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P R O C E E D I N G S

(11:02 a.m.)

JUDGE SPRITZER: Okay. All right. Why don't we go on the record. We'll get started here in the matter of Calvert Cliffs 3 Nuclear Project and UniStar Nuclear Operating Services, Combined License Application for Calvert Cliffs Unit 3. This is Docket No. 52-016-COL, ASLBP No. 09-874-02-COL-BD01.

We're here having a scheduling conference and well, so we have it on the record, if you wouldn't mind going through and identifying yourselves one more time.

This is Judge Ron Spritzer.

JUDGE ARNOLD: Gary Arnold.

JUDGE SPRITZER: Judge Arnold. And we also have Judge Sager.

JUDGE SAGER: Judge William Sager.

JUDGE SPRITZER: From College Station, Texas.

With us here also is Megan Wright, our law clerk.

And for the petitioners, who is on the call for the petitioners?

MR. MARIOTTE: Michael Mariotte, Nuclear Information and Resource Service.

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1 MS. SEVILLA: June Sevilla, Southern
2 Maryland CARES.

3 JUDGE SPRITZER: Okay. And then for the
4 applicant?

5 MR. REPKA: David Repka. And I'll let Mr.
6 Smith and Mr. Fleming separately announce themselves.

7 MR. SMITH: This is Tyson Smith.

8 MR. FLEMING: And this is Carey Fleming,
9 Constellation UniStar.

10 JUDGE SPRITZER: For the NRC staff?

11 MR. BIGGINS: James Biggins and with me
12 today is Adam Gengelman.

13 JUDGE SPRITZER: And for the State of
14 Maryland?

15 MR. BOLEA: This is Brent Bolea. And
16 Brent Hare is also here.

17 JUDGE SPRITZER: Okay. And is there
18 anyone else on the line listening?

19 (No response.)

20 JUDGE SPRITZER: Okay. Hearing no takers,
21 we will proceed.

22 We do, of course, have the letter you
23 submitted. I think as far as we, the Board, are
24 concerned, the discovery closure -- discovery
25 disclosure agreement that you all have worked out

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1 seems acceptable. We don't have any questions, I
2 don't think, for any of you on that.

3 On the scheduling, first on the briefing
4 of Contention Two, Judge Arnold has an alternative
5 proposal that we'd like to discuss with you.

6 JUDGE ARNOLD: First off, Contention Two
7 we want to briefed on is not a question of fact
8 concerning Calvert Cliffs or the application or the
9 petition. It's a matter of what did the Commission
10 intend when they promulgated the rules for
11 decommissioning funding? Did they intend that the
12 proofs that are the subject of of this contention
13 would be with the application or were they with the
14 actual certification of the funding?

15 And I'm afraid that if we have the
16 petitioner brief first, we may get responses that are
17 potentially too much directed at opposing that brief
18 as opposed to giving us your best thoughts on how to
19 interpret the actual regulation itself.

20 So our alternate proposal is to have all
21 three briefs due the same day. And if somebody feels
22 the need to respond to something in somebody else's
23 brief, then a short time later a short rebuttal.

24 Any opinions on that alternate proposal?

25 MR. BIGGINS: This is Jim Biggins with the

1 - NRC staff, Judge. We would have no problem with that
2 type of briefing schedule.

3 MR. SMITH: This is Tyson Smith for
4 UniStar. We would have no problem with that briefing
5 schedule either.

6 MR. MARIOTTE: Okay. And this is Michael
7 Mariotte for intervenors, that's fine with us as well.

8 JUDGE SPRITZER: Okay. How about starting
9 on -- have all the briefs due then May 15th, the first
10 date that you all had proposed unless that's -- well,
11 let me ask if that's a problem for anybody's schedule.

12 I would envision, to me, a maximum of 15
13 pages would seem about right here. And then ten days
14 to file any -- for anybody who feels they need to file
15 a response to the other side's position. We won't, of
16 course, interpret your failure to do so as agreeing
17 with your opponents. You're not under any obligation.

18 But if you find something in the other
19 side's -- what another party has said that you file an
20 objection to and feel you need to let us know about it
21 within ten days, so May 25th. And probably limit to
22 those five pages or so.

23 Any thoughts on that?

24 MR. FLEMING: Well, Judge Spritzer, this
25 is Carey Fleming. I'm looking at the calendar right

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1 now and it appears that May 25th would be a holiday.

