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NUCLEAR REGULATORY COMMISSION

Title: Calvert Cliffs Nuclear Project  
Calvert Cliffs Unit 3

Docket Number: 52-016-COL

DOCKETED

January 17, 2012 (p.m.)

ASLBP Number: 09-874-02 COL-BD01

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD PANEL

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PRE-HEARING CONFERENCE

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In the Matter of: : Docket No. 52-016-COL  
CALVERT CLIFFS 3 NUCLEAR : ASLBP No.  
PROJECT, LLC and UNISTAR : 09-874-02 COL-BD01  
NUCLEAR OPERATING SERVICES, :  
LLC. :  
(Combined License :  
Application for Calvert :  
Cliffs Unit 3) :

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Tuesday, January 10, 2012

Teleconference

BEFORE:

RONALD M. SPRITZER, Chair  
GARY S. ARNOLD, Administrative Judge  
WILLIAM W. SAGER, Administrative Judge

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15 MATINA SOLOMAKOS

16 KIRSTEN STODDARD

17 ANDY WELKIE

18

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P-R-O-C-E-E-D-I-N-G-S

11:02 a.m.

CHAIR SPRITZER: Good morning. We are here today for a pre-hearing conference in the matter of Calvert Cliff's 3 Nuclear project and UniStar Nuclear Operating Services. This is Docket Number 52-016-COL and it's also ASLBP Number 09-874-02-COL-BD01.

And, as I said, we're here to have a prehearing conference. We'll start with myself, Judge Spritzer.

ADMIN. JUDGE ARNOLD: Judge Arnold.

CHAIR SPRITZER: And Judge Sager are you there?

ADMIN. JUDGE SAGER: Yes, I am here.

CHAIR SPRITZER: And we also have with us in our room here in Rockville, Andy Welkie who is our information technology person. He's here to answer any questions and also provide a little information about how the electronic exhibits process will work. That is how we're going to go about making exhibits available for questioning at the hearing.

Kirsten Stoddard our law clerk. And Matina Solomakos who is our administrative support person. For the parties to the case, why don't we start with UniStar. Can you introduce yourselves

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1 again for the record?

2 MR. SMITH: Sure, this is Tyson Smith.  
3 I'm an attorney for UniStar. And with me, but on  
4 another line, is David Repka.

5 CHAIR SPRITZER: All right, and the NRC  
6 staff. Can you identify yourselves again?

7 MR. WILSON: This is Anthony Wilson,  
8 joined by Sara Kirkwood, Adam Gendelman and project  
9 staff.

10 CHAIR SPRITZER: And intervenors?

11 MR. MARIOTTE: This is Michael Mariotte  
12 from Nuclear Information and Resource Service. With  
13 me is Dominique French, also of Nuclear Information  
14 and Resource Service. And Scott Sklar, our expert  
15 witness may be coming on the line later, I'm not  
16 positive.

17 CHAIR SPRITZER: Okay. And the State of  
18 Maryland?

19 MR. BOLEA: Good morning. I'm Brent Bolea  
20 for the State of Maryland.

21 CHAIR SPRITZER: All right. We have a  
22 list that I hope everybody has seen and had a chance  
23 to review, a list of topics we're going to go over.  
24 Some very mundane stuff but things we want to make  
25 sure everybody's aware of and clear on. Starting with

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1 the all important matter of parking for the hearing.  
2 The Calvert County's government has been kind enough  
3 to make this facility available, the Albright Building  
4 Facility, available to us without charge.

5 The one thing they asked in return is that  
6 we not occupy their parking lot, the parking lot  
7 immediately in front of the building. Instead use the  
8 parking lot at 200 Duke Street, it's a short walk from  
9 the hearing.

10 The one immediately adjacent to the  
11 building is the one the employees use so they'd like  
12 not to arrive to work on Thursday morning and find  
13 their parking spaces taken. We may have some  
14 difficulty enforcing that for any members of the  
15 public that might be attending the public, but we  
16 appreciate your cooperation in that.

17 We have a press release out that provides  
18 this kind of background information on where to park  
19 and security procedures. I don't know whether anybody  
20 has seen a copy of it, it's available on the NRC  
21 website under the press release category. Has any of  
22 the parties seen this before?

23 MR. SMITH: This is Tyson Smith for  
24 UniStar, yes we have seen that press release and that  
25 information and we'll circulate it to our experts and

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1 other potential attendees.

2 CHAIR SPRITZER: Okay, great. And,  
3 Intervenors, are you aware of this?

4 MR. MARIOTTE: No, I wasn't aware. And, I  
5 don't actually even know where the hearing is, but I  
6 guess I'll have to find that out.

