UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

NRC STAFF ANSWER TO JOINT INTERVENORS' NEW CONTENTION 10

Pursuant to 10 C.F.R. § 2.309(h)(1), the staff of the Nuclear Regulatory Commission (NRC Staff) hereby answers the "Submission of Contention 10 by Joint Intervenors" (Intervenor Submission) filed on June 25, 2010, by Michael Mariotte on behalf of Nuclear Information and Resource Service, Beyond Nuclear, Public Citizen, and Southern Maryland CARES (collectively, Intervenors). For the reasons set forth below, the Intervenors' proposed Contention 10 should be dismissed for failure to comply with the contention admissibility requirements in 10 C.F.R. § 2.309(f)(1) and/or the requirements for new and amended contentions in 10 C.F.R. § 2.309(f)(2).

BACKGROUND

On July 13, 2007, and March 14, 2008, UniStar Nuclear Operating Services, LLC and Calvert Cliffs 3 Nuclear Project, LLC (collectively, Applicant) submitted an application for a combined license (COL) for one U.S. Evolutionary Power Reactor (U.S. EPR) to be located adjacent to the existing Calvert Cliffs Nuclear Power Plant (CCNPP), Units 1 and 2, near Lusby, Calvert County, Maryland (COLA or Application).[1] The proposed unit will be known as Calvert

[1] The original COL applicants were Constellation Generation Group, LLC and UniStar Nuclear Operating Services, LLC. The application was revised by letter dated August 1, 2008, which among other

Cliffs Nuclear Power Plant, Unit 3 (CCNPP3). The COL Applicants subsequently revised and supplemented the Application.

On September 26, 2008, the NRC published a notice of hearing on the Application, which provided members of the public sixty days from the date of publication to file a petition for leave to intervene in this proceeding. 73 Fed. Reg. 55,876 (Sept. 26, 2008). In response to the Notice of Hearing, the Intervenors submitted their "Petition to Intervene in Docket No. 52-016, Calvert Cliffs-3 Nuclear Power Plant Combined Construction and License Application" on November 19, 2008. On December 15, 2008, the NRC Staff filed an answer to the Petition. The Licensing Board held a prehearing conference in Rockville, Maryland on February 20, 2009, regarding the admissibility of the proposed contentions.

On March 24, 2009, the Licensing Board issued a Memorandum and Order admitting the Intervenors as parties to this proceeding and admitting three proposed contentions. *Calvert Cliffs 3 Nuclear Project, LLC and UniStar Nuclear Operating Services, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), LBP-09-4, 69 NRC 170 (2009).

NUREG-1936, *Draft Environmental Impact Statement for the Combined License (COL) for Calvert Cliffs Nuclear Power Plant Unit 3* (April 2010) (DEIS) was issued and made publicly available on April 13, 2010.[2] On April 20, 2010, the NRC Staff transmitted to the Board and the parties notice of the availability of the DEIS by service through the Electronic Information Exchange. The Intervenors filed their Intervenor Submission to admit proposed new contention 10 on June 25, 2010.

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things, changed the applicants to Calvert Cliffs 3 Nuclear Project, LLC and UniStar Nuclear Operating Services, LLC.

[2]The DEIS is contained in two volumes. Volume 1 (ML101230376) provides coverage through Chapter 10. Volume 2 (ML101030167) provides coverage of Appendices A to M.

DISCUSSION

The Intervenors assert that one new contention based on the Draft Environmental Impact Statement should be admitted in this proceeding. For the reasons set forth below, the Intervenors' new contention should be rejected.

I. Legal Standards for Admissibility of New and Amended Contentions

The admissibility of new and amended contentions is governed by 10 C.F.R. § 2.309(f)(2) and 2.309(f)(1).

First, new or amended contentions arising under the National Environmental Policy Act may be filed if there are data or conclusions in the NRC draft environmental impact statement that differ significantly from the data or conclusions in the applicant's documents. 10 C.F.R. § 2.309(f)(2). Otherwise, new or amended contentions filed after the initial filing period may be admitted only with leave of the presiding officer if, in accordance with 10 C.F.R. § 2.309(f)(2), the contention meets the following requirements:

> (i) The information upon which the amended or new contention is based was not previously available;
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> (ii) The information upon which the amended or new contention is based is materially different than information previously available; and
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> (iii) The amended or new contention has been submitted in a timely fashion based on the availability of the subsequent information.

10 C.F.R. § 2.309(f)(2)(i)-(iii).

The 10 C.F.R. § 2.309(f)(2) standard for new or amended contentions addresses two situations. For the first situation, 10 C.F.R. § 2.309(f)(2) states that contentions may be filed on the DEIS where the DEIS differs significantly from the applicant's documents, which in this case is the Calvert Cliffs Nuclear Power Plant Unit 3, Combined License Application, Part 3: Environmental Report, Revision 6, September 2009 (Environmental Report or ER). Such new or amended environmental contentions "must be submitted promptly after the NRC's environmental documents are issued." Changes to Adjudicatory Process (Final Rule), 69 Fed.

Reg. 2182, 2221 (Jan. 14, 2004). The second situation provides criteria for filing "all other new or amended contentions," making clear that the criteria in 10 C.F.R. § 2.309(f)(2)(i) through (iii) must be satisfied for admission of a contention based on new information. *Id*. If new information arises related to the ER, then under the criteria of 10 C.F.R. § 2.309(f)(2)(i) through (iii), an intervenor must raise this new information in a timely fashion and not wait until the DEIS is issued. A licensing board has recognized the two-fold application of the rule, but has pointed out that no significant difference exists between the standards for the two situations. *Exelon Generating Company, LLC* (Early Site Permit for Clinton ESP Site), LBP-05-19, 62 NRC 134, 160-64 (2005).

Further, the status of the petitioner is the relevant factor in determining whether 10 C.F.R. § 2.309(f)(2) regarding new and or amended petitions or 10 C.F.R. § 2.309(c) regarding untimely petitions is applied to determine the admissibility of new, amended, or untimely petitions. A new or amended contention filed by a previously admitted intervenor must be reviewed under the requirements of 10 C.F.R. § 2.309(f)(2) rather than the provisions of 10 C.F.R. § 2.309(c). *See Pa'ina Hawaii, LLC* (Material License Application), CLI-10-18, 72 NRC __, (Jul. 8, 2010) (slip op. at 40 n.171).[3] In either case, the new, amended, or untimely petition must meet the general contention admissibility requirements of 10 C.F.R. § 2.309(f)(1) as discussed next.

