

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE COMMISSION

In the Matter of

Docket No. 52-016

Calvert Cliffs-3 Nuclear Power Plant
Combined Construction and License Application

**JOINT INTERVENORS REPLY TO MOTION BY NUCLEAR INNOVATION
NORTH AMERICA FOR LEAVE TO FILE AN *AMICUS* BRIEF ON LBP-12-19**

Joint Intervenors oppose the November 7, 2012 motion by Nuclear Innovation North America LLC (NINA) for leave to file an *amicus curiae* brief in support of Applicants' Petition for Review of LBP-12-19. This motion is not timely, and consideration of this brief would be manifestly unfair to Joint Intervenors. The motion should not be accepted by the NRC Commissioners, nor should the NINA *amicus curiae* brief be considered.

In the event the NRC Commissioners choose to accept the motion and consider the *amicus* brief, Joint Intervenors request leave to file a response.

NINA'S MOTION IS NOT TIMELY

10 CFR 2.315(d) allows persons who are not a party to a proceeding to file *amicus curiae* briefs. However, this section states clearly that, "Unless the Commission provides otherwise, the brief must be filed within the time allowed to the party whose position the brief will support."

Under 10 CFR 2.341, Applicants filed a timely Petition for Review of LBP-12-19 on September 24, 2012.¹ Given the wording of 10 CFR 2.315(d) quoted above (which is the only reference to filing of *amicus curiae* briefs we can find in the regulations), *amicus* briefs should have been filed by that date.²

Also following 10 CFR 2.341 and the agreed-upon application of the new 10 C.F.R. §§ 2.341 (b)(1), (b)(3)), Joint Intervenors and NRC staff filed response briefs in a timely fashion (because of a scheduled medical procedure, Joint Intervenors had to file early, on October 17, 2012, and NRC staff filed on October 19, 2012). Nuclear Energy Institute filed its *amicus* brief on October 19, 2012. Applicants filed a timely reply brief on October 29, 2012. There is no provision in the regulations for filing of any briefs by any party or person after that date. Yet NINA's motion and brief were not filed until November 7, 2012.

The rationale for the language in 10 CFR 2.315(d) ("the brief must be filed within the time allowed to the party whose position the brief will support") is that *amicus* briefs are allowed in order to provide additional support and perspective for a position of one or more of the parties in a case. *Amicus* briefs are not intended to serve as an additional

¹ We note that this date itself was a concession by Joint Intervenors, who did not oppose a motion by Applicants to apply new Part 2 rules that allow 25 days to file a Petition for Review rather than the 15 days mandated under the existing Part 2 rules that are governing this proceeding.

² This would mean that the *amicus curiae* brief filed by Nuclear Energy Institute, which Joint Intervenors also oppose, is untimely as well. However, NEI did file its brief prior to the final opportunity for Applicants to participate in this process. NINA did not.

means of reply for one of the parties—such a use of *amicus* briefs would provide an unfair advantage to one party.

In this case, by submitting its motion on November 7, 2012, NINA had the opportunity to not only review the Applicants’ initial Petition for Review, but also the responses from Joint Intervenors and NRC staff, and Applicants’ reply brief. In short, NINA is attempting, through a distorted use of the *amicus* process, to have the last, and uncontested, word in this proceeding. Especially given that NINA has no standing in this proceeding, this would be manifestly unfair.

Acceptance of the NINA motion and consideration of its *amicus* brief would distort the purpose of *amicus* briefs and provide an undue advantage to Applicants and their supporters.

**SHOULD THE NINA MOTION BE ACCEPTED, JOINT INTERVENORS
REQUEST LEAVE TO RESPOND**

10 CFR 2.315(d) does give the NRC Commissioners some leeway as to whether to accept the NINA motion (“Unless the Commission provides otherwise...”). Joint Intervenors argue that this leeway was not intended to allow what amounts to a second and untimely Reply Brief against Joint Intervenors and NRC staff’s positions.

However, should the NRC Commissioners choose to accept the NINA motion and consider its *amicus* brief, Joint Intervenors hereby request leave to respond to this brief.

Allowing NINA, which has no standing in this proceeding, and which supports Applicants (which already have had the opportunity to submit an uncontested reply to Joint Intervenors and NRC staff), the opportunity to have the last and uncontested word in this proceeding, would simply be unfair.

Respectfully submitted this 8th day of November, 2012,

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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 8, 2012 via the EIE system.

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