7 CHAIR SPRITZER: Well that you should  
8 certainly be clear on by the 26th.

9 MR. MARIOTTE: Yes, I think so.

10 CHAIR SPRITZER: As I said there is a  
11 press release, it's available on the NRC website. If  
12 you have, I think it's under Press Releases if you  
13 look around on the public website.

14 MR. MARIOTTE: Will do.

15 CHAIR SPRITZER: It's identified by  
16 Calvert Cliffs. Also in the order we issued on  
17 November 9th. Oh, yes, we did cover the parking issue  
18 there too. Okay, look at our order that we issued on  
19 November 9th, but you should also take a look at the  
20 press release there may be some information there that  
21 we didn't cover.

22 The press release also includes the  
23 limited appearance session that we're going to do on  
24 the 25th. So anyway everybody should take a look at  
25 that. If you have any questions contact Kirsten.

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1 Anything related to security procedures, parking,  
2 whatever, contact Kirsten.

3 In terms of security right now the plan is  
4 the Calvert County government has consented to provide  
5 security. I don't know specifically what they're  
6 going to do in terms of how much screening they're  
7 going to do in terms of electronic examination before  
8 you go in. But everybody should plan to arrive, I  
9 would think, at least 30 minutes beforehand.

10 That'll also give you a little chance to  
11 see how the monitors will be set up and so forth and  
12 generally get familiar with the layout of the facility  
13 we're going to be using. I don't know if anybody's  
14 been there. It has kind of an L-shaped dias, which on  
15 one side of the L, which is where the judges will be  
16 sitting, I think what our plan is right now at least  
17 is to use the other side of the L for whatever witness  
18 or witnesses will be testifying.

19 I think there are two screens already  
20 there which we'll use for both the judges and people  
21 in the audience and the parties to be able to view  
22 whatever exhibit we might be talking about at any  
23 given point in time.

24 And if it's necessary we're going to bring  
25 some monitors so that if we need to put monitors at

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1 the tables for the parties so if there's any  
2 difficulty, where you would have to turn around 180  
3 degrees or something to see an exhibit, we'll put a  
4 monitor there for you so you won't have to do that.  
5 At least that's our current plan.

6 So let's move on to exhibits. At the  
7 start of the hearing what we're planning to do is have  
8 everybody move and we'll go party by party and ask you  
9 to move into evidence whatever exhibits you want to  
10 move into evidence. Hopefully, you know, we'd like to  
11 go through that as quickly as we can to the extent, I  
12 don't know if the motion in limine that was filed by  
13 the staff pretty much summarizes where we are in terms  
14 of any disputes about admissibility.

15 You're obviously not limited to what's  
16 been put in the motion in limine but to the extent you  
17 can work out among yourselves any disputes about  
18 admissibility of documents and thereby move that  
19 process along that would certainly be in our interest  
20 and I think in everybody's interest.

21 On the motion in limine we will get out a  
22 ruling on that. I mean I think in general,  
23 particularly with the specific objections to  
24 testimony, we'll certainly look at those objections  
25 and take them into account in issuing our ruling.

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1 It's less likely that we're going to exclude testimony  
2 right off the bat before we even heard whatever  
3 evidence there is. But we'll certainly consider the  
4 objections that were made, and any others that we  
5 might get as we look through the evidence from the  
6 hearing, because we don't have a jury we don't  
7 necessarily have to exclude evidence.

8 At least this is my reading of the law.  
9 We don't have to exclude evidence up front, we can  
10 always take the objections into account and let you  
11 know our position when we issue the ruling on the  
12 merits. But we will get an order out on that in the  
13 near future, and certainly before the hearing.

14 In terms of displaying exhibits at the  
15 hearing I think I've already kind of summarized what  
16 we're proposing to do. Is there anything else you --

17 (Off microphone comment)

18 CHAIR SPRITZER: All right. Let me just  
19 add, do you all have any questions about how the  
20 exhibits will be made available to you or how you will  
21 be able to view exhibits that we may be asking  
22 witnesses about? Going once, twice.

23 MR. SMITH: This is Tyson Smith. No.

24 CHAIR SPRITZER: Okay.

25 MR. MARIOTTE: This is Mike with NIRS, I'm

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1       sorry, could you run through it very quickly?