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[3] The Commission stated that "[t]here has been some discussion recently over the application of 10 C.F.R. § 2.309(f)(2) (governing new or amended contentions), and 10 C.F.R. § 2.309(c) (governing untimely petitions). *See generally Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), LBP-10-1, 71 NRC __ (Jan. 8, 2010) (slip. op). To be clear, in the circumstances presented here, where Concerned Citizens was admitted to this case as a party at the time it filed Amended Contention 3, consideration of the contention's admissibility is governed by the provisions of § 2.309(f)(2), as well as the general contention admissibility requirements of § 2.309(f)(1)." *Pa'ina*, CLI-10-18, 72 NRC at __ (slip. op. at 40 n.171). Similarly, in this case, the Intervenors have been admitted to parties to this proceeding. Accordingly, consideration of New Contention 10 is governed by the requirements of 10 C.F.R. § 2.309(f)(2). Even if 10 C.F.R. § 2.309(c) were to apply in this case, the Intervenors fail to address these requirements.

Amended and new contentions must comply with the general contention admissibility requirements set forth in 10 C.F.R. § 2.309(f)(1). In accordance with 10 C.F.R. § 2.309(f)(1), an admissible contention must:

> (i) provide a specific statement of the legal or factual issue sought to be raised;
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> (ii) provide a brief explanation of the basis for the contention;
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> (iii) demonstrate that the issue raised is within the scope of the proceeding;
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> (iv) demonstrate that the issue raised is material to the findings the NRC must make to support the action that is involved in the proceeding;
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> (v) provide a concise statement of the alleged facts or expert opinions, including references to specific sources and documents, that support the petitioner's position and upon which the petitioner intends to rely at the hearing;
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> (vi) . . . provide sufficient information to show that a genuine dispute with the Applicant exists with regard to a material issue of law or fact, including references to specific portions of the application that the petitioner disputes, or in the case when the application is alleged to be deficient on a relevant matter as required by law, the identification of such deficiencies and supporting reasons for this belief . . . .

10 C.F.R. § 2.309(f)(1). The Commission has emphasized that the rules on contention admissibility are "strict by design." *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 358 (2001), *pet. for reconsideration denied*, CLI-02-01, 55 NRC 1 (2002). Failure to comply with any of these requirements is grounds for the dismissal of a contention. *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 325 (1999). "Mere 'notice pleading' does not suffice." *Amergen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-06-24, 64 NRC 111, 119 (2006) (internal quotation omitted). The general contention admissibility requirements apply to contentions on the DEIS as well. *See*, *e.g.*, *Exelon Generating Company, LLC* (Early Site Permit for Clinton ESP Site), CLI-05-29, 62 NRC 801, 808-09 (2005) (applying 10 C.F.R. § 2.309(f) standards to DEIS contentions).

II. The Intervenors' Proposed Contention Was Not Timely Filed

The Board issued its Order establishing a schedule to govern further proceedings but did not establish a specific time for filing new or amended contentions based on the draft EIS. The Board provided, "if Petitioners learn of relevant new information in the Draft EIS, they should file any new or amended environmental contentions based on that new information promptly, as required by Section 2.309(f)(2) . . . ." *Calvert Cliffs 3 Nuclear Project, LLC and UniStar Nuclear Operating Services, LLC* (Calvert Cliffs Unit 3), at *6 (Apr. 22, 2009) (unpublished order) (ML091120507) (Establishing schedule to govern further proceedings).

In addressing the timeliness of filing proposed Contention 10, the Intervenors state that the "DEIS was issued publicly on April 26, 2010."[4] Intervenor Submission at 16. The Intervenors also state that they received two messages from the NRC staff announcing public availability of the DEIS would be on April 26, 2010.[5] *Id.* at 16-17.

The NRC staff provided the Board and the parties with notice of availability of the DEIS on April 20, 2010.[6] The Intervenors filed the Intervenor Submission on June 25, 2010. The Intervenors assert that their Submission was timely filed because they were under the impression that the DEIS would not be public until April 26, 2010. Submission at 16-17.

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[4] The DEIS was made publicly available in ADAMS on April 13, 2010 as shown in the ADAMS document properties for the date to be released and the date declared.

[5] The Intervenors appear to have misunderstood the messages. The email messages are simply transmitting a table listing correspondence to various stakeholders, and indicate that the listed correspondence would be available on April 26, 2010. *See* e-mail 1 of 2 from Kimberly Dent to Public Service List, transmitting all letters on the DEIS for Calvert Cliffs, Unit 3 (Apr. 20, 2010) (ML101820536); e-mail 2 of 2 from Kimberly Dent to Public Service List, transmitting all letters on the DEIS for Calvert Cliffs, Unit 3 (Apr. 20, 2010) (ML101820542). Neither of them indicated that the DEIS would not be available until April 26, 2010. Note that although the messages do not appear to have been sent to the Intervenors, they were sent to the public service list which does not appear as a recipient of the email transmittal letters because it was blind copied in the email notifications to avoid replies to all. *See also* e-mail from Kimberly Dent to Public Service List, providing notice of DEIS availability (Apr. 20, 2010) (ML101820559).

[6] Letter from Counsel for the NRC Staff to the Board, Providing Notice of Availability of NUREG-1936, Draft Environmental Impact Statement for the Combined License (COL) for Calvert Cliffs Nuclear Power Plant Unit 3 (Apr. 20, 2010) (ML101100546).

Further, Intervenors claim that if their Submission were deemed by the Board to be untimely, they request an extension of time due to "unusual circumstances." *Id*. at 17. Specifically, the Intervenors claim that Mr. Mariotte's paternity leave from April 25, 2010 through May 17, 2010, warrants an extension of time. *Id*.

The Intervenors request for an extension of time, however should be denied, and the Intervenor Submission should be rejected as untimely filed. First, the Intervenors did not indicate why the other three admitted Intervenor parties could not timely file. The Intervenors could have anticipated the overlap of Mr. Mariotte's unavailability with the release of the DEIS and the filing deadline.[7] The Intervenors were each notified of the public availability of the DEIS prior to the birth of Mr. Mariotte's daughter through service of the Staff's notice. The Intervenors would typically have 30 days to file proposed contentions, although the Applicant supports 60 days.[8] Finally, the Intervenors did not attempt to define or extend their filing time until after 60 days from the Staff notice had passed. Ultimately, the Intervenors filed their proposed contention 73 days after public availability of the DEIS and 66 days after the Staff letter to the Board was filed. Considering all of the relevant facts as a whole, even if the Board were to allow 60 days for filing of new contentions, the Intervenors did not submit their new proposed contention promptly after the issuance of the DEIS and therefore do not comply with the requirements of 10 C.F.R. § 2.309(f)(2). Therefore, the Intervenors' proposed Contention 10 should be denied.

