The proximity presumption, which at one time was consistent with then-existing judicial standing principles, is no longer valid under modern standing jurisprudence. Petitioners in NRC proceedings should be required to establish standing through a specific showing of injury, causation, and redressibility. Here, Petitioners have failed to establish standing under either the proximity presumption or

judicial standing principles. Accordingly, the Commission should reverse the Board's decision with respect to standing.

B. The Petitioners' Contentions Are Not Admissible

To intervene in a proceeding a petitioner must, in addition to demonstrating standing, submit at least one admissible contention. Failure of a contention to meet any one of the requirements of § 2.309(f)(1) is grounds for its dismissal. *Private Fuel Storage* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 325 (1999). The Commission has stated that the "contention rule is strict by design," having been "toughened . . . because in prior years 'licensing boards had admitted and litigated numerous contentions that appeared to be based on little more than speculation.'" *Millstone*, 54 NRC at 358. It is the responsibility of a petitioner to provide the necessary information to satisfy the requirements for admission of contentions, including an explanation of the bases for its contentions. *Seabrook*, ALAB-942, 32 NRC at 416-417. The Petitioners have failed to do so here. Yet, the Board admitted, in part, Contentions 1, 2, and 7 despite fundamental flaws and failure to satisfy the requirements of 10 C.F.R. § 2.309(f)(1). For the reasons discussed below, those contentions are inadmissible.

1. *Contention 1 Is Inadmissible*

In Contention 1, Petitioners assert that issuance of a COL to the Applicants would be contrary to the foreign ownership, domination, or control restrictions of Section 103.d of the Atomic Energy Act (42 U.S.C. § 2133(d)). The contention is based on factual assertions regarding the ownership of Calvert Cliffs 3 Nuclear Project 3, LLC, the proposed owner-licensee of Calvert Cliffs 3. (UniStar Nuclear Operating Services, LLC is the proposed operator-licensee of Calvert Cliffs 3, and the proposed contention also vaguely addresses the ownership of "UniStar Nuclear.") The proposed contention cites only two bases: (1) Électricité de France ("EDF") will have the "ability to dominate and control this project" by virtue of ownership

interests above an asserted “50% plateau”;<sup>12</sup> and (2) EDF is a much larger company than Constellation Energy Group (the other partner) — based on market capitalization and revenue — and that this will somehow make EDF the “dominant and controlling partner” in the relationship.<sup>13</sup> Pet. at 8. The proposed contention and supporting bases fail as a matter of law to establish a genuine dispute on any matter that would entitle Petitioners to relief.

With respect to the first basis for the proposed contention, the Board acknowledged that “there is no threshold above which a foreign entity is assumed to control and dominate a corporation.” LBP-09-04, at 30. The Board is correct and, as a result, the 50-50 relationship alone does not run afoul of the foreign control restrictions. Since the proposed contention rested on a faulty premise — that there is a 50% threshold — there can be no genuine dispute with the application. Moreover, there is no dispute that UniStar is a 50-50 venture. The Petitioners instead argue that EDF actually controls more than 50% of UniStar as a result of its additional 9.51% ownership interest in Constellation Energy Group. However, a cursory review of the documents submitted by Petitioners demonstrates the falseness of the claim of foreign control.<sup>14</sup> Therefore, EDF has not crossed a 50% threshold, even if such a threshold did exist, and there is no genuine dispute with the COLA.

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<sup>12</sup> Petitioners assert based on this fact alone that the proposal “runs afoul on all counts for a foreign corporation.” Pet. at 7.

<sup>13</sup> We note that the transaction did not present any national security concerns. *See* Ltr from Mark M. Jaskowiak, Acting Deputy Assistant Secretary, U.S. Dept. of the Treasury, to Laura Fraedrich, Kirkland & Ellis LLP, “Re: CFIUS Case 09-02: Électricité de France SA (France)/Constellation Energy Nuclear Group, LLC,” dated March 30, 2009 (indicating that the review by the Committee on Foreign Investment in the United States determined that there were no unresolved national security concerns with respect to the EDF/Constellation transaction).