2 JUDGE SPRITZER: Oh, okay.

3 MR. FLEMING: Can we move that to the
4 26th?

5 JUDGE SPRITZER: Yes, we'll go with the
6 26th. Thank you for pointing that out.

7 Any other thoughts on that?

8 MR. BIGGINS: This is the NRC staff,
9 Judge, we don't have any problem with that.

10 JUDGE SPRITZER: Okay. And the applicant?

11 MR. SMITH: That's acceptable to us.
12 Thank you.

13 JUDGE SPRITZER: Okay.

14 As far as motions for summary disposition,
15 your proposal has a date for motions for summary
16 disposition on Contention Two due June 26th. Do we
17 need that at this point? I mean that seems to set off
18 another round of briefing that I don't know -- as
19 Judge Arnold said, we're not really dealing with a
20 factual question here.

21 And whatever we decide on the legal
22 question is pretty much going to resolve this
23 contention one way or the other unless we decide it's
24 really a matter of policy that we ought to send to the
25 Commission, in which case we don't need motions for

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1 summary disposition until we hear back from them.

2 So can we eliminate that? Or is there
3 some reason why we need to have motions for summary
4 disposition concurrently with this other briefing we
5 were talking about?

6 Well, Staff, do you have any thoughts on
7 this?

8 MR. BIGGINS: Judge, James Biggins for the
9 staff again. I thin that's fine. I think we included
10 the motions for summary disposition mainly based on
11 the Board's order.

12 JUDGE SPRITZER: Right. I mean we're --
13 you know, you can file motions for summary disposition
14 whenever you feel they are appropriate. We're not
15 prohibiting it. But I don't know that we need to
16 build it into the schedule unless anybody -- does
17 anybody else -- I haven't been identifying myself.
18 This is Judge Spritzer by the way.

19 But is there is anybody else that feels we
20 need to have a definite schedule that includes motions
21 for summary disposition on Contention Two at this
22 point?

23 (No response.)

24 JUDGE SPRITZER: We will have deadlines
25 down the road for motions for summary disposition but

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1 is there any reason why we need to have this
2 particular item in the schedule now for Contention
3 Two?

4 MR. SMITH: This is Tyson Smith for
5 UniStar. No, I don't think we need to have that
6 right now.

7 JUDGE SPRITZER: Okay. And petitioners,
8 do you have any views on that?

9 MR. MARIOTTE: We're happy to never have
10 a motion for summary disposition.

11 JUDGE SPRITZER: All right. Well, you can
12 file one of your own, you know. It can go both ways.
13 Petitioners can file for a summary disposition as
14 well.

15 Okay.

16 JUDGE SAGER: Judge Spritzer?

17 JUDGE SPRITZER: Yes, excuse me.

18 JUDGE SAGER: Is there a reason also,
19 completing this circle on the proposed scheduling
20 order, is there a reason to specify August/September
21 as a time for any additional proceedings on Contention
22 Two?

23 MR. BIGGINS: Judge, Jim Biggins for the
24 NRC staff. The reason why that was included was when
25 we were trying to work out an expanded schedule with

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1 the other parties, that was more of a placeholder. So
2 there's no particular reason why that would have to
3 remain in.

4 JUDGE SAGER: Okay.

5 JUDGE SPRITZER: All right. This is Judge
6 Spritzer again. Moving on to I guess it's your
7 Paragraph B in the proposed scheduling order, all
8 parties agree that the intervenors shall have 30 days
9 following issuance of the final environmental impact
10 statement and final safety evaluation report in which
11 to file new or amended contentions.

12 Just so we're clear on what that means, I
13 take it that would mean if they file within that 30
14 day period, the contention would not be considered
15 late. And, therefore, wouldn't be subject to that 10
16 CFR Section 2.309(c). And I correct on that or not?

17 MR. SMITH: This is Tyson Smith for the
18 applicant. I think our thinking was not that that
19 would be -- necessarily satisfy 2.309(c) in terms of
20 timeliness because it would depend on what the basis
21 for the new or amended contention.

22 If, for instance, it was relying on
23 information that had been available previously, well
24 then it wouldn't satisfy the contention admissibility
25 requirements.

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1 That was more to set a deadline for filing
2 new or amended contentions.