2                   CHAIR SPRITZER:   Run through what?

3                   MR. MARIOTTE:   How the exhibits will be  
4       displayed?

5                   CHAIR SPRITZER:   Well we'll have --

6                   MR. MARIOTTE:   Just, you know, this is our  
7       first time at doing this.

8                   CHAIR SPRITZER:   Well I understand and  
9       feel free to ask.

10                  MR. MARIOTTE:   So I may have a lot of  
11       stupid questions this morning.   I'm not sure.

12                  CHAIR SPRITZER:   Yes, what will happen is  
13       if we're asking a witness about an exhibit, or for  
14       that matter, if someone during their opening or  
15       closing argument wants to have an exhibit displayed,  
16       it will be on, we have two screens, I guess,  
17       essentially large like a flat screen TV that are  
18       already in this facility, that are positioned, they  
19       conduct public meetings there.   I think it's the  
20       Zoning Board that normally meets there.

21                  And they have these screens there for both  
22       people sitting in the audience and people sitting at  
23       what, for us will be the judges bench, to be able to  
24       view the exhibits.   If you're sitting at a table  
25       that's not convenient as far as viewing either of

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1 those two screens we're going to have a monitor there  
2 for you so you'll be able to see the exhibit.

3 Now what we would like, well of course the  
4 Judges are going to be the ones asking questions of  
5 the witnesses, we will use the questions have been  
6 submitted to us by the parties, or at least by the  
7 parties who have submitted questions, and we'll add  
8 some fo our own. But you'll be able to see, when  
9 we're asking the witness, you'll be able to see the  
10 exhibit that we're referring to, which hopefully will  
11 be on the page that we're talking about if we're  
12 talking about a specific page.

13 Now, we're going to come later to the  
14 question of opening and closing arguments, but if you  
15 have exhibits you may want to refer to during your  
16 opening statement, if we're going to have opening  
17 statements we'll cover this in a minute, but it would  
18 be useful, it would be helpful, for our IT personnel  
19 if you could provide a list of what those exhibits are  
20 in advance of the hearing.

21 We will have them available  
22 electronically, so we can bring up an exhibit even if  
23 we don't know in advance that that's what somebody's  
24 going to be talking about. But it will go more  
25 smoothly if we have a list so when you get up, Mr.

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1 Mariotte, if you're going to make an opening statement  
2 and you've told us in advance that you're going to be  
3 talking about a particular document and what page,  
4 that's an exhibit that you're going to move into  
5 evidence, and what page you're going to be referring  
6 to. That would make it a lot easier to put it up on  
7 the screen rather than having to take a break while  
8 our IT staff tries to find the document.

9 MR. MARIOTTE: Right. Okay, and so if I  
10 mention an exhibit it has to be displayed or can it  
11 just be referred to as its name?

12 CHAIR SPRITZER: No, you don't have to  
13 display it.

14 MR. MARIOTTE: Okay, I just wanted to  
15 clarify that. Thank you.

16 CHAIR SPRITZER: It's going to be a little  
17 more, I think it would probably be more effective if  
18 you display it, but it's up to you. We're not going  
19 to require you to do that.

20 MR. MARIOTTE: Okay.

21 CHAIR SPRITZER: Let me ask, by the way,  
22 we did not get any witness questions from your side.  
23 Is that because you didn't submit any? You're not  
24 required to submit them, but we wanted to make sure  
25 there wasn't some problem in the electronic submission

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1 process where you submitted something and we didn't  
2 see it.

3 MR. MARIOTTE: I guess I was unaware that  
4 the deadline for that was passed.

5 CHAIR SPRITZER: Yes, it's passed some  
6 time ago I'm afraid. Well --

7 MR. MARIOTTE: I haven't received any from  
8 anybody else either.

9 CHAIR SPRITZER: You're not supposed to  
10 receive.

11 MR. MARIOTTE: Oh okay, that might have  
12 kicked in a reminder for me. It's been sort of a  
13 hectic time with a new baby and the holidays and stuff  
14 so I have to confess I haven't been paying as close of  
15 attention as I should be.

16 CHAIR SPRITZER: Yes, the deadline for  
17 that has passed. We can formulate our own questions  
18 so that doesn't preclude us from asking questions of  
19 the applicant and staff witnesses and we certainly  
20 intend to do that. We just wanted to make sure we  
21 hadn't missed something that you had submitted.

22 MR. MARIOTTE: Foul up on my end, not the  
23 EIE's.

24 CHAIR SPRITZER: Okay, for once. All  
25 right. One document we do need, this is a technical

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1 point for you, Mr. Mariotte, you submitted an  
2 affidavit of Mr. Sklar that we asked you to submit  
3 basically authenticating his testimony. That didn't  
4 have a number on it. We're going to number that  
5 JNT000031.