<sup>14</sup> Petitioners’ Exhibit 11 is a Form SC 13D filed with the Securities and Exchange Commission by EDF on September 8, 2008, regarding the acquisition of a beneficial interest in common stock in Constellation Energy Group. The filing includes as an

With respect to the second basis for the proposed contention, neither market capitalization nor revenue are factors to be considered when addressing the foreign ownership, domination, or control restrictions of Section 103.d of the Atomic Energy Act. As the Board recognized, the issue hinges on whether the applicant is controlled or dominated by a foreign entity. LBP-09-04, slip op. at 26. Petitioners did not explain why or how market capitalization or relative revenues factor into the analysis of control or domination. Yet, a petitioner must explain the significance of any factual information upon which it relies. *See Fansteel, Inc.* (Muskogee, Oklahoma, Site), CLI-03-13, 58 NRC 195, 204-05 (2003). If a petitioner believes the license application fails to adequately address a relevant issue, then the petitioner is to “explain why the application is deficient.” *Palo Verde*, CLI-91-12, 34 NRC at 156. Petitioners have wholly failed to describe any actual dispute with the application on a material issue. Indeed, they do not even cite to the application.

A contention that does not directly controvert a position taken by the applicant in the application is subject to dismissal. *See Tex. Utils. Elec. Co.* (Comanche Peak Steam Electric Station, Unit 2), LBP-92-37, 36 NRC 370, 384 (1992). Here, the Petitioners do not challenge any of the discussion of the foreign ownership, control or domination implications in Section 1.4

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exhibit an Investor Agreement which, in Section 3.2, plainly specifies that EDF “shall” vote its shares in accordance with the recommendations of the Constellation Energy Group Board of Directors. Thus, a necessary premise for the proposed contention is flawed. There is no showing that EDF has a controlling interest over the Applicants based on the beneficial ownership of 9.51% of Constellation Energy Group common stock. Moreover, even if EDF could control the votes of 9.51% of the shares of Constellation Energy Group, this would not give EDF control of Constellation Energy Group and would not alter the 50-50 relationship of Constellation Energy Group and EDF relative to the Applicants. With respect to the issue of *control*, the 9.51% does not add to EDF’s 50% share of the Applicants as Petitioners seem to assume.

of Revision 3 of the application.<sup>15</sup> The Petitioners do not acknowledge, much less engage, any of this discussion of the various measures that are in place such that, notwithstanding the participation of EDF, the Applicants will not be owned, dominated, or controlled by foreign interests within the meaning of the Atomic Energy Act.<sup>16</sup> A petitioner must “read the pertinent portions of the license application . . . [and] state the applicant’s position and the petitioner’s opposing view,” and explain why it disagrees with the applicant. 54 Fed. Reg. at 33,170; *see also Millstone*, CLI-01-24, 54 NRC at 358. The financial considerations (market capitalization and relative revenue) identified by the Petitioners as the basis for the proposed contention simply do not implicate governance and control. Therefore, the proposed contention fails to demonstrate a genuine dispute on a material issue.

In the full context of the information that is in fact provided in the COL application, Petitioners’ simplistic reference to EDF’s participation is completely inadequate to demonstrate a genuine dispute with respect to ultimate control over Calvert Cliffs 3.<sup>17</sup>

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<sup>15</sup> Revision 3 of the application contains the discussion of the ownership and control provisions related to EDF. Although Petitioners apparently based proposed Contention 1 on Revision 2 of the application, the Board afforded them additional time in which to formulate contentions based on any new information in Revision 3 (*e.g.*, the discussion of foreign ownership). The Petitioners did not avail themselves of this opportunity to modify proposed Contention 1 or to submit a new contention based on the new information in Revision 3. As a result, nowhere in Contention 1 do Petitioners reference any portion of the discussion of ownership provisions in the application — that is, there is no reference to either Revision 2 or Revision 3 of the COLA.

<sup>16</sup> While the basic fact of EDF’s ultimate 50% participation in the Calvert Cliffs 3 project is not in dispute, the important issue for licensing purposes is the issue of governance structure and control. This issue the Petitioners completely ignore.

