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August 6, 2009

Chairman Gregory B. Jaczko
U.S. Nuclear Regulatory Commission
Mail Stop: O-16G4
Washington, DC 20555-0001

Commissioner Dale E. Klein
U.S. Nuclear Regulatory Commission
Mail Stop: O-16G4
Washington, DC 20555-0001

Commissioner Kristine L. Svinicki
U.S. Nuclear Regulatory Commission
Mail Stop: O-16G4
Washington, DC 20555-0001

**Re: Calvert Cliffs 3 Nuclear Project, LLC, and
UniStar Nuclear Operating Services, LLC
(Combined License Application for
Calvert Cliffs Nuclear Power Plant, Unit 3),
Docket No. 52-016-COL**

Dear Commissioners:

This letter addresses an issue arising in connection with the pending appeal filed by the Applicants on this docket, on April 3, 2009. That appeal was taken from the Atomic Safety and Licensing Board Memorandum and Order, LBP-09-04, issued on March 24, 2009, granting the request for hearing and admitting certain contentions in the proceeding. One issue addressed in the appeal was the Licensing Board's decision to admit Contention 2 concerning the adequacy of the Applicants' plan for decommissioning funding assurance for the new unit.

On July 30, 2009, the Licensing Board issued Memorandum and Order, LBP-09-15, granting a motion for summary disposition with respect to Contention 2, finding that Contention 2 is no longer viable as a contention of omission and is moot. The Licensing Board's decision arguably moots Applicants' pending appeal as it relates to admissibility of Contention 2.

In admitting Contention 2, the Licensing Board narrowed the contention to a legal issue related to the timing of the financial test used in connection with the parent guarantee form of financial assurance. As explained in the appeal brief (at 20-21), Applicants' position is that

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the financial test need not be performed until the time that decommissioning financial assurance must be provided. The Licensing Board in LBP-09-15 disagreed, concluding that the financial test is required concurrently with submission of the decommissioning report to the NRC. The Licensing Board nonetheless granted summary disposition because Applicants had provided the necessary information in the application.

Under the circumstances, Applicants clearly have no right to an interlocutory appeal with respect to any aspect of LBP-09-15, including the decision on the legal issue of the timing of the financial test. *See* 10 C.F.R. § 2.341(f); *Connecticut Yankee Atomic Power Co.* (Haddam Neck Plant), CLI-01-25, 54 NRC 368, 373 (2001) (“The threat of future widespread harm to the general population of NRC licensees is not a factor in interlocutory review. . . .”).

Nonetheless, given the pending appeal of LBP-09-04, the Commission has an opportunity to address this legal issue. The issue of the timing of the financial test for a parent guarantee could recur in this matter (if financial circumstances change) or in other proceedings. In this regard, the Applicants’ pending appeal of Contention 2 is not a purely academic exercise. Applicants encourage the Commission to continue to consider this issue.

Sincerely,

/s/ signed electronically by
David A. Repka
Counsel for Calvert Cliffs Nuclear Project, LLC and
UniStar Nuclear Operating Services, LLC

cc: Service List

DAR:kj