6 MR. MARIOTTE: Okay, I apologize.

7 CHAIR SPRITZER: That will be JNT000031.  
8 So when you update your exhibit list that should be  
9 numbered that way.

10 MR. MARIOTTE: Okay. I apologize.

11 CHAIR SPRITZER: In any event if we're  
12 going to have opening statements I would apply to  
13 everybody it would be useful to have a list of any  
14 exhibits that you might want to refer to in opening.  
15 Obviously, you're not obligated to do that if you  
16 don't want to.

17 We have an issue with, I want to see if  
18 this is a problem here if this has affected anybody's  
19 ability to get access to other party's exhibits. This  
20 is the issue that the Secretary's Office here at the  
21 NRC has raised about copyrighted documents. Some of  
22 the exhibits submitted in this case, as well as in  
23 some of our other cases, are magazine articles or  
24 newspaper articles that the Secretary's Office here  
25 decided they couldn't make publicly available on ADAMS

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1 because of what they saw as potential copyright  
2 issues.

3 As I understand it, if you have, you all  
4 should have exchanged exhibits among yourselves, that  
5 is all the parties to the case. If you downloaded  
6 those exhibits you should have all of the exhibits  
7 that the other parties have offered or will be  
8 offering. Those wouldn't have excluded any documents  
9 based on copyright. It's only what's displayed here  
10 at the NRC.

11 I guess the problem arises if you did not  
12 download exhibits you received from the other sides,  
13 other parties, didn't save or have since deleted the  
14 emails and were assuming you would be able to get  
15 everything on ADAMS, that's where we might run into a  
16 problem. Let me ask the intervenors, did you download  
17 or still have the emails that contained the exhibits  
18 that are being offered by the staff and UniStar?

19 MR. MARIOTTE: We still have the emails.  
20 I know we downloaded some things but probably not  
21 everything. But I doubt if we would perceive a real  
22 problem. But we do have the emails.

23 MS. STODDARD: Mr. Mariotte, this is  
24 Kirsten Stoddard, the law clerk, if you still have  
25 those emails from the other parties the links on those

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1 will still work. You can use those links to access  
2 all the documents whether they're copyrighted or not  
3 copyrighted.

4 MR. MARIOTTE: Okay, thank you.

5 CHAIR SPRITZER: All right. Does anybody  
6 else think they might have a potential problem, that  
7 they were relying on the public ADAMS for access to  
8 exhibits?

9 MR. SMITH: This is Tyson Smith, the  
10 applicant has downloaded all of the exhibits and we  
11 have those. We don't see a problem with that from our  
12 end.

13 CHAIR SPRITZER: Well the staff I can't  
14 imagine would have a problem.

15 MR. WILSON: That's correct. We have no  
16 problem.

17 CHAIR SPRITZER: State of Maryland, have  
18 you, I don't know whether you've been going through  
19 the exhibits in detail, but as far as you know do you  
20 have access to everything? Is the State still on the  
21 line?

22 MR. BOLEA: Yes, Your Honor, I'm still  
23 here.

24 CHAIR SPRITZER: Have you been reviewing  
25 the exhibits? Is this even a potential issue for you?

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1 MR. BOLEA: I don't think we have an  
2 issue. I think we have access to all of the exhibits,  
3 but if we run into a problem I'll contact your law  
4 clerk and let her know.

5 CHAIR SPRITZER: Okay, that's fine.

6 MR. BOLEA: Thank you.

7 CHAIR SPRITZER: All right, as far as the  
8 exhibit lists go, as indicated in this order, we'd  
9 like to have -- When do we need it by? Up to date  
10 exhibits?

11 MS. STODDARD: By the end of the next  
12 week.

13 CHAIR SPRITZER: Yes, by the end of next  
14 week we'd like to have a updated exhibit list from  
15 everybody. This should include any changes in exhibit  
16 numbers. If you have, for example, I believe there's  
17 and Applicant Exhibit, what is it, 00017 that has four  
18 sub-parts, that should be labeled 17 A through D.

19 MS. STODDARD: (Inaudible)

20 CHAIR SPRITZER: Oh yes, for the  
21 intervenors, for the direct testimony of Mr. Sklar, it  
22 was originally JNT00001, I think that needs to be  
23 JNTR00001, to indicate that it's a revised document.  
24 That would be what you'd want to have on your exhibit  
25 list.

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1 MR. MARIOTTE: Okay.

2 MS. STODDARD: Yes, Mr. Mariotte, this is  
3 Kirsten Stoddard the law clerk again. The exhibit  
4 list we just want to make sure, and this applies for  
5 the staff as well, that they're comprehensive. That  
6 is when you submitted your updated exhibit lists with  
7 your rebuttal testimony it didn't include the exhibits  
8 that you initially filed.