<sup>17</sup> As the Commission has observed, “[i]t is the responsibility of the Petitioner to provide the necessary information to satisfy the basis requirement for the admission of its contentions and demonstrate that a genuine dispute exists within the scope of this proceeding.” *Balt. Gas & Elec. Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 & 2), CLI-98-14, 48 NRC 39, 41 (1998). In other words, “[a] contention’s proponent, not the licensing board, is responsible for formulating the contention and providing the necessary

Petitioners do not attack the adequacy of the governance provisions, acknowledge the additional controls proposed, or propose any additional measures. And, Petitioners do not establish how market capitalization and relative revenues of the two parents are relevant to the issue of operating authority and control. In total, the proposed contention should be rejected for failure to establish that relief could be granted based on EDF's participation alone, and for failure to demonstrate any genuine dispute regarding governance and control of the applicants.

Finally, the proposed Contention should be rejected for an additional, independent reason: the Petitioners failed to demonstrate standing for this contention. The Commission in CLI-96-1 discussed the nexus between standing and contentions, stating that "once a party demonstrates that it has standing to intervene on its own accord, that party may then raise any contention that, if proved, will afford the party relief from the injury it relies upon for standing." See *Yankee Atomic Electric Company* (Yankee Nuclear Power Station), CLI-96-1, 43 NRC 1 (1996). The Commission went on to specifically state that an intervenor's contentions may be limited to those that will afford it relief from the injuries asserted as a basis for standing. *Id.*, at n.3.

The Supreme Court recently reaffirmed the principle that standing must be shown for every single claim in *Davis v. Federal Election Commission*. The *Davis* Court reiterated that "standing is not dispensed in gross," and remarked that a party "must demonstrate standing for each claim he seeks to press" and "for each form of relief that is sought." 554 U.S. \_\_\_, slip op. at 7 (June 26, 2008), citing *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 352 (2006) and *Laidlaw*, 528 at 185; see also *Rosen v. Tenn. Commissioner of Finance and Admin.*, 288 F.3d 918 (6th Cir. 2002) ("It is black-letter law that standing is a claim-by-claim issue."). According to the Court,

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information to satisfy the basis requirement for the admission of contentions." *Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC 18, 22 (1998).

standing for one claim does not suffice for all claims even where those claims arise from the same nucleus of operative fact. *DaimlerChrysler*, 547 U.S. at 352.

In articulating its reasoning for requiring standing for each claim, the Supreme Court explained that the actual-injury requirement would hardly serve its intended purpose of ensuring that there is a legitimate role for an agency adjudicatory body in dealing with a particular grievance if, once a party demonstrated harm from one particular inadequacy in government administration, the adjudicatory body were authorized to remedy all inadequacies in that administration. *Lewis v. Casey*, 518 U.S. 343, 357 (1996). As the Court emphasized in *Lewis*, “[t]he remedy must of course be limited to the inadequacy that produced the injury in fact that the [party] has established.” *Id.* This statement echoes the description of the nexus between standing and contentions articulated by the Commission in *Yankee Atomic*: contentions must be limited to those that will afford relief from the injuries asserted as a basis for standing.

Here, none of the alleged “injuries” that purported to supply the basis for standing relate to foreign ownership or control. The only asserted bases for standing were the risk of accidental releases and contamination of water resources. Petitioners therefore failed to affirmatively demonstrate any injury that could be remedied by a favorable outcome on proposed Contention 1. In the absence of any injury related to foreign ownership, Petitioners lack standing to pursue proposed Contention 1.

For all of these reasons, the Board erred in admitting Contention 1.

2. *Contention 2 Is Inadmissible*

In proposed Contention 2, Petitioners argue that the decommissioning funding assurance described in the application is inadequate to ensure that funds will be available to decommission Unit 3. Pet. at 8. Petitioners argue that UniStar must use the prepayment method

of decommissioning funding assurance. *Id.* At its core, the basis for this contention is the flawed assumption that a decline in stock price adversely impacts UniStar’s ability to rely on a parent guarantee. *Id.* at 10.