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[7] A scheduling letter was sent to the Applicant dated February 23, 2010, which set the scheduled date for DEIS issuance as April 16, 2010 (ML100540412).

[8] 30 days would be typical under the Model Milestones provided in 10 C.F.R. Part 2, Appendix B for subpart L hearing procedures.

III. The Intervenors' Have Not Submitted an Admissible Contention

The Intervenors' proposed Contention 10 reads:

> The Draft Environmental Impact Statement (DEIS) is inadequate to meet the requirements of 10 CFR 51.71(d) or provide reasonable support for the NRC's decision on issuance of a construction/operating license for the proposed Calvert Cliffs-3 nuclear reactor because its analyses of Need for Power, Energy Alternatives and Cost/Benefit analysis (Chapters 8, 9, and 10) are flawed and based on inaccurate, irrelevant and/or outdated information.

Intervenor Submission at 1. The Intervenors argue contention 10 in four subparts, labeled A through D. Each subpart is discussed, in order, below. [9]

A. The Intervenors' Contention 10(A) Should Be Denied

> The DEIS' Analysis of Need for Power in [sic] Inadequate and Based on Faulty and Outdated Information

Intervenor Submission at 2.

In Subpart A, the Intervenors assert that the NRC "DEIS' [a]nalysis of the need for power is inadequate and based on faulty and outdated information." *Id*. The Intervenors make three basic arguments to support their need for power assertions: that the analysis is based on outdated information; that the analysis considers only Maryland rather than the whole PJM Interconnection, LLC (PJM) grid service area; and that the electricity demand projections do not support a new reactor at Calvert Cliffs.

Staff Response:

The assessment of need for power has historically been equated "with the benefits of the proposed action" for the cost-benefit balance consideration. Nuclear Energy Institute; Denial of Petition for Rulemaking, 68 Fed. Reg. 55,905, 55,909 (Sept. 29, 2003) (NEI Rulemaking Petition Denial). While need for power assessments are required, they "'should not

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[9] As stated, each of the Subparts (A-D) to Contention 10 will be discussed separately. The subparts present distinct arguments that require individual treatment. Despite the individual treatment of Contention 10's subparts, the Staff does not believe that these subparts have any cumulative force that would constitute an admissible contention.

involve burdensome attempts to precisely identify future conditions. Rather, it should be sufficient to reasonably characterize the costs and benefits associated with proposed licensing actions.'" *South Carolina Electric & Gas Co. & South Carolina Public Service Authority (Also Referred to as Santee Cooper)* (Virgil C. Summer Nuclear Station, Units 2 and 3), CLI-10-01, 71 NRC __, __ (Jan. 7, 2010) (slip op. at 21) (quoting NEI Rulemaking Petition Denial, 68 Fed. Reg. at 55,910). The Commission has also recognized that long-range forecasts of need for power are especially uncertain because they depend on many factors, and many of these factors are, themselves, inherently uncertain. *Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant, Units 1, 2, 3, and 4), CLI-79-5, 9 NRC 607, 609-10 (1979).

The NRC Staff's assessment of need for power is contained in Chapter 8 of the DEIS. In Chapter 8, the Staff examined whether there was a need for baseload power[10] in the region of interest in the appropriate timeframe.[11] DEIS at 8-1. The Staff "reviewed the 2009 Order by the [Maryland Public Service Commission] MPSC to issue UniStar a [Certificate of Public Convenience and Necessity] CPCN for Unit 3 and several reports prepared by State and regional entities."[12] DEIS at 8-5. After determining that, taken in aggregate, these forecasts and documents were (1) systematic, (2) comprehensive, (3) subject to confirmation, and (4) responsive to forecasting uncertainty, DEIS at 8-8, the Staff's analysis and conclusions were

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[10] In its 2009 Order granting a CPCN to UniStar for Unit 3, the MPSC found that "[u]nit 3 would be a welcome source of baseload power *designed to run continuously* . . . ." DEIS at 8-6.

[11] The Staff concluded "that there is a need for power from proposed Unit 3 at the Calvert Cliffs site by December 2015," which is the Applicant's projected time frame to begin commercial operation. DEIS at 8-1.

[12] These reports included the 2009 MPSC Order to issue the CPCN to UniStar; a 2007 MPSC Electric Supply Adequacy Report; a report of Reliability First Corporation Reserve Margin Projections; and the *Maryland Strategic Electricity Plan* prepared in 2008 by the Maryland Energy Administration. DEIS at 8-5 to 8-7.

ultimately directed toward assessing the need for baseload power. *Id.* at 8-9. After completing its assessment, the Staff reached the following conclusion:

> The NRC staff concludes (1) there is a shortage of power in the Maryland region that could be at least partially addressed by construction of proposed Unit 3 at the Calvert Cliffs site; (2) construction of Unit 3 would reduce the likelihood of an electricity supply reliability crisis in Maryland; and (3) construction of Unit 3 would contribute to the new generation needed in the RFC region by 2018 to meet reserve targets. *Based on its analysis, the staff concludes there is a justified need for new baseload generating capacity in Maryland in excess of the planned output of proposed Unit 3.*

Id. (emphasis added).

In support of their arguments relating to faulty and outdated information, the Intervenors state that while "updated in relation to the [Applicants'] Environmental Report, [the DEIS] is still outdated." *Id.* Further, the Intervenors state that "NRC Staff's analysis of need for power is not reliable because it focuses on the State of Maryland rather than the broader area that would be served by Calvert Cliffs Unit 3, the PJM grid." *Id.* (internal footnotes omitted). Lastly, the Intervenors state that "electricity demand has actually plummeted in Maryland and throughout the PJM grid, primarily due to the recession, but also due to demand-side management programs in the region which exist to reduce electrical usage." *Id.* at 2-3.

Contention 10(A) does not present sufficient information to demonstrate a genuine dispute with the DEIS on a material issue of law or fact. 10 C.F.R. § 2.309(f)(1)(vi). In addition, portions of the Intervenors arguments are untimely, and therefore fail to meet the criteria for new or amended contentions. 10 C.F.R. § 2.309(f)(2).