3 JUDGE SPRITZER: Okay. So if it was 31
4 days, it would just be automatically rejected?

5 MR. SMITH: Right. Yes. As untimely
6 based on any new information contained in the FEIS.

7 JUDGE SPRITZER: Well, what we were
8 thinking is if they meet the 30 days, we would, as you
9 said, look to see whether it is really based on new
10 information. That's contemplated by the language of
11 CFR 2.309(f)(2).

12 But if it is within 30 days and it is,
13 indeed, based on new information, and otherwise
14 satisfies 2.309(f)(2), then it seemed to us we
15 wouldn't need to look at (c) which deals with late-
16 filed contentions. But --

17 MR. SMITH: Well, this is Tyson Smith,
18 again, for the applicant. As we understand it, both
19 the new or amended contention requirements in (f)(2)
20 and the requirements for late filing in (c) must be
21 evaluated for all new or amended contentions.

22 JUDGE SPRITZER: All right. That's -- as
23 you probably know, there's some disagreement among
24 various Board's with that view. But we may not --
25 hopefully we don't need to resolve that to get

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1 through, at least, the scheduling order.

2 MR. BIGGINS: If I may, this is Jim
3 Biggins for the NRC staff, I think my understanding
4 was closer in line with your understanding except --
5 not that it would satisfy all of the criteria of
6 subsection (c), rather it would go towards subsection
7 (c)(I) regarding the good cause. In other words,
8 there would be less of a need for a showing of good
9 cause if they were filing within that time period
10 based on new information.

11 JUDGE SPRITZER: Right.

12 MR. SMITH: And this is Tyson Smith for
13 the applicant. I would agree with that -- with the
14 NRC staff on that.

15 JUDGE SPRITZER: All right. Well, maybe
16 what we can do at this point is simply have a deadline
17 after which it will be clear that new or amended
18 contentions will clearly be late. And that would be
19 30 days for contentions based on either the final EIS
20 or the final safety evaluation report.

21 Now you go on to say that the applicant
22 and the intervenors both support permitting new or
23 amended contentions to be filed within 60 days of the
24 draft EIS and draft safety evaluation report. I take
25 it that means the staff does not agree with that? Or

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1 not? Let me ask the staff that question.

2 MR. BIGGINS: Yes, Judge, Jim Biggins for
3 the staff. We were -- our thought was that we could
4 be more in line with the model milestones and
5 particularly that we didn't receive any reason from
6 either the applicant or the intervenors in this case
7 regarding why we should deviate from those model
8 milestones.

9 So although, you know, we would defer to
10 the Board's judgment on that matter, whether we need
11 to or not, the staff was more supportive of simply
12 incorporating the model milestones into the scheduling
13 for this case.

14 JUDGE SPRITZER: Yes, the model
15 milestones, at least for L proceedings, simply refer
16 to the SER and the NEPA document. They don't
17 differentiate between draft and final. You are
18 interpreting that to mean final EIS and final safety
19 evaluation report?

20 MR. BIGGINS: Yes. But we do recognize
21 that a larger portion of information would likely be
22 new in a draft of those documents versus the final
23 version. And so we were willing to go along with the
24 30-day period for filing new or amended contentions
25 after the drafts of those documents are publicly

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1 available.

2 JUDGE SPRITZER: Okay. I mean from the
3 Board's perspective, I can see -- if we could, it
4 would in some ways make more sense to have the only
5 relevant deadline be the publication of the final
6 document. Otherwise, we might get contentions based
7 on the drafts that then become moot when the final EIS
8 or the final safety evaluation report come out.

9 But (f)(2) seems to contemplate filing new
10 or amended contentions based on the draft
11 environmental impact statement as well as the final.
12 All right, so you're saying the staff would not object
13 if we had 30 -- you'd prefer 30 days rather than 60
14 for new or amended contentions based on the draft EIS
15 or the draft safety evaluation report?

16 MR. BIGGINS: Just in accordance with the
17 model milestones, yes.

18 JUDGE SPRITZER: Okay. All right. And
19 from the petitioners, do you -- you may have a
20 different view about that.

21 MR. MARIOTTE: Yes, Your Honor. We
22 believe, as was stated just a moment ago, that the
23 draft documents are likely to contain, you know,
24 substantial new information. You know as pro se
25 intervenors here, we are rather under-resourced. And

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1 having been through some licensing cases in the past
2 where there actually was quite significant information
3 in particularly a draft EIS, we thought it appropriate
4 to have a 60-day period similar to the one for the
5 initial filing of contentions rather than a 30-day
6 period.