With respect to Petitioners’ arguments that UniStar “must” use the prepayment method of decommissioning funding, the Board held that “[c]learly it is beyond the authority of this Board to specify how applicant must fulfill the decommissioning funding requirement.” LBP-09-04, at 36. Thus, the Board correctly declined to admit this portion of the contention. However, the Board also found that the Petitioners had raised a “legitimate issue of law regarding the proper timing for Applicant to submit the financial tests for parent company guarantees.” *Id.* at 38. The Board stated that “[i]f financial tests are required at the application stage, then this contention has proposed a clearly admissible contention of omission,” but “[i]f financial tests are not required until after the license has been issued, then this contention may not be admitted.” The Board admitted the contention on the question of the timing of the financial test. As discussed below, the Board erred in admitting this narrow legal issue.

First, Petitioners argued that because of a decrease in the total market capitalization of Constellation Energy, UniStar cannot rely on the parent guarantee method. Pet. at 10. This statement is inconsistent with the regulations and fails to establish a genuine dispute with the application. Neither market capitalization nor share price are variables to be used in the financial test (nor are these values related to tangible net worth or other financial parameters that are used in the test). Petitioners have provided no other information to call into question the use of the parent guarantee on its own, much less in combination with other methods (external sinking fund and letter of credit). The Board should have ruled the contention inadmissible because Petitioners “ha[ve] offered no tangible information, no experts, no substantive

affidavits,’ but instead only ‘bare assertions and speculation’” regarding UniStar’s ability to use a parent guarantee. *Fansteel*, CLI-03-13, 58 NRC at 203 (quoting *GPU Nuclear* (Oyster Creek Nuclear Generating Station), CLI-00-06, 51 NRC 193, 208 (2000)). A contention that simply states the petitioner’s views about what regulatory policy should be does not present a litigable issue. *General Public Utilities Nuclear Corp.* (Three Mile Island Nuclear Station, Unit 1), LBP-86-10, 23 NRC 283, 285 (1986), citing *Philadelphia Electric Co.* (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20-21 (1974). In the absence of any showing that a parent guarantee could not be used, the issue of the timing of the test is immaterial.<sup>18</sup>

Second, the Petitioners did not make any legal argument that UniStar must pass the financial test at this time. Where a petitioner neglects to provide the requisite support for its contentions, the Board may not make assumptions that favor the petitioner or supply information that is lacking. *See Ariz. Pub. Serv. Co.* (Palo Verde Nuclear Station, Units 1, 2, & 3), CLI-91-12, 34 NRC 149, 155 (1991). Petitioners point to no legal obligation to “pass” the financial test or demonstrate an ability to provide decommissioning funding assurance at the COL application stage — now or any future point in time. Petitioners did not even cite, much less discuss, the NRC regulations on decommissioning financial assurance for COL applicants. A petitioner bears the burden to present the information necessary to support its contention adequately, and failure to do so requires the Board to reject the contention. *See* 10 C.F.R. § 2.309(f)(1)(v);

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<sup>18</sup> In any event, there is no omission. UniStar provided information in the COL indicating that Constellation Energy Group (“CEG”) satisfied the financial tests for use of the parent guarantee. *See* “Calvert Cliffs Unit 3 COL Application, General Information Rev. 0,” Appendix A-6, at 1.0-43 (Sept. 11, 2007); *see also*, “Calvert Cliffs Unit 3 COL Application, General Information Rev. 3,” at 1-21 (stating that Constellation Energy Group meets the financial test criteria), and Appendix A-6, at 1.0-51 (noting that the financial test was “previously provided”) (July 2008). Further, based on the most recent financial statements, Constellation continues to “pass” the parent guarantee financial test. Thus, there is no omission, and, even if admissible, the contention would be moot.

*Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235, 262 (1996).

The Board therefore should not have supplied bases for contention that were not raised by the Petitioners.