The Intervenors' first argument asserts that the NRC Staff's analysis is based on outdated information. Specifically, the Intervenors question the use of "a 2009 Maryland Public Service Commission decision authorizing a Certificate of Public Convenience and Necessity [CPCN] for Calvert Cliffs-3, a January 2010 PJM load forecast report, a 2010 Maryland Department of Natural Resources report, and other documents much more recent than those

cited by Applicants in their Environmental Report." Intervenor Submission at 2. The documents used by the staff were prepared by the State of Maryland and other regional entities. The MPSC found that a need for power exists and issued the CPCN on that basis. The NRC Staff may rely upon such information in its analyses. "[T]he NRC does not supplant the States, which have traditionally been responsible for assessing the need for power generating facilities, their economic feasibility and for regulating rates and services . . . [T]he NRC has acknowledged the primacy of State regulatory decisions regarding future energy options." 68 Fed. Reg. 55,905 at 55,909 (Sept. 29, 2003). The Intervenors fail to show that the Staff's reliance on these documents was not appropriate or that there are more recent documents that the Staff should have relied upon.

The Intervenors second argument states that "NRC Staff's analysis of need for power is not reliable because it focuses on the State of Maryland rather than the broader area that would be served by Calvert Cliffs Unit 3, the PJM grid." Intervenor Submission at 2. (internal footnotes omitted). This argument attacks the determination of the appropriate Region of Interest (ROI) and this argument does not present sufficient information to demonstrate a genuine dispute with the DEIS on a material issue of fact or law. 10 C.F.R. § 2.309(f)(1)(vi). As explained in the DEIS, the purpose and need of the proposed NRC action, "is to provide for additional large baseload electrical generating capacity *within the State of Maryland*." (Emphasis added). DEIS at 1-9. The proposed NRC action is a direct reflection of the Applicant's purpose for Unit 3 which "is to build and operate a baseload nuclear merchant power plant that will generate needed power *for Maryland*." (Emphasis added) Calvert Cliffs Nuclear Power Plant Unit 3, Combined License Application, Part 3: Environmental Report, Revision 6, September 2009, at 1-2 (ML092880899). An applicant's stated purpose and need for the project is entitled to deference by the NRC. The Board has stated that "NEPA and the decisions interpreting it advise us quite clearly that the Staff should take into account the Applicant's business purpose (goals and needs) of owning and operating baseload power plants at the Clinton Site." *Exelon*

Generating Co., LLC, (Early Site Permit for Clinton ESP Site), LBP-05-19, 62 NRC 134, 157 (2005). Another Board stated that "the EIS alternatives analysis should be based around the applicant's goals, including its economic goals[,]" and an agency cannot redefine those goals. *Progress Energy Fla., Inc.*, (Combined License Application for Levy County Nuclear Power Plant, Units 1 and 3), LBP-09-10, 70 NRC 51, 127 (2009) (citing *Hydro Resources, Inc*. (P.O. Box 15910, Rio Rancho, NM 87174), CLI-01-04, 53 NRC 31, 55 (2001)). The DEIS' analysis appropriately addresses the Applicants' stated goals and needs. Accordingly, this basis for Contention 10(A) is inadmissible. 10 C.F.R. § 2.309(f)(1)(vi).

In addition, the Intervenors do not meet their burden of demonstrating that their Region of Interest argument is timely. 10 C.F.R. § 2.309(f)(2). The Staff's DEIS assessment of purpose and need for the proposed action was based on Applicants' statement in Revision 6 of the ER. ER, Rev. 6 at 1-2. Therefore, to the extent that the Intervenors challenge the purpose and need determination for the proposed NRC action, the ER and DEIS do not "differ significantly" in this respect. 10 C.F.R. § 2.309(f)(2). Also, the Intervenors do not point to any material, that differs significantly from the ER, upon which their arguments are based, so they fail to satisfy 10 C.F.R. § 2.309(f)(2). Intervenors should have made their "purpose and need" arguments much earlier based upon the ER, and not have waited for the DEIS to be published.

As stated above, the Intervenors have not shown their Contention 10(A) meets the admissibility requirements 10 C.F.R. § 2.309(f)(2). For the foregoing reasons, the Intervenors have not met their burden of demonstrating that their "purpose and need" argument meets the requirements of 10 C.F.R. § 2.309(f)(2). Accordingly, this basis for Contention 10(A) is inadmissible.

Intervenors further argue that "electricity demand has actually plummeted in Maryland and throughout the PJM grid, primarily due to the recession, but also due to demand-side management programs in the region which exist to reduce electrical usage." Intervenor Submission at 2-3. The Intervenors make a number of assertions of this type. For example, the

Intervenors state that "[t]he DEIS makes no effort to provide or cite new projections of future demand that are based on the fact that demand has dropped substantially over the past three years, and appears on its way to dropping again in 2010." *Id.* at 3. The Intervenors argue that the DEIS should account for alleged falling demand, but Intervenors never explain how peak demand taken at specific dates[13] (citing, *inter alia,* June 24, 2010 as a data point demonstrating that summer peak demand has fallen) is relevant to the analysis of the demand for baseload power generation. Intervenor Submission at 3. A short-term reduction in demand is not sufficient to necessitate an accounting in the DEIS for that changed demand. The longstanding position of the Commission is that "inherent in any forecast of future electric power demands is a substantial margin of uncertainty." *Carolina Power and Light Company*, (Shearon Harris Nuclear Power Plant), CLI-79-5, 9 NRC 607, 609 (1979); *See also Georgia Power Company* (Alvin W. Vogtle Nuclear Plant, Units 1 & 2) DD-81-12, 14 NRC 265, 271, (1981)(Director Decision citing *Carolina Power*, "given the margin of uncertainty inherent in any demand forecast, changes in a demand forecast are not likely to 'clearly mandate a change in result ... ."). The Intervenors' demand argument does not present sufficient information to change the Staff's need for power analysis or to affect the Staff's conclusion and thus does not demonstrate a genuine dispute with the DEIS on a material issue of law or fact. 10 C.F.R. § 2.309(f)(1)(vi).

Further, the Intervenors' state that "[a]lso lacking in the DEIS is a meaningful discussion of demand-side programs, that could and almost certainly will reduce future electrical demand in Maryland and the PJM service area." Intervenor Submission at 5. Because Calvert Cliffs Unit 3 is intended to operate "as a baseload, merchant independent power producer", ER Rev. 6 at 9-25, there is no requirement for the DEIS to address demand-side management (DSM). *See Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-05-29, 62 NRC 801

[13] Intervenor Submission at note 2 discusses peak demand during the summer of 2006.