7 And we talked with, you know, the
8 applicants and, you know, they agreed to go along with
9 that.

10 JUDGE SPRITZER: Okay.

11 JUDGE ARNOLD: And I might also say --
12 this is Judge Arnold -- contentions triggered off the
13 final environmental impact statement effect the
14 overall schedule whereas contentions triggered off the
15 draft do not. So it really doesn't effect the overall
16 schedule whether we allow 30 or 60 days.

17 MR. MARIOTTE: This is Michael again.
18 Yes, I agree with that. We also noted that by the
19 way.

20 JUDGE SPRITZER: Okay. All right. We'll
21 come up with the appropriate time limit for both of
22 those -- sets of new or amended contentions if any are
23 filed.

24 Now we have a number of items that I guess
25 -- that are covered in the model milestones that

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1 aren't covered in your agreed-to schedule. Motions
2 for summary disposition, filing of written direct
3 testimony, evidentiary hearing, obviously, if there is
4 any, does anyone have any objection to our using the
5 model milestones for the events that aren't covered in
6 your agreement?

7 Let's start with the petitioners on that.

8 MR. MARIOTTE: We have no objection.

9 JUDGE SPRITZER: And the applicant?

10 MR. SMITH: Your Honor, yes, we would
11 actually think that in accordance with 2.329 that
12 there are probably lots of opportunities here to
13 accelerate the disposition of this proceeding --

14 JUDGE SPRITZER: Okay.

15 MR. SMITH: -- considering at the point we
16 get to actually filing direct testimony and conducting
17 a hearing will be several years down the road. We had
18 entered into some discussions with the intervenors and
19 with the NRC staff on reaching agreement on some of
20 these scheduling points. And we were unable to reach
21 a resolution before today.

22 But it's my view that it is possible that
23 we could achieve some agreement that would result in
24 some efficiencies without, you know, compromising the
25 parties' abilities to support the proceeding.

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1 So I think there is some room for
2 efficiencies and if I could, and subject to what the
3 other parties think, I think we could perhaps consult
4 and maybe reach agreement on some of those in the near
5 term.

6 JUDGE SPRITZER: Okay. Well, that's
7 certainly -- you know we're certainly in favor in of
8 expediting the proceeding if it can be done in a way
9 that's fair to everybody.

10 MR. BIGGINS: Judge, if I may provide the
11 staff's thoughts on that --

12 JUDGE SPRITZER: Okay.

13 MR. BIGGINS: -- at this point, the draft
14 environmental impact statement; we don't even have a
15 scheduled date for its public release. And, you know,
16 we're talking about times that are, you know,
17 substantially far off in the future, a year and a half
18 to two years on estimate.

19 And I think what we're looking at is, you
20 know, we don't have any way of predicting, you know,
21 how many contentions might be proposed or admitted
22 based on the draft documents or the final documents.
23 So I don't know that the staff can predict well enough
24 to start setting dates that far off in the future.

25 My thought is that maybe this is something

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1 that could be the subject of revisiting later when we
2 do have a better idea of where efficiencies might be
3 most appropriate.

4 JUDGE SPRITZER: Well, most of the model
5 milestones are geared toward those documents and after
6 they come out. That is, the SER and the final NEPA
7 documents in this case, the final EIS. So I'm not --
8 would it be possible to figure out where you might
9 expedite things at least provisionally?

10 I mean whatever we would come up with with
11 a schedule would be subject to, you know, later
12 motions for extension of time if there is good cause.
13 But if there are ways to move things along -- and we
14 really are supposed to come out with a scheduling
15 order now and not wait for one, you know, months or a
16 year or more down the road.

17 MR. BIGGINS: I understand, Judge, Jim
18 Biggins for the staff. My point is simply that at
19 this stage, I don't think we have enough facts to
20 determine how or in which place we should deviate from
21 the model schedule.

22 JUDGE SPRITZER: Well, Mr. Smith, in light
23 of that, do you think there is any point in having
24 further discussions among yourselves?

