

be reversed. It does not challenge the Board's rulings on contention admissibility. Both the NRC Staff and Petitioners timely filed responses in opposition to Detroit Edison's appeal.³

Our rules of practice provide for an automatic right to appeal a licensing board standing and contention admissibility decision on the issue of "[w]hether the request for hearing or petition to intervene should have been wholly denied."⁴ We will defer to the Board's rulings on standing, however, unless the appeal points to an error of law or abuse of discretion.⁵

We find no error in the Board's standing determination. The appeal encompasses arguments that are substantively similar to those made by a different applicant on appeal of a licensing board's standing and contention admissibility ruling in the *Calvert Cliffs* COL proceeding.⁶ In sum, Detroit Edison claims that application of the fifty-mile proximity presumption for the standing inquiry in Commission adjudicatory proceedings is inconsistent with contemporaneous judicial concepts of standing developed in precedent from Article III courts.⁷ We recently issued a decision in *Calvert Cliffs* that rejected the similar arguments

³ *NRC Staff Brief in Opposition to the Applicant's Appeal from LBP-09-16* (Aug. 20, 2009); *Reply of Petitioners in Opposition to DTE's Appeal LBP-09-16* (Aug. 20, 2009).

⁴ 10 C.F.R. § 2.311(d)(1).

⁵ See *Crow Butte Resources, Inc.* (License Renewal for In Situ Leach Facility, Crawford, Nebraska), CLI-09-9, 69 NRC __ (May 18, 2009)(slip op. at 4); *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-06-24, 64 NRC 111, 121 (2006); *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 324 (1999); *Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), ALAB-855, 24 NRC 792, 795 (1986).

⁶ Compare Detroit Edison Appeal at 4-12, with *Applicant's Notice of Appeal of LBP-09-04* (Apr. 3, 2009)(Docket No. 52-016-COL) at 5-13.

⁷ See Detroit Edison Appeal at 6.

made here.⁸ As we explained in that decision, “we see no conflict between the basic requirements for standing, as applied in the federal courts, and the NRC’s proximity presumption.”⁹ For the reasons provided in our *Calvert Cliffs* decision, we *deny* Detroit Edison’s appeal and *affirm* the Board’s decision in LBP-09-16.

IT IS SO ORDERED.

For the Commission

(NRC SEAL)

/RA/

Annette L. Vietti-Cook
Secretary of the Commission

Dated at Rockville, Maryland,
this 17th day of November, 2009.

⁸ *Calvert Cliffs 3 Nuclear Project, LLC, and Unistar Nuclear Operating Services, LLC* (Combined License Application for Calvert Cliffs, Unit 3), CLI-09-20, 70 NRC ___ (Oct. 13, 2009)(slip op.).

⁹ *Id.* (slip op. at 7).