(2005), *aff'd, Envtl. Law & Policy Ctr v. NRC,* 470 F.3d 676 (7th Cir. 2006). In *Clinton*, the Board held that "Exelon and the NRC staff were not obliged to examine general efficiency or conservation proposals that would do nothing to satisfy this particular project's goals," which was to generate base load power. *Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-05-29, 62 NRC 801 (2005), *aff'd, Envtl. Law & Policy Ctr v. NRC,* 470 F.3d 676 (7th Cir. 2006). By failing to explain how the Staff, in the DEIS, is required to consider demand-side programs for this merchant power, the Intervenors' DSM argument does not demonstrate a genuine dispute with the DEIS on a material issue of law or fact. 10 C.F.R. § 2.309(f)(1)(vi).

For the foregoing reasons, the Intervenors' Contention 10(A) should be denied.

B. The Intervenors' Contention 10(B) Should Be Denied

The DEIS Discussion of Energy Alternatives is Inadequate, Faulty and Misleading

Intervenor Submission at 6.

In support of their proposed contention, the Intervenors' argue that, "the NRC did not research Maryland's offshore wind potential in any meaningful manner, nor did it investigate the offshore wind potential of the rest of the mid-Alantic coast, even though it would feed into the PJM grid." Intervenor Submission at 7. The Intervenors' next contest the Staff's reference to a "2007 study by Southern Company and the Georgia Institute of Technology of wind potential off the coast of Georgia as evidence that Maryland's offshore wind potential is trivial." *Id.* The Intervenors point out that, "[t]he U.S. Department of Energy's assessment of offshore wind gives Maryland's offshore potential its highest ratings—as outstanding or superb" and that "such ratings are applied to the entire coastal region of the PJM service area." Intervenor Submission 7-8. Regarding the DEIS discussion of a solar power alternative, the Intervenors argue that, "the DEIS then fails to even attempt to quantify the possible contribution solar PV [photovoltaic] could make for Maryland." *Id.* at 8. The Intervenors also point out that solar power potential is not "analyzed anywhere else in the PJM service area besides Maryland." *Id.*

Staff Response:

This proposed contention is inadmissible because the Intervenors do not meet the filing requirements of 10 C.F.R. § 2.309(f)(2), and the contention does not meet the requirements of 10 C.F.R. § 2.309(f)(1)(iv)-(vi).

Proposed Contention 10(B) does not demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the proposed action. 10 C.F.R. § 2.309(f)(1)(iv). The Intervenors contend that the DEIS analysis of the wind power alternative and the solar power alternative are each inadequate. Intervenor Submission at 6-9. Generally, NEPA imposes procedural requirements on the NRC to take a "hard look" at the environmental impacts of building and operating a nuclear reactor. *Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-05-28, 62 NRC 721, 726 (2005). The NEPA "hard look" doctrine is subject to a "rule of reason" that the Commission has interpreted as obligating the agency to consider "all reasonable alternatives" to the proposed action. *Louisiana Energy Services, L.P.* (National Enrichment Facility), LBP-06-8, 63 NRC 241, 258-59 (2006). If the DEIS eliminates an alternative from consideration, NEPA does not require a detailed discussion of the rejected alternative's environmental impacts. Pursuant to CEQ regulations, the EIS must "[r]igorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated." 40 C.F.R. § 1502.14. Here, the Intervenors have failed to establish that NEPA requires the DEIS to provide an analysis beyond a brief discussion of why certain alternatives – such as wind power generation and solar power generation – were eliminated from consideration.

The DEIS eliminates wind power facilities from further consideration because they "would not currently be a reasonable alternative to construction of a 1600-MW(e) nuclear power generating facility that would be operated as a baseload plant within UniStar's ROI [region of interest]." DEIS at 9-23. Solar power facilities are similarly excluded from further consideration because they also "would not currently be a reasonable alternative" to meet the purpose and

need of the proposed project. DEIS at 9-23. The Intervenors do not explain why wind and solar generation, as alternatives that do not meet the purpose and need of the proposed project, require additional treatment in the DEIS. The DEIS discussion of alternatives is bounded by feasibility. *See Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council*, 435 U.S. 519, 551 (1978). The DEIS is not required under NEPA to discuss alternatives that are not viable. *Id.* Because the Intervenors do not establish that the proposed alternative is viable, and thereby do not show how detailed study of this proposed alternative is required under NEPA, the Intervenors do not demonstrate that this proposed alternative is material to the findings the NRC must make. 10 C.F.R. § 2.309(f)(1)(iv).

The Intervenors do not provide a concise statement of the alleged facts or expert opinions, including references to specific sources and documents, that support proposed Contention 10(B). 10 C.F.R. § 2.309(f)(1)(v). The Intervenors assert that "not only does the DEIS cite a misleading and irrelevant study, it does not even acknowledge the reality that there is enormous offshore wind power potential off Maryland's coast and the PJM region generally." Intervenor Submission at 8. The Intervenors likewise state for solar power that "[t]he DEIS thus makes it impossible to assess the possible solar PV contribution to Maryland's (and the PJM's) electrical supply." *Id.* at 8-9. However, the Intervenors do not provide any facts or expert opinions to show how sources of wind power generation or solar power generation could meet the purpose and need of the proposed project by providing large baseload power within the Applicant's region of interest. A contention is inadmissible if it only offers "bare assertions and speculation." *Fansteel Inc.* (Muskogee, Oklahoma Site), CLI-03-13, 58 NRC 195, 203 (2003) (quoting *GPU Nuclear, Inc.* (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 NRC 193, 208 (2000)). Therefore, Contention 10(B) is not supported by facts or expert opinions, and does not comply with 10 C.F.R. § 2.309(f)(1)(v).

Proposed Contention 10(B) does not provide sufficient information to show that a genuine dispute with the DEIS exists with regard to a material issue of law or fact. 10 C.F.R.

§ 2.309(f)(1)(vi). In proposed Contention 10(B), the Intervenors argue that the offshore wind generating potential is larger than stated in the DEIS, and that the solar photovoltaic generating potential is not quantified. Intervenor Submission at 6-9. Although the Intervenors provide some information about the availability of offshore wind power, they do not dispute the DEIS conclusions that neither energy source can currently provide large baseload power. Because Contention 10(B) only focuses on showing that there is more wind and solar generating capacity available than allegedly examined in the DEIS, Contention 10(B) does not provide sufficient information to show that a genuine dispute with the DEIS exists with regard to the wind alternative and the solar alternative conclusions in the DEIS, specifically that they are not currently reasonable alternatives to the proposed project. 10 C.F.R. § 2.309(f)(1)(vi).

