May 16, 2011

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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

APPLICANTS' RESPONSE TO MOTION FOR LEAVE TO REPLY

Pursuant to 10 C.F.R. § 2.323(c), the Calvert Cliffs 3 Nuclear Project, LLC, and UniStar Nuclear Operating Services, LLC ("UniStar"), hereby respond to the "Petitioners' Motion for Modification of the Commission's April 19, 2011, Order to Permit a Consolidated Reply," dated May 9, 2011 ("Motion").[1] Neither the Commission's order of April 19, 2011, nor 10 C.F.R. § 2.323(c) provides Petitioners with a right to reply as requested in their Motion. Section 2.323(c) allows a reply to a responsive filing only in compelling circumstances, such as where the answer includes a plainly and factually incorrect allegation or where the moving party

[1] The Motion was accompanied by "Petitioners' Reply To Responses To Emergency Petition To Suspend All Pending Reactor Licensing Decisions And Related Rulemaking Decisions Pending Investigation Of Lessons Learned From Fukushima Daiichi Nuclear Power Station Accident," dated May 6, 2011 ("Reply"). The Motion and Reply relate to the "Emergency Petition to Suspend All Pending Reactor Licensing Decisions and Related Rulemaking Decisions Pending Investigation of Lessons Learned From Fukushima Daiichi Nuclear Power Station Accident," dated April 14, 2011 ("Emergency Petition"), filed by Nuclear Information and Resource Service ("NIRS"), Beyond Nuclear, Public Citizen Energy Program, and Southern Maryland Citizen's Alliance for Renewable Solutions, which are intervenors in this proceeding, and other petitioners and stakeholders in various licensing and rulemaking matters (collectively "Petitioners").

demonstrates that it could not reasonably have anticipated the arguments to which it seeks to reply. That is not the case in this proceeding.

In the Motion, the Petitioners assert that there are several reasons for permitting a reply: (1) the Fukushima accident raises "unprecedented technical and legal issues for which there is very little precedent in NRC jurisprudence;" (2) Petitioners could not have anticipated that many of the responses would "mischaracterize the nature of their Emergency Petition or misinterpret governing law;" (3) Petitioners could not have reasonably anticipated numerous technical arguments; and (4) Petitioners could not have anticipated how opponents would "misinterpret" the National Environmental Policy Act ("NEPA"). Motion at 5. As discussed below, none of these bases involve compelling circumstances justifying a reply. Accordingly, the Motion should be denied.

First, contrary to Petitioners' assertions, there is significant NRC jurisprudence related to the treatment of significant events or other new information in licensing reviews and adjudicatory proceedings — including precedent related to the Three Mile Island accident and the terrorist attacks of September 11, 2001. Consistent with that precedent, any issues (or lessons learned) arising from Fukushima can be addressed through existing regulatory processes. If, for example, Petitioners believe that information related to Fukushima warrants agency action, they may request that the NRC initiate a rulemaking under 10 C.F.R. § 2.802. Under this provision, any person can request that the NRC issue, amend, or rescind a regulation. The Commission can modify license requirements by rule, regulation, or order, and changes can be applicable to both applicants and licensees. The regulations provide for public participation in

these matters.[2] Thus, the mere fact that a significant event has occurred does not present compelling circumstances for a reply brief, and does not provide a basis to suspend pending licensing reviews, hearing processes, or licensing decisions.

Second, the Petitioners could have reasonably anticipated that responses to the Emergency Petition would characterize their petition as a motion. In light of the fact that the Petitioners cited no specific provision of NRC regulations in the Emergency Petition, it cannot be surprising that parties would treat the Emergency Petition as a general motion under the Commission's rules of practice. Moreover, this is essentially what the Commission directed in its order of April 19, 2011.

The Petitioners' complaint that the industry responses mischaracterize the Emergency Petition as requesting suspension of "proceedings" also misses the mark. For example, in their Reply the Petitioners argue that "[t]he only relief sought by Petitioners with respect to ongoing licensing proceedings is to request the Commission to establish procedures for the consideration of Fukushima-related issues in adjudications and design certification rulemakings." Reply at 8 n.4. However, the Emergency Petition clearly requested that the Commission "[s]uspend all proceedings with respect to hearings or opportunities for public comment, on any reactor-related or spent fuel pool-related issues that have been identified for investigation in the Task Force's Charter of April 1, 2011." Emergency Petition at 2 (emphasis added). Therefore any confusion regarding the Petitioners' position is of their own making.

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[2] *See* 10 C.F.R. § 2.802 (permitting "any interested person" to file a petition for rulemaking); 10 C.F.R. § 2.206 (affording "any person" the opportunity to file a request to modify, suspend, or revoke a license).

There are no compelling circumstances justifying a reply — other than to clarify that suspension of ongoing hearings is not relief that the Petitioners seek.[3]

Finally, the Petitioners argue that they could not have anticipated the technical arguments in the response or the ways in which the industry responses to the Emergency Petition would "misinterpret" NEPA's requirements for consideration of new and significant information. However, the fact that various industry responses disagree with the Petitioners' broad technical assertions, or their legal interpretation of NEPA, is neither surprising nor unusual. The technical points and legal arguments raised in the industry responses are precisely those that Petitioners should reasonably have anticipated in preparing their Emergency Petition. The Petitioners should not be afforded an opportunity to file a reply simply because they have more to say or a different perspective than that provided in the various responses to the Emergency Petition. The prohibition on replies in 10 C.F.R. § 2.323 is intended to apply to these very circumstances.

For the above reasons, the Commission should deny the motion for leave to file a reply.

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[3] If the Petitioners are modifying their request for relief — to eliminate suspension of the proceeding — that clarification should be duly noted by the Commission.

Respectfully submitted,

/s/ signed electronically by

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Dated at Washington, District of Columbia
this 16th day of May 2011

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CERTIFICATE OF SERVICE

I hereby certify that copies of "APPLICANTS' RESPONSE TO MOTION FOR LEAVE TO FILE A REPLY" in the captioned proceeding have been served via the Electronic Information Exchange ("EIE") this 16th day of May 2011, which to the best of my knowledge resulted in transmittal of the foregoing to those on the EIE Service List for the captioned proceeding.

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