9 So we'd just like to have all the exhibits  
10 you plan on entering into evidence, or offering into  
11 evidence, on one document. And since you're going to  
12 be offering your revised Exhibit 1, you should list  
13 Joint Intervenors Revised Exhibit 1 and not Joint  
14 Intervenor's Exhibit 1.

15 And similarly, as we discussed previously,  
16 if you could list Joint Intervenor's Exhibit 31, which  
17 is Mr. Sklar's affidavit that you didn't number, if  
18 you could just add that to your exhibit list too that  
19 would be great.

20 MR. MARIOTTE: Okay, will do. Can I ask  
21 a question, which I think I know the answer to? In  
22 the most recent round of discovery we included a  
23 couple of new articles that came out since we filed  
24 our exhibits and all that. Can we include those now  
25 as exhibits or was that basically a cutoff date?

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1 CHAIR SPRITZER: Well if you want to add  
2 exhibits why don't you file a short motion as soon as  
3 possible and we'll allow the other parties to respond.  
4 I think there's enough time, we can respond as soon as  
5 possible.

6 MR. MARIOTTE: They weren't crucial. So  
7 I don't know if we need to put everybody through that.

8 CHAIR SPRITZER: All right.

9 MR. SMITH: I apologize, this is Tyson  
10 Smith for UniStar. We actually have recently, there's  
11 a document, and exhibit, that's come up that we think  
12 is actually relevant and sort of changes some of the  
13 information that's in some of the testimony that we  
14 think is important to raise, and so one of my  
15 questions I was going to ask today is how should we go  
16 about doing that?

17 It could be done in the form of an  
18 exhibit. It's a press release from a company, but  
19 alternatively we could just have our expert speak to  
20 it at the hearing. So I didn't know how you wanted to  
21 proceed or what you thought the best way might be to  
22 proceed on that.

23 CHAIR SPRITZER: As to which way to go  
24 about, it sounds like you would need to either update  
25 the testimony or add the exhibit. Certainly, if

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1 somebody's going to talk about something, at least for  
2 me as a judge, I'd rather be able to read the document  
3 than just hear somebody describe it. So hopefully  
4 that answers at least the first part of your question.

5 Maybe, you know, it sounds like the  
6 intervenor's have one or two things they'd like to  
7 add. You have at least one. Maybe you all could come  
8 to some understanding and perhaps the staff would  
9 agree, perhaps not, but if we could get this handled  
10 by agreement that would obviously make everybody's  
11 lives easier.

12 MR. SMITH: Okay, I will contact the other  
13 parties and see if we can't reach some sort of  
14 agreement. And it sounds like the preferred approach  
15 from your end would have us, with maybe perhaps if we  
16 can reach agreement, a short joint motion or unopposed  
17 motion to add that as an exhibit.

18 CHAIR SPRITZER: That would be great. And  
19 the intervenor's, if they have some additional  
20 documents, they can discuss those with you as well and  
21 maybe we can get it worked out. If there has to be a  
22 motion then I guess we'll have to go that route and  
23 we'll get it ruled on as soon as we can.

24 MR. MARIOTTE: I'm sure we can work it  
25 out. I'm pretty sure I know what document Tyson is

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1 talking about.

2 MR. SMITH: Okay, we'll chat after this,  
3 Mr. Mariotte.

4 MR. MARIOTTE: Okay.

5 CHAIR SPRITZER: Very good. Okay, before  
6 we move on to the question of opening and closing  
7 statements, anything else anybody wants to ask about  
8 what we've covered so far? Particularly regarding  
9 exhibits, exhibit lists, technology issues?

10 MR. WILSON: Well at this time we'd like  
11 to -- This is Anthony Wilson for staff, just go back  
12 to venue logistics. We were wondering of the facility  
13 had meeting rooms that would be available to us?

14 CHAIR SPRITZER: We'll have to get back to  
15 you on that. I don't know, can you check on that?

16 MS. STODDARD: I can check on that.

17 MR. WILSON: Okay, and in addition in the  
18 event of inclement weather should we follow the  
19 Federal Government announcements or is there something  
20 for the county or who should we follow?

21 CHAIR SPRITZER: Well if Calvert County is  
22 closed we could safely assume we won't be using their  
23 building. If the county were open but the NRC were  
24 not operating, I guess that's possible, we could have  
25 a storm down in Calvert County and not up here. I

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1 would think if the Federal Government is going to be  
2 closed then we're not going to hold a hearing even if  
3 Calvert County is open. I'm looking around the table  
4 here to see if anybody has any different thoughts.