The arguments by the Intervenors that the DEIS should have examined alternative energy sources in the area outside of Maryland are untimely as a challenge to the purpose and need of the proposed project and challenges the selection of the region of interest established in the Application to examine alternatives. The Intervenors do not meet the requirements of 10 C.F.R. § 2.309(f)(2). As explained in the DEIS, the purpose and need of the proposed NRC action, "is to provide for additional large baseload electrical generating capacity *within the State of Maryland*." DEIS at 1-9 (emphasis added). The proposed NRC action is a direct reflection of the Applicant's purpose for Unit 3 which "is to build and operate a baseload nuclear merchant power plant that will generate needed power *for Maryland*." ER Rev. 6 at 1-2 (emphasis added) (ML092880899). The Applicant identified its region of interest in the ER Section 9.3.1.1. where it states part of the basis for its choice as, "an expectation that the needed electric power, to meet in-state demand, should not be imported into the state." ER Rev. 6 at 9-38. Therefore, since the purpose and need and region of interest information in the DEIS reflects information that was in the ER, it does not materially differ from the ER, and thus the Intervenors challenge to the purpose and need or the region of interest does not meet the requirements of 10 C.F.R. § 2.309(f)(2).

C. The Intervenors' Contention 10(C) Should Be Denied

The DEIS Discussion of a Combination of Alternatives is Inadequate and Faulty

Intervenor Submission at 9.

The Intervenors argue that the DEIS combination alternative is fatally flawed because of the "failure to adequately understand wind power potential for Maryland, or to quantify solar power potential, or to correctly examine the impact of demand-side programs." *Id.* The Intervenors assert that the wind power potential in the combination alternative analyzed in the DEIS "is grossly underestimated in the DEIS' arbitrary formulation." *Id.* The Intervenors further assert that the DEIS "grossly underestimate[s] the impact of state-mandated demand-side programs," and "has no basis whatsoever for assuming a 75 MW contribution from solar power." *Id.* at 10. The Intervenors contend that "a feasible combination of alternatives might well include a considerably smaller natural gas plant than contemplated in the DEIS, along with a much larger contribution from renewable sources of power and demand-side programs" which "could produce reliable electricity (the goal of 'baseload' power) with lower environmental consequences and quite likely at reduced economic cost." *Id.*

Staff Response:

This proposed contention is inadmissible because the Intervenors do not meet the requirements of 10 C.F.R. § 2.309(f)(2), and the contention does not meet the requirements of 10 C.F.R. § 2.309(f)(1)(iv)-(vi).

Generally, NEPA imposes procedural requirements on the NRC to take a "hard look" at the environmental impacts of building and operating a nuclear reactor. *Louisiana Energy Services, L.P.*, CLI-05-28, 62 NRC at 726. The NEPA "hard look" doctrine is subject to a "rule of reason" that has been interpreted as obligating the agency to consider "all reasonable alternatives" to the proposed action. *Louisiana Energy Services, L.P.*, LBP-06-8, 63 NRC at 258-59; 10 C.F.R. Part 51, Subpart A, App. A. The alternatives analysis is the "heart of the

environmental impact statement." 10 C.F.R. Part 51, Subpart A, App. A. However, the agency is not required to consider every imaginable alternative to a proposed action; rather, it only need evaluate reasonable alternatives. *See, e.g.*, *Long Island Lighting Co*. (Shoreham Nuclear Power Station, Unit 1), CLI-91-2, 33 NRC 61, 71 (1991). "An agency's consideration of alternatives is sufficient if it considers an appropriate range of alternatives, even if it does not consider every available alternative." *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-03-30, 58 NRC 454, 479 (2003) (quoting *Headwaters, Inc. v. BLM*, 914 F.2d 1174, 1181 (9th Cir. 1990), *reh'g and reh'g en banc denied*, 940 F.2d 435 (1991)) (alteration in original).

Here, the Intervenors contend that "it is reasonable to examine the [sic] DEIS will examine a feasible combination of alternatives." Intervenor Submission at 9. The Intervenors, however, are simply suggesting that an additional combination alternative be considered, although they do not specify exactly what the combination should be. *Id.* at 9-10. Because the Intervenors only show that another alternative could be considered without specifying what it should be, how it would be reasonable by fulfilling the purpose and need of the proposed project, or why the range of alternatives examined by the DEIS was not sufficient, the contention does not show why the additional alternative must be considered under NEPA's rule of reason. Therefore, the Intervenors do not demonstrate that the issue raised in proposed Contention 10(C) is material to the findings the NRC must make to support the action that is involved in the proceeding because examination of an additional combination alternative is not required by NEPA. 10 C.F.R. § 2.309(f)(1)(iv).

The Intervenors have not supported Contention 10(C) with facts or expert opinions. The Intervenors state that "600 MW of offshore wind power already have been proposed" for Maryland. Intervenor Submission at 9. The Intervenors assert that "the wind power potential in [the DEIS] combination [alternative] is grossly underestimated." Intervenor Submission at 9. As the Commission has previously stated, a contention is inadmissible if it only offers "bare

assertions and speculation." *Fansteel Inc.* (Muskogee, Oklahoma Site), CLI-03-13, 58 NRC 195, 203 (2003) (quoting *GPU Nuclear, Inc.* (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 NRC 193, 208 (2000)). The Intervenors' assertion that wind power potential is "grossly underestimated" does not provide a concise statement of the alleged facts or expert opinions, including references to specific sources and documents, that support the Intervenors' position. 10 C.F.R. § 2.309(f)(1)(v). The DEIS provides that "[t]he wind power would need to be coupled with a storage mechanism such as CAES to provide baseload power." DEIS at 9-26. In contrast, the Intervenors do not provide any facts or expert opinions to show that a storage mechanism is available or that a combination alternative with a greater contribution from wind would be viable to provide baseload power without a storage mechanism. The Intervenors, therefore, do not meet 10 C.F.R. § 2.309(f)(1)(v). Similarly, the Intervenors assert that demand-side programs and solar photovoltaics could provide a larger contribution to a combination alternative "with lower environmental consequence." Intervenor Submission at 10. However, the Intervenors do not provide any facts or expert opinion to show that such greater contribution could meet the purpose and need of the proposed action to provide baseload power. 10 C.F.R. § 2.309(f)(1)(v).