25 MR. SMITH: This is Tyson Smith for the

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1 applicant. I think I'd like to try to reach some
2 agreement on ways to expedite this. I know in other
3 proceedings, for instance on safety-related
4 contentions, the staff, in the past, has been willing
5 to proceed based on the advanced SER with open items.

6 And I know in other proceedings I've been
7 involved in in the past, the staff has been willing to
8 proceed based on a draft even before there has been an
9 SER.

10 We have at least one issue in the
11 proceeding now that the staff will take a position on
12 in those documents. And it seems like we could --
13 rather than waiting until it is time sensitive at the
14 end of the proceeding and we are on the critical path
15 for resolution of the license issuance, it would make
16 sense to explore ways to do that more quickly. You
17 know at least by several months.

18 So, again, the model milestones are just
19 that. They are model milestones. They do not set
20 dates certain. They are not dates you do it on, you
21 know, Day 155. They are within certain time frames.

22 It seems to me we ought to at least start
23 from a position of trying to accelerating the
24 proceeding and expedite it rather than starting from
25 a position that's as lengthy as it might be and then

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1 try and work our way forward at the end.

2 It seems much more appropriate to start
3 with something that is going to result in schedule
4 savings. And then if there's good cause and if there
5 is a need, we can extend the schedule as appropriate.

6 JUDGE SPRITZER: Right. That seems to be
7 to be a reasonable approach.

8 Well, how long do you think you would need
9 to confer among yourselves? You could either get back
10 to us if you are able to reach any agreements. If
11 you're not, you know, we'd certainly be willing to
12 consider any proposal that any party might have that's
13 -- even if it's not 100 percent agreed to by the other
14 parties. How long do you think you would need to
15 complete that?

16 MR. SMITH: A week might be a reasonable
17 time to give us time to have a discussion and chat
18 among ourselves. And I'd be happy to take the lead to
19 get back to the Board. And if we're unable to reach
20 agreement, then the other parties could submit their
21 proposal either through me or separately at that time.

22 JUDGE SPRITZER: All right.

23 JUDGE ARNOLD: Question, Judge Arnold, for
24 Mr. Biggins. Did I hear properly you said you really
25 don't have a date for the draft environmental impact

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1 statement but you're thinking a year and a half, two
2 years from now?

3 MR. BIGGINS: Judge, part of the reason
4 why we can't set a date is because of uncertainties in
5 the application. And so that's really just an
6 estimate at this point. You know we're looking at
7 some significant changes at this site.

8 And so, you know, the staff is relying on
9 the applicant to provide enough information for the
10 staff to set its milestones in this case. And, you
11 know, with that being the situation, I think other
12 Boards have held off from either setting a schedule or
13 deviating from the model.

14 You know I would particularly point out
15 that the example that applicants have relied on here,
16 in the North Anna case, in particular, there was a
17 contention on high-level waste. And, you know, its
18 particular circumstances are not the same or should
19 not even be controlling in this situation.

20 You know each case, according to the
21 Appendix B, model milestone considerations, should be
22 considered by itself. You know each case is unique in
23 some respects. And that's why the Appendix B model
24 milestones allow flexibility for each individual case.

25 You know at this stage, I just believe

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1 that it's too difficult to determine, you know, which
2 direction, whether it would be a delay or an
3 advancement of the proposed times would be appropriate
4 here.

5 JUDGE SPRITZER: We haven't heard from the
6 petitioners. This is Judge Spritzer. We haven't
7 heard from the petitioners. Do you all have anything?
8 Are you willing to at least talk with Mr. Smith about
9 possibly expediting some of the deadlines?

10 MR. MARIOTTE: Yes, we are. What we've
11 told the applicants to this point is that we prefer
12 the model schedule. But we are not necessarily going
13 to object to an altered schedule.

14 JUDGE SPRITZER: All right. Well, it
15 seems to me --

16 MR. MARIOTTE: I mean, yes, we're willing
17 to be reasonable.

18 JUDGE SPRITZER: Okay. This is Judge
19 Spritzer again. It seems to me and I think Judge
20 Arnold is nodding in ascent that -- unfortunately we
21 can't talk to Judge Sager directly since he's on
22 another line. So jump in if you have any problems,
23 Judge Sager --

24 JUDGE SAGER: No, I don't. I'm fine with
25 it.

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1 JUDGE SPRITZER: -- yes, that seems to be
2 to be a reasonable --

3 JUDGE SAGER: It seems reasonable, yes.

4 JUDGE SPRITZER: -- approach. So we'll
5 look forward to hearing from you in a week. If you're
6 at the brink of an agreement but need another day or
7 two, let us know. But that seems like a reasonable
8 thing to do to have some discussion.