5 I think if that happens we're already  
6 going to be down there, of course, on the 25th.  
7 Probably what we should do is get you a cell phone  
8 contact. Probably for Kirsten, our law clerk, so  
9 you'll have somebody to contact in the event we have  
10 a weather issue. Certainly if the county is closed  
11 we're not going to have access to the facility and  
12 we're not going to be able to function so that's a  
13 pretty easy call.

14 If the NRC is closed because there happens  
15 to be a bad storm up here in the Washington area but  
16 maybe it's not so bad down in Calvert County we might  
17 go ahead. I don't know whether, if that raises the  
18 question of whether NRC employees can work or should  
19 be expected to work when the agency they're working  
20 for is closed for the day.

21 MS. KIRKWOOD: Your Honor, this is Sara  
22 Kirkwood for the staff. I think in terms of the NRC  
23 employees if we were already in Calvert County and  
24 Calvert wasn't affected by the storm I think that  
25 closing only applies to the immediate metro area,

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1 which Calvert isn't part of. So I don't that would  
2 operate as any sort of bar to the employees working.

3 CHAIR SPRITZER: Okay. Yes, that makes  
4 sense. We will, however, I think it would be a good  
5 idea for us to get you a contact number. We'll be in  
6 Solomons for the limited appearance sessions,  
7 obviously you all, we'll be at the Calvert County  
8 Marine Museum and we'll get you a phone number where  
9 you can reach if there's some issue about weather or  
10 logistics, anything of that nature.

11 MR. WILSON: Thank you, Your Honor.

12 CHAIR SPRITZER: We'll send that out by  
13 email. Okay, any other questions on logistics or  
14 exhibits or technology? All right, hearing none we  
15 will move on to the question of opening and closing  
16 statements.

17 Let me ask the parties first, do you want  
18 to make opening statements? The reason I ask is, of  
19 course typically an opening statement is to provide an  
20 outline of what you expect the evidence to show. But  
21 you've already submitted your evidence to us and  
22 largely the hearing is going to consist of us asking  
23 questions. But we don't want to foreclose opening  
24 statements if you think they would be useful. So why  
25 don't we start with UniStar, do you all have any view

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1 on that?

2 MR. SMITH: Well, I think in general I  
3 agree with you as to the point of opening statements  
4 in the typical hearing. I think here it's not  
5 necessary to give a lengthy opening statement but I  
6 think that, you know, a short statement would be  
7 helpful at least for, at a minimum, the members of the  
8 public in the audience to help understand the party's  
9 position in advance of hearing the judges questioning  
10 of the witnesses. So I think it would set it up a  
11 little bit. But I think it certainly could be brief,  
12 on the order of five minutes or ten minutes max.

13 CHAIR SPRITZER: Okay. Intervenors do you  
14 have any view on that?

15 MR. MARIOTTE: I agree with UniStar on  
16 that I think, you know, for the members of the public  
17 on particular I think it's helpful. And yes I think  
18 we'd like the opportunity for a short opening  
19 statement.

20 CHAIR SPRITZER: And the staff, do you all  
21 also want to make an opening statement or not?

22 MR. WILSON: We would agree with the  
23 intervenors and the applicant that perhaps a short  
24 statement may be necessary.

25 CHAIR SPRITZER: Okay. Now for the State

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1 of Maryland, you're not a party, but we'd welcome any  
2 statement you'd like to provide but you're under no  
3 obligation to make one.

4 MR. BOLEA: Thank you, Your Honor. I  
5 don't think the State is going to provide one but I'd  
6 agree with the other parties that it sounds like it  
7 would be a reasonable idea for the reasons that they  
8 articulated.

9 CHAIR SPRITZER: Okay. Well what we'll  
10 do, we'll include in our order an allocation of time  
11 for everybody. And we'll include something for the  
12 State. It may be less than for the other parties but  
13 we'll include something, you're of course under no  
14 obligation to actually use that if you don't want to  
15 though.

16 MR. BOLEA: Okay, thank you.

17 CHAIR SPRITZER: In terms of questions I  
18 think the idea for the opening statements would, as  
19 everyone indicated, to move through them fairly  
20 quickly. So we're not going to be asking, certainly  
21 not a great many questions like we have done at oral  
22 arguments that we've had in this case.

23 For closing statements I think you could  
24 expect that we will probably have a fair number of  
25 questions. But for the openings I think we'll pretty

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1 much let you make your case and save the questions for  
2 later on.

3 In terms of the order of witnesses. Let  
4 me go around, I mean, to me the normal sense would be  
5 to start with the party who has brought the case,  
6 which is the intervenors, have them go first and then  
7 we would hear from witnesses from the staff and  
8 UniStar.