The Intervenors do not provide sufficient information to show that a genuine dispute with the DEIS exists with regard to a material issue of law or fact. 10 C.F.R. § 2.309(f)(1)(vi). The Intervenors state that their suggested combination alternative could produce power "with lower environmental consequences" than the combination analyzed in the DEIS. Intervenor Submission at 10. However, even assuming their assertion to be true, the Intervenors have not provided sufficient information to show that their suggested combination alternative would be environmentally preferable to the proposed action. The DEIS states that, "the [staff] concludes, from an environmental perspective, none of the viable energy alternatives are clearly preferable to construction of a new baseload nuclear power generating plant located within UniStar's ROI [region of interest]." DEIS at 9-28. Because the Intervenors have not provided any information

showing that their suggested combination alternative would be environmentally preferable to the proposed action, the Intervenors have not shown a genuine dispute with the DEIS on the material issue of whether any viable alternative is preferable to the proposed action. 10 C.F.R. § 2.309(f)(1)(vi).

Intervenors do not meet the filing requirements of 10 C.F.R. § 2.309(f)(2) for proposed Contention 10(C). The Intervenors do not show what data or conclusions from the DEIS, that Contention 10(C) is based upon, differ significantly from the data or conclusions in the Applicant's analysis of a combination alternative in the ER. *See* ER Section 9.2.3.3 (ER Rev. 6 at 9-25 through 9-29) (ML092880578). The Intervenors state that the "DEIS relies on data that were not included in the Environmental Report submitted with the Applicants' COL application." Intervenor Submission at 14. The fact that the DEIS, as a whole, does reference more recent studies than the ER, does not by itself demonstrate that the Intervenors meet the requirements of 10 C.F.R. § 2.309(f)(2). The Intervenors must specifically show that their proposed contention is based on data or conclusions "that differ significantly from the data or conclusions in the applicant's documents." 10 C.F.R. § 2.309(f)(2). The Intervenors only cite to the Applicants' discussion of the *wind power alternative* in the ER, and do not compare the Applicants' discussion of a *combination alternative* to the DEIS discussion of a combination alternative. *See* Intervenor Submission at 15 (citing ER Rev. 6 at 9-9). Without addressing the difference between the ER *combination alternative* and the DEIS *combination alternative*, the Intervenors do not meet the requirements of 10 C.F.R. § 2.309(f)(2).

D. <u>The Intervenors' Contention 10(D) Should Be Denied</u>

> The DEIS Discussion of Costs Both Understates Likely Costs and Disputes Cost Estimates in Applicants' ER, Calling into Question the ER's discussion of Calvert Cliffs-3 vs. Alternatives

Intervenor Submission at 11.

In Subpart D, the Intervenors raise an issue with the DEIS' discussion of costs. The Intervenors make three basic arguments to support their cost assertions: that the DEIS

understates the costs of building CCNNP3; that the DEIS' discussion of costs is in dispute with the Applicants' ER; and that higher construction costs means substantially higher electricity rates. *Id.* at 11-14.

Staff Response:

The Intervenors have failed to satisfy the requirements of 10 C.F.R. § 2.309(f)(1)(iv), (v), and (vi). In addition, portions of the Intervenors' arguments are untimely, and therefore fail to meet the criteria for new or amended contentions. 10 C.F.R. § 2.309(f)(2).

The Staff's assessment of the costs and benefits of the proposed CCNPP3 facility is contained in Chapter 10 of the DEIS. In Chapter 10, the Staff examined whether the benefits of this project outweigh the costs to the environment. After completing its assessment, the Staff reached the following conclusion:

> UniStar's business decision to pursue expansion of Calvert Cliffs' generating capacity by adding an additional nuclear reactor is an economic decision based on private financial factors subject to regulation by the MPSC . . . On the basis of the assessments in this EIS that the construction and operation of the proposed Calvert Cliffs-3, with mitigation measures identified by the review team, would have accrued benefits that most likely would outweigh the economic, environmental, and social costs associated with constructing and operating Unit 3 at the Calvert Cliffs site. For the NRC-proposed action (NRC-authorized construction and operation) the accrued benefits would also outweigh the costs of construction, preconstruction, and operation of Unit 3.

DEIS at 10-28.

As stated above, the Intervenors' three basic arguments to support their cost assertions are: that the NRC DEIS understates the costs of building CCNPP3; that the NRC's discussion of costs is in dispute with the Applicants' ER; and that higher construction costs means substantially higher electricity rates.

In the first of the three basic arguments the Intervenors make in Contention 10(D) – that the NRC DEIS understates the costs of building CCNPP3 – they fail to show how the "economic" costs relate to the "environmental" costs of the project. The Applicants' ER, after considering three alternative locations and a generic greenfield scenario, concluded that no

environmentally preferable alternative to the current Calvert Cliffs site was identified. ER Rev. 6 at 10-26. Economic costs are only considered when a viable alternative to the purpose and need is identified. "[T]his is not a cost/benefit analysis, but a balancing of the environmental effects of the proposed action and the alternatives determined to be reasonable (in light of the sponsor's selected purpose), against the benefits of each thereof." *Summer*, LBP-09-2, 69 NRC at 112 n. 99. The Intervenors argue that Applicants' use of "overnight"[14] cost estimates of $7.2 to $9.6 billion understates the "likely" costs of the facility. Contention 10 Submittal at 11. "[M]onetary construction costs are only relevant to the NRC's NEPA analysis if an environmentally preferable alternative is identified." *See Summer*, LBP-09-2, 69 NRC at 113 n.102.

> "Put another way, once it has been shown that the power to be produced by a plant is needed and that no environmentally preferable way exists of obtaining it, the acceptability of the 'cost' of the plant in dollars is a question for the utility and the State regulatory agencies, the true experts in this area…. Thus, an increase in monetary costs may well not alter the plant's cost-benefit balance at all, for the benefit side will increase correspondingly. In short…the final cost-benefit analysis will almost always favor the plant, simply because the benefit of meeting real demand is enormous – and the adverse consequences of not meeting that demand are serious."

Consumers Power Company, (Midland Plant, Units 1 and 2), ALAB-458, 7 NRC 155, 168-169, (1978). Finally, "neither NEPA nor [the Council on Environmental Quality] CEQ requires the costs and benefits of a proposed action be quantified in dollars or any other common metric." DEIS at 10-18. In this case, since neither the ER nor the Intervenors identified an environmentally preferable alternative, consideration of economic costs is unnecessary and the Intervenors' arguments regarding economic costs fail to demonstrate a genuine dispute with the DEIS on a material issue of law or fact. 10 C.F.R. § 2.309(f)(1)(iv).

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[14] The phrase commonly used to describe the monetary cost of constructing a nuclear plant is "overnight capital cost." The capital costs are those incurred during construction, when the actual outlays for equipment and construction and engineering are expended, in other words, the cost resulting if one were to pay for 100% of the plant "overnight". ER, Rev 6, at 10-27.