9 And if you can't agree, we'd be willing to
10 entertain proposed deviations from the model
11 milestones that one or more parties might propose even
12 if they're not completely or unanimously agreed to.

13 JUDGE SAGER: Since we don't have the
14 dates which trigger the milestones on the model, I
15 take it then this is just going to be done in an
16 abstract way as to, you know, final environmental
17 impact statement plus or minus so many days?

18 JUDGE SPRITZER: Right, yes, I think that
19 is what we would be aiming for.

20 Okay. Is there anything else related to
21 scheduling that we need to discuss or anything else of
22 a procedural nature that would be useful to talk about
23 here today with everybody on the phone?

24 JUDGE ARNOLD: This is Judge Arnold again.
25 Is there any idea as to when there will be sufficient

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1 information available to set a date for the documents?

2 MR. BIGGINS: If I may confer with the
3 staff for a moment, Judge.

4 JUDGE SPRITZER: Okay.

5 MR. BIGGINS: Judge, Jim Biggins for the
6 NRC staff. We expect or hope that within one to two
7 months we would have the necessary information to set
8 a schedule.

9 JUDGE ARNOLD: Sounds good.

10 JUDGE SPRITZER: Well, all right, when you
11 get back to us, we could do one of two things then it
12 sounds like. If you are able to reach an agreement,
13 we could plug in some of those deadlines for thing
14 along down the road. At a minimum, we have a schedule
15 here for briefing Contention Two. And for new or
16 amended contentions based on the draft and final
17 documents -- the safety evaluation report and the
18 final environmental impact statement.

19 And as Mr. Biggins said, I don't think
20 there is anything that would prohibit the Board from
21 waiting another month or two to issue the schedule for
22 the remaining things that need to be scheduled. So if
23 at the end of your discussions you can't reach
24 agreement, that's another option that is available to
25 us.

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1 All right. Anything else?

2 JUDGE ARNOLD: Future scheduling of
3 telephone calls. I would say we want to think about
4 having one a few weeks after the dates become
5 available.

6 JUDGE SPRITZER: That might a good -- yes,
7 that might be an approach to follow.

8 All right, well the next thing on the
9 agenda will be we'll hear back from Mr. Smith and/or
10 other parties as to whether any agreement -- any
11 further agreement has been reached. And we'll decide
12 at that point whether we want to -- exactly where we
13 want to proceed from there.

14 Judge Sager, did you have any other
15 questions or concerns?

16 JUDGE SAGER: No, nothing here.

17 JUDGE SPRITZER: Any of the parties or the
18 State of Maryland have anything they want to bring up?

19 MR. BOLEA: No, Your Honor.

20 MR. BIGGINS: Nothing further from the
21 staff, Judge.

22 MR. SMITH: Nothing further from the
23 applicant.

24 MR. MARIOTTE: Nothing further for the
25 intervenors.

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1 MR. GUNTER: Judge, this is Paul Gunter,
2 just for the court record, I joined the call a few
3 minutes late.

4 JUDGE SPRITZER: Okay. Thank you for
5 letting us know.

6 Very good. Well, thank you for your
7 efforts so far. And we look forward to hearing from
8 you in seven days as to whether you've reached any
9 further agreements.

10 Very good. Thank you. We'll terminate
11 the call.

12 (Whereupon, the above-entitled pre-hearing
13 conference was concluded at 11:32 a.m.)

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CERTIFICATE

This is to certify that the attached proceedings
before the United States Nuclear Regulatory Commission
in the matter of: Calvert Cliffs 3

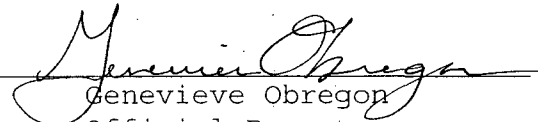
Name of Proceeding: Pre-Hearing Conference

Docket Number: 52-016-COL;

ASLBP No. 09-974-02-COL-BD01

Location: (telephone conference)

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