Third, NRC decommissioning regulations state that “[f]or an applicant for a combined license under subpart C of 10 CFR part 52, the [decommissioning] report must contain a certification that financial assurance for decommissioning will be provided no later than 30 days after the Commission publishes notice in the *Federal Register* under § 52.103(a).” 10 C.F.R. § 50.75(b)(1). Importantly, an applicant for or holder of a combined license need not obtain the actual financial instrument or submit a copy to the Commission until 30 days after the Commission publishes the § 52.103(a) notice.<sup>19</sup> 10 C.F.R. § 50.75(e)(3). The NRC’s regulations on this point are clear: UniStar need not provide decommissioning funding assurance at this point in time. In LBP-09-04, the Board reduced this contention to a legal issue related to the timing of the financial test. However, there is no basis in either the proposed contention or NRC regulations for requiring passage of the financial test at a different time than when decommissioning funding must be provided.<sup>20</sup> It makes no sense to litigate a hypothetical, prospective financial test when there is no obligation to pass the financial test for at least several more years.<sup>21</sup> Thus, there is no genuine dispute on a material legal issue and the proposed contention amounts to an impermissible attack on the Commission’s regulations.

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<sup>19</sup> This is notice is not published until 180 days prior to fuel load. 10 C.F.R. § 52.103(a). Thus, there is no legal requirement that a parent guarantee be authorized (and that the financial test be satisfied) at this point in time.

<sup>20</sup> Nevertheless, as discussed above, the COL application does contain information demonstrating that CEG satisfies the financial test criteria for using a parent guarantee.

<sup>21</sup> If the parent guarantee is not available when the necessary decommissioning funding assurance is required to be in place (for example, because the financial test could not be met), then UniStar could not use the parent guarantee. If, at that time, Petitioners believe

Finally, the proposed Contention should be rejected for the additional, independent reason that the Petitioners failed to demonstrate standing for this contention. Here, none of the alleged “injuries” that purported to supply the basis for standing relate to decommissioning. The only asserted bases for standing were the risk of accidental releases and contamination of water resources. Petitioners therefore failed to affirmatively demonstrate any injury that could be remedied by a favorable outcome on proposed Contention 2. In the absence of any injury related to decommissioning, Petitioners lack standing to pursue proposed Contention 2.

At bottom, the Board erred in admitting the contention on grounds that were not raised by the Petitioners. Because the Petitioners failed to raise the legal issue identified by the Board, they failed to satisfy their obligation under 10 C.F.R. § 2.309 to “demonstrate” a genuine dispute with the application on a material issue. Further, there is no genuine dispute on the legal issue identified by the Board. Accordingly, the Commission should reverse the Board’s ruling and find Contention 2 inadmissible.

### *3. Contention 7 Is Inadmissible*

This contention alleges that the Environmental Report (“ER”) fails to offer a viable plan for disposal of low-level radioactive waste (“LLRW”) because, as of June 30, 2008, the disposal facility in Barnwell, South Carolina no longer accepts Class B and Class C LLRW that is generated outside the Atlantic Compact Commission States of Connecticut, New Jersey, and South Carolina. Specifically, Petitioners argue that the application “does not address long

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that the NRC Staff should not permit use of whatever decommissioning funding mechanism UniStar intends to use (for whatever reason), then a petition for enforcement action under 10 C.F.R. § 2.206 would be appropriate. However, it is premature (and speculative) to litigate the current availability of a parent guarantee (based on future financial conditions) when no guarantee is required to be in place for several years.

term storage onsite” and that the ER should evaluate the impacts of licensing the site itself under 10 C.F.R. Part 61 or Maryland’s compatible agreement state regulations for Class B, Class C, and Greater-than-Class C (“GTCC”) wastes. Pet. at 50. The Board rejected portions of the contention that related to Class A waste, GTCC waste, and Table S-3. However, the Board admitted, as an environmental contention of omission, the portion of the contention alleging that UniStar has failed to explain how it will manage Class B and C waste in the absence of an offsite disposal facility. LBP-09-04, at 70.