9 But it's been handled in other ways in  
10 other cases. It's not unusual for, the ultimate  
11 burden of proof rests with the staff to support the  
12 EIS. I suppose there's an argument that staff may  
13 want to go first, or should go first. So let me open  
14 that up for discussion. Let's start with the staff on  
15 this one. Do you have any view as to what the order  
16 of witnesses should be in terms of who we call first  
17 and ask questions of first?

18 MR. WILSON: No, Your Honor, we're not  
19 opposed to going first or going in the middle, or  
20 last.

21 CHAIR SPRITZER: Okay, intervenors, do you  
22 have any view on that?

23 MR. MARIOTTE: I don't think we have any  
24 real preference. Whatever works best for the panel.

25 CHAIR SPRITZER: Okay. And, last but not

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1 least, UniStar?

2 MR. SMITH: Your Honor, the order in which  
3 you outlined initially sounded fine with us, with the  
4 intervenors first and then the staff and then UniStar.  
5 But we don't have an objection to some other order  
6 either.

7 MR. WILSON: But, Your Honor, staff would  
8 note that since everyone is going to be relying on the  
9 EIS you may want to at least get that in first.

10 CHAIR SPRITZER: You mean in terms of  
11 admitting? Well here's what I envisioned on that.  
12 Before we get to any witnesses, probably after the  
13 opening statements, we'll have all the parties that  
14 want to move exhibits into evidence do that.

15 As I indicated earlier I would hope that  
16 there would be a minimum amount of time consumed on  
17 that, that you will have worked out, well, we will  
18 have ruled on the motion in limine, you will have any  
19 other disagreements or issues there might be to the  
20 extent you can you'll have resolved them among  
21 yourselves. Any objections that can't be resolved  
22 obviously we'll have to rule on them.

23 I would envision each of you would get up  
24 and say I hereby move into evidence, you know,  
25 Intervenor's Exhibits 1 through whatever the last one

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1 is. Or if you happen to have a gap in there  
2 somewhere, you know, 1 through whatever except for  
3 exhibit such and such. In other words move them into  
4 evidence as a group, not one by one.

5 We'll give each of the other parties at  
6 that point the opportunity to object to any of those  
7 exhibits. For the staff since you've already filed a  
8 motion in limine you can simply say that you reiterate  
9 the objections made in your motion in limine, you  
10 don't need to go through them line by line or document  
11 by document again.

12 And we'll then proceed to admit those  
13 documents. For the staff you could certainly, you  
14 know, I would assume you would included the EIS as  
15 well as the other documents that you've offered. So  
16 by the time we start with actual witnesses we'll have  
17 all the documents issues, hopefully, resolved. And  
18 then we can ask questions based on documents that are  
19 already admitted into evidence. Does anybody see any  
20 problems with that procedure?

21 MR. WILSON: Well, this is Anthony Wilson  
22 for staff, our witness Laura Quinn, the only reason  
23 for her testimony is to deport the EIS, so if there  
24 won't be objections to that we'll probably then move  
25 not to have her appear.

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1 CHAIR SPRITZER: Yes, unless, and I can't  
2 imagine what ground there would be to objecting to the  
3 entering of the EIS into evidence. That's what we're  
4 here about, about the adequacy of the EIS. So unless  
5 something very unusual is going on I wouldn't think we  
6 would need a sponsoring witness for the EIS.  
7 Obviously you'll need to confirm that with the  
8 intervenors and UniStar. But I hope that would not be  
9 an issue we need to spend any time on and wouldn't  
10 need a witness for that. Any other potential issues  
11 about the procedure for moving exhibits into evidence?

12 Okay, what we'll do on the order of  
13 witnesses then is we'll include that in our order.  
14 We'll talk among ourselves and we'll include that in  
15 our order.

16 In terms of rebuttal questioning of  
17 witnesses, this is I'm sure will be something new for  
18 you, Mr. Mariotte. Perhaps for the others as well, I  
19 don't know. What we've done at other hearings and I  
20 think what we would propose to do here, what we're  
21 talking about is a situation where we've finished  
22 asking our question of, let's say, the intervenor's  
23 witness, Mr. Sklar. The staff, the applicant or maybe  
24 also the intervenors, might have some additional  
25 questions you want us to ask at that point.

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1                   What we would probably do, what we will do  
2 unless somebody has any violent objection, is take a  
3 recess, probably ten or 15 minutes, when we've  
4 finished with a witness or a block of witnesses and  
5 allow you all to submit written, they're probably  
6 going to have to be handwritten questions, to us. Any  
7 additional questions you would want us to ask at that  
8 point of that particular witness or group of  
9 witnesses.