The Intervenors also assert that there is a lack of "some sort of defensible cost escalation component, as there is no history whatsoever to suggest that the Calvert Cliffs-3 project would be built at its estimated cost. Failure to do so would lead to an underestimate of costs and an overestimate of benefits." Intervenor Submission at 13. The DEIS clearly states that "interest and cost escalation during the construction and preconstruction period are excluded from the overnight capital cost." DEIS at 10-25. However, the Staff determined that since "[a]ll of these estimates include the cost of both construction and preconstruction activities . . . they [Applicants] overestimate the costs of the NRC proposed action and provide a conservative estimate of the costs for the benefit-cost analysis." *Id.* The Intervenors' fail to show why the Staff's acceptance of the construction cost range without interest or escalation considerations was inappropriate. As discussed above, only after an environmentally superior alternative has been identified do economic considerations become relevant.

The Intervenors also raise an issue regarding the inherent uncertainty of the $7.2 to $9.6 billion "overnight" cost estimate of constructing CCNPP3. *See* 10 C.F.R. § 2.390(a)(4). In this case, Applicants provided a range in which they believed the actual cost of construction would fall – namely $7.2 to $9.6 billion. The Staff, in its analysis, accepted this range as an overestimate because it includes costs from preconstruction activities outside the scope of NRC-regulated activities. DEIS at 10-22 to 10-23. However, the Staff reviewed recent literature in an effort to validate this cost range, *Id.* at 10-25, and concluded that "they [Applicants] overestimate the costs of the NRC proposed action and provide a conservative estimate of the costs for the benefit-cost analysis." *Id.* The Intervenors counter this conclusion by asserting that the cost of CCNPP3 will be much higher. The Intervenors only support for this assertion is the statement that "every reactor ever built, to the best of our knowledge, has gone over-budget." Intervenor Submission at 12. The Intervenors do not show how such alleged cost overruns are applicable to this project. In fact, they concede that their cost overrun assertions are "not necessarily evidence that the Calvert Cliffs-3 project would experience a cost overrun of

200+%, or even 80% . . . ." Intervenor Submission at 13. The Intervenors have stated that they believe "[t]he DEIS fails to acknowledge" cost overruns. *Id.* at 12. However, they have not demonstrated how the information is required by law, or provided facts or expert opinions to satisfy 10 C.F.R. § 2.309(f)(1)(v) and (vi). The Intervenors provide no support for their assertions regarding the DEIS' cost estimates nor do they show how alleged cost overruns are applicable to this project. A "bald assertion that a matter ought to be considered or that a factual dispute exists . . . is not sufficient;" rather, "a petitioner must provide documents or other factual information or expert opinion that set forth the necessary technical analysis to show why the proffered bases support its contention." *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 180 (1998) (citing *Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), LBP-95-6, 41 NRC 281, 305 (1995), *vacated in part and remanded on other grounds*, CLI-95-10, 42 NRC 1 (1995), *aff'd in part*, CLI-95-12, 42 NRC 111 (1995) (A petitioner is obligated to provide the [technical] analyses and expert opinion" or other information "showing why its bases support its contention.") Accordingly, the Intervenors fail to demonstrate a genuine dispute with the DEIS on a material issue of law or fact. 10 C.F.R. § 2.309(f)(1)(vi).

The second of the Intervenors' three cost arguments – that the NRC's discussion of costs is in dispute with the Applicants' ER – fails to demonstrate a genuine dispute with the DEIS on a material issue of law or fact. 10 C.F.R. § 2.309(f)(1)(iv). The Intervenors state that "[a]pplicants' ER repeatedly states, in comparing the costs of nuclear to costs of alternatives, that nuclear plants – by reference including Calvert Cliffs-3 – are expected to produce power in the range of $0.031 to $0.046 per kWh." Contention 10 at 13. The Intervenors' unsupported statement on this issue provides that "the DEIS undercuts Applicants' cost-benefit analyses, and *demonstrates that Chapters Nine and Ten of the Applicants' Environmental Report are wrong and misleading, and may not serve as the basis for licensing action." Id.* (Emphasis added).

The Staff compared the Applicants' estimate by reviewing recent documents[15] to determine the cost of producing power and concluded that cost to fall within "an overall range of 3.8 to 8.6 cents per kWh for operation costs." DEIS at 10-26. This approach was within the discretion allowed by the Commission when it stated that "[d]etermination of economic benefits and costs that are tangential to environmental consequences are within a wide area of agency discretion." *Louisiana Energy Services, L.P.*, CLI-05-28, 62 NRC at 726.

Lastly, the Intervenors' third cost argument – that higher construction costs means substantially higher electricity rate – misunderstands the nature of CCNPP3's business model. Intervenor Submission at 14. As stated above, CCNPP3's purpose and need "is to build and operate a baseload nuclear merchant power plant that will generate needed power for Maryland." ER Rev. 6 at 1-2. As discussed above, the Maryland Public Service Commission accepted this purpose and need and issued Applicants a Certificate of Public Convenience and Necessity for Unit 3 thereby providing state approval to proceed with the project. DEIS at 8-5 to 8-6. The NRC Staff may rely on this State of Maryland determination. 68 Fed. Reg. at 55,909. As a "merchant power plant", CCNPP3 will sell its output "on the wholesale market." ER Rev. 6 at 9-25. The Intervenors' fail to provide support for its assertion that "higher construction costs *means substantially higher electricity rates*." Intervenor Submission at 14 (Emphasis added). It is therefore, inadmissible because it does not present a genuine dispute with the DEIS on a material issue of law or fact as required by 10 C.F.R. § 2.309(f)(1)(vi)

For the foregoing reasons, the Intervenors' Contention 10(D) should be rejected.

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[15] 2007 Keystone study and 2009 MIT study. DEIS at 10-26.

CONCLUSION

The Intervenors' proposed Contention 10 should be rejected for failure to comply with the contention admissibility requirements in 10 C.F.R. § 2.309(f)(1) and the requirements for new and amended contentions in 10 C.F.R. § 2.309(f)(2).

Respectfully submitted,

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Dated at Rockville, Maryland
this 20th day of July, 2010

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

CERTIFICATE OF SERVICE

I hereby certify that copies of NRC STAFF ANSWER TO SUBMISSION OF CONTENTION 10 BY JOINT INTERVENORS have been served upon the following persons by Electronic Information Exchange this 20th day of July, 2010:

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