The Board erred in admitting this aspect of the proposed contention because it is contrary to the Commission’s recent decision in *Bellefonte*, because Petitioners have not cited any (and there is no) requirement that the ER specify exactly how the applicant will manage LLW based on future contingencies regarding access to disposal sites, and because notwithstanding the absence of a licensed disposal site, there are other means of managing low-level waste that do not require extended on-site storage or an expansion of low-level waste storage capacity.

First, in *Bellefonte*, the Commission considered the admissibility of a contention that alleged that the COLA failed to offer a viable plan for disposal of Class B and C waste and argued that if extended on-site storage is needed, that circumstance is not discussed in the COL application. *Tennessee Valley Authority* (Bellefonte Nuclear Power Plant Units 3 and 4), CLI-09-03, \_\_ NRC \_\_, slip op. at 5-9 (Sept. 12, 2008). The Commission noted that the *Bellefonte* Board adopted the reasoning of the Board in the *North Anna* proceeding. Specifically, the *North Anna* Board had reasoned that (i) an applicant’s ER must address the environmental costs of

managing low-level wastes, (ii) the analysis must be based on Table S-3,<sup>22</sup> (iii) Table S-3 “may be supplemented by a discussion of the environmental significance of the data set forth in the table as weighed in the analysis for the proposed facility,” (iv) the table “does not include health effects from the effluents described in the table,” (v) the health effects “may be the subject of litigation in individual licensing proceedings,” and (vi) “the increased need for interim storage of [low-level radioactive waste] because of the closure of the Barnwell facility implicates the health of plant employees, an issue that Table S-3 does not resolve.” According to the Commission, the rationale from *North Anna* suffered from a flaw — the contention constituted a collateral attack upon Table S-3. Thus, according to the Commission, the contention was inadmissible.

Proposed Contention 7 in *Calvert Cliffs* is nearly identical to the contention that the Commission found inadmissible in *Bellefonte*. Both contentions cite the same sections of the respective ERs (Section 3.5) and both contentions reference corresponding sections of the FSAR (Section 11.4.5 in *Bellefonte* and Section 11.4.3 in *Calvert Cliffs*). Significantly, both Petitions also contain language regarding challenges to Table S-3 that the Commission found critical in *Bellefonte*.<sup>23</sup> According to the Commission, absent a waiver, parties are prohibited from

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<sup>22</sup> Table S-3 assumes that solid, low-level waste from reactors will be disposed of through shallow land burial, and concludes that this kind of disposal will not result in the release of any “significant effluent to the environment.” 10 C.F.R. § 51.51(b), Table S-3.

<sup>23</sup> From *Calvert Cliffs*:

Joint Petitioners recognize that this contention raises a challenge to the generic assumptions and conclusions in Table S-3. However, we respectfully submit that the information submitted in this contention constitutes new and significant information, not considered in any previous environmental impact statement (“EIS”), that must be considered in the EIS for the Calvert Cliffs Unit 3 plant because it would have a significant effect on the outcome of UniStar’s and the NRC’s analyses of the environmental impacts of licensing the proposed plant. *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360 (1989).

collaterally attacking our regulations in an adjudication. Intervenors did not seek such a waiver here. Therefore, under Commission rules, the Board should not have admitted the contention.

Second, the Board erred in admitting the contention because there is no requirement that an applicant specify precisely how low-level waste will be managed. The Petitioners assert that the COLA's failure to fully address on-site storage violates environmental and safety and security requirements, but provide absolutely no support for this assertion. Pet. at 50. The Petitioners do not provide any facts, expert opinion, or references to documents or sources indicating that long-term onsite storage of waste (if necessary) would pose any significant safety or security risk.<sup>24</sup> A petitioner must provide sufficient information to demonstrate a genuine dispute with the applicant on a material issue. Here, Petitioners merely highlight short excerpts of the portions of the application that address waste treatment and storage. Petitioners do not allege that any portion of the application contains an incorrect assessment of doses or that the processes and programs described in the application fail to protect public health and safety. In the absence of any contrary expert opinion or references, the Petitioners' bald assertion that "it is imperative" to address unspecified safety and security issues is not sufficient to support an admissible contention. *Rancho Seco*, LBP-98-7, 47 NRC at 180.

