

**UNITED STATES OF AMERICA**  
**NUCLEAR REGULATORY COMMISSION**  
**BEFORE THE ATOMIC SAFETY AND LICENSING BOARD**

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In the Matter of  
Calvert Cliffs-3 Nuclear Power Plant  
Combined Construction and License Application

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Docket No. 52-016

**JOINT INTERVENORS' REPLY TO APPLICANTS AND NRC STAFF  
RESPONSES TO MOTION TO CLARIFY DEADLINE FOR FILING  
AMENDED CONTENTION FOR CONTENTION 1**

In our motion of November 15, 2010, seeking clarification of the deadlines for filing amended contentions in this proceeding, Joint Intervenors suggested a deadline of 30 days following a revision to the license application. Applicants and NRC staff responded that the deadline for filing an amended contention should instead be 30 days from the filing of any new relevant information, apparently in any forum, rather than from an actual revision to the license application. For example, Applicants state: "Instead, the Intervenors should be expected to file in a timely fashion after any new information becomes available."<sup>1</sup> Similarly, NRC staff states, "The Staff supports setting a 30-day deadline for new or amended contentions based on the date UniStar Nuclear Operating Services, LLC and Calvert Cliffs 3 Nuclear Project, LLC (collectively, Applicants) file new or materially different information on the licensing docket,

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<sup>1</sup> Applicants' Response to Motion to Clarify Deadline, page 2, November 22, 2010

including but not limited to revisions to the COL application, responses to Staff requests for additional information (RAIs), or other supplemental information.”<sup>2</sup>

In order to assure that Joint Intervenors receive reasonably prompt notice of any significant changes to the Applicant’s license application or position in this case, Joint Intervenors request the ASLB to clarify that the parties must comply with NRC policy for providing notice to the ASLB and parties of any new information which is relevant to Contention 1. This policy is discussed in NRC Statement of Policy: Handling of Late Allegations, 50 FR 11030, 1131 (March 19, 1985).<sup>3</sup>

For instance, Joint Intervenors request clarification that the Applicants should serve on the Board and parties their response to the Request for Additional Information (RAI) that was proposed (but not yet asked) by the Staff in a letter dated November 19, 2010. This RAI would ask: “In view of the fact that EDF is a foreign entity and apparently now possesses 100% ownership of UniStar, please justify how UniStar complies with the requirements of 10 CFR § 50.38, “Ineligibility of Certain Applicants.” Obviously, the Applicants’ answer to this request from the NRC staff will be highly significant and material to our Contention 1.

In the alternative, Joint Intervenors request that the timeliness of new contentions should be measured by counting thirty days from the date when new information is identified in the Applicant’s or Staff’s monthly disclosures. However, Joint Intervenors would not consider it fair to count thirty days from the date when a document is posted in ADAMS, because they do not have sufficient resources to maintain constant vigilance over the ADAMS document collection.

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<sup>2</sup> NRC Staff Answer to Joint Intervenors’ Motion to Clarify Deadline for Filing Amended Contention for Contention 1, page 1, November 24, 2010

<sup>3</sup>“All parties in NRC adjudicatory proceedings, including the NRC staff, have a duty to disclose to the boards and other parties all new information they acquire which is considered material and relevant to any issue in controversy in the proceeding. Such disclosure is required to allow full resolution of all issues in the proceeding.”

To illustrate the concern we are raising today: hypothetically speaking, if the Applicants were to provide a response to this request on January 4, 2011 that was posted by the NRC on January 6, 2011, Joint Intervenors—unless we were to take hours per day to go through the NRC’s ADAMS system to attempt to find newly submitted documents, which would be an extraordinary burden on pro se intervenors—might not learn that a response had been filed until monthly disclosures were made on February 1, 2011. According to the standard proposed by Applicants and NRC staff of a 30-day period from when new information become available, this would give Joint Intervenors only 4 to 6 days to file an amended contention from when we first learned of the new information.

It is clearly not hypothetical that Joint Intervenors anticipate amending Contention 1—Applicants have completely restructured this project to the point where it appears to be in blatant violation of Sections 103(d) of the Atomic Energy Act and CFR 50.38. Therefore Joint Intervenors have a significant interest in assuring that we are able to amend Contention 1 in a timely fashion and with a full opportunity to review relevant new information as it becomes available.

Therefore we request that the ASLB direct the Parties to promptly provide Board Notifications of whatever new information is issued that is relevant to Contention 1. Alternatively, we request the Board to clarify that the timeliness of contentions will be measured from the date on which new information relevant to Contention 1 is identified in monthly disclosures.

Respectfully submitted,

Michael Mariotte  
Nuclear Information and Resource Service  
This 29th day of November 2010

\_\_\_\_\_ Signed Electronically by \_\_\_\_\_

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## **CERTIFICATE OF SERVICE**

It is our understanding that all on the Calvert Cliffs-3 service list are receiving this motion through the submission I am making on November 29, 2010 via the EIE system.

### **REPLY TO APPLICANTS AND NRC STAFF REGARDING THEIR RESPONSES TO JOINT INTERVENORS' MOTION TO CLARIFY DEADLINE FOR FILING AMENDED CONTENTION FOR CONTENTION 1**

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