Third, neither Petitioners nor the Board cite any regulatory requirement that UniStar must provide a "feasible plan" for dispositioning LLW in the ER. See LBP-09-03, at 73. UniStar has described how it intends to manage low-level waste, and other options are

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Pet. at 47 n.7. The same language appears in the *Bellefonte* petition, except for "BREDL" is substituted for "Joint Petitioners" and "Bellefonte" for "Calvert Cliffs."

<sup>24</sup> Indeed, the Commission recently noted that, as a general matter, "power reactor licensees have been safely storing and managing low-level waste onsite for years under NRC oversight, and the Staff has not identified any immediate safety problems or concerns with such storage." *Bellefonte*, CLI-09-03, slip op. at 11 n3.

available if the maximum low-level waste storage capacity is reached (*e.g.*, sending to offsite vendor for treatment and storage prior to disposal, ceasing operations, using Calvert Cliffs Units 1 and 2 storage capacity). If, later, it turns out that an expansion of the low-level waste storage facility is necessary, approval of that change would be the subject of a separate licensing action. However, a licensing board must deny a basis for a contention which involves an inchoate plan of the Licensee. *See Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-14, 55 NRC 278, 293 (2002).

In any event, Petitioners' alleged omission rests on an incorrect premise. Petitioners assume that the lack of a licensed disposal site for Class B and C wastes necessarily means that the waste will remain onsite indefinitely. Pet. at 50. However, under 10 C.F.R. Part 20, a power reactor licensee could transfer the material to another licensee that is licensed to accept and treat waste prior to disposal. 10 C.F.R. § 20.2001. The waste treatment facility would then be responsible for eventual waste disposal. *See, e.g.*, UniStar Exhibit 1.<sup>25</sup> Thus, even with the closure of Barnwell, there is a clear disposition path for removing Class B and C wastes from the Calvert Cliffs 3 site.

Finally, the proposed Contention should be rejected for the additional, independent reason that the Petitioners failed to demonstrate standing for this contention. Here, none of the alleged "injuries" that purported to supply the basis for standing relate to low-level waste. The only asserted bases for standing were the risk of accidental releases and contamination of water resources. Petitioners therefore failed to affirmatively demonstrate any

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<sup>25</sup> Studsvik, *Press Release*, "First contract signed with FPL for new U.S. waste model" (December 2, 2008). Studsvik will treat the Class B and C waste at its Erwin, Tennessee facility and thereafter take responsibility for storage and final disposal, for which a storage agreement has been reached with Waste Control Specialists in Texas. Constellation Generation Group has signed a similar contract with Studsvik.

injury that could be remedied by a favorable outcome on proposed Contention 7. In the absence of any injury related to low-level waste, Petitioners lack standing to pursue proposed Contention 7.

For the above reasons, there is no basis for the contention and no genuine dispute with the application with respect to low-level waste management. Accordingly, the Commission should reverse the Board and find Contention 7 to be inadmissible.

V. CONCLUSION

For the foregoing reasons, the Commission should reverse the Board's rulings regarding standing and the admissibility of contentions in LBP-09-04. The Petition should be denied and the proceeding should be terminated.

Respectfully submitted,

          /s/ signed electronically by            
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SERVICES, LLC

Dated at Washington, District of Columbia  
this 3rd day of April 2009

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of “APPLICANTS’ NOTICE OF APPEAL OF LBP-09-04” and “APPLICANTS’ BRIEF IN SUPPORT OF APPEAL FROM LBP-09-04” in the captioned proceeding have been served via the Electronic Information Exchange (“EIE”) this 3rd day of April 2009, which to the best of my knowledge resulted in transmittal of the foregoing to those on the EIE Service List for the captioned proceeding.

/s/ signed electronically by \_\_\_\_\_  
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COUNSEL FOR CALVERT CLIFFS 3  
NUCLEAR PROJECT, LLC AND  
UNISTAR NUCLEAR OPERATING  
SERVICES, LLC