10                   Is that clear, Mr. Mariotte? You've  
11 probably not run across this before.

12                   MR. MARIOTTE: Actually I've run across it  
13 in PSC hearings before, so that makes sense to me,  
14 thank you.

15                   CHAIR SPRITZER: So you should, as you're  
16 listening to the testimony, you may be want to be  
17 thinking of any questions you'd want us to ask that we  
18 haven't asked already.

19                   I think, given the way that the applicant  
20 and staff witness statements have been submitted, that  
21 is essentially as one statement rather than three  
22 individual ones, we'll have panels of witnesses for  
23 both the applicant and staff. As we'll have all the  
24 witnesses up there, sworn, testifying at the same  
25 time.

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1           We may direct questions to a specific  
2 person who we think knows the answer or we may just  
3 direct them to the panel of witnesses as a group and  
4 they can tell us who the appropriate person or persons  
5 is to answer the questions. Again, that seems to me  
6 to be the most logical way of proceeding but if  
7 anybody has any different views now would be the time  
8 to let us know. Okay, hearing nothing further we'll  
9 proceed.

10                           (Off the record comments.)

11           CHAIR SPRITZER: On the question of  
12 witness introduction I think we have enough, but if we  
13 need any further explanations we'll let you know. All  
14 right, anything further on witnesses? I'll include my  
15 fellow judges in that, I've been doing all the talking  
16 here. Judge Sager, do you have anything you wanted to  
17 bring up that we haven't talked about?

18           ADMIN. JUDGE SAGER: No, nothing for me.

19           CHAIR SPRITZER: All right. Well the  
20 last thing on our list is deadline for transcript  
21 corrections and proposed findings of fact, conclusions  
22 of law. Unless somebody objects I think we'll take  
23 that up at the conclusion of hearing. See what  
24 everybody's schedules are like at that point.  
25 Normally we'd allow, once the transcript comes out, we

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1 allow something on the order of two weeks to three  
2 weeks for the parties, hopefully, to submit a joint  
3 list of transcript questions.

4 Mr. Mariotte, just for your further  
5 edification, this does not mean changing the substance  
6 of the witness testimony. This means changing  
7 typographical errors, maybe an error where the  
8 reporter attributed a statement to one witness and  
9 everyone agrees it was actually a different witness  
10 who was speaking at the time. But it's not a means to  
11 change the testimony, the substantive testimony, of  
12 anybody. Only to make essentially clerical,  
13 typographical type corrections.

14 MR. MARIOTTE: That makes sense to me,  
15 thank you.

16 CHAIR SPRITZER: Normally we'd do that two  
17 to three weeks after the transcript becomes available.  
18 We'd allow another two to three weeks after the  
19 transcript corrections are submitted to submit  
20 proposed findings of fact and conclusions of law. But  
21 I think we can work that out at the end of the  
22 hearing, unless anybody thinks we need to decide that  
23 now. All right.

24 Is there anything further anybody,  
25 including my fellow judges, can think of that we need

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1 to talk about today?

2 MR. MARIOTTE: No.

3 MR. SMITH: No, Your Honor.

4 MR. MARIOTTE: I have one questions  
5 related to the limited appearance hearing. Is that  
6 hearing strictly on this contention or is it on all  
7 contentions in general?

8 ADMIN. JUDGE SAGER: We would like it to  
9 be strictly on this contention, but we're not going to  
10 limit people if they go out on a tangent.

11 CHAIR SPRITZER: Yes, what's submitted at  
12 the limited appearance session is not evidence that we  
13 would consider in our ruling on contentions, it's  
14 limited to information, typically people talk about  
15 things that have, at best, a remote connection to  
16 anything.

17 The one possible contribution it can make  
18 to the hearing, if people actually do talk about  
19 things related to the issue that we're going to be  
20 hearing, is to suggest questions, areas of inquiry,  
21 for the Board. But it's not substantive evidence that  
22 we would then consider in actually making our ruling.  
23 But it can suggest ideas to us and gives people a  
24 chance to voice their opinions even though we can't  
25 base our ruling on them.

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1 MR. MARIOTTE: And is it normal protocol  
2 for all the parties to appear at this?

3 CHAIR SPRITZER: No. There's no  
4 requirement that you, or any party, be present there  
5 at all. And in fact it's really not intended for  
6 parties to make statements.

7 MR. MARIOTTE: Right, no I understand that  
8 part.

9 CHAIR SPRITZER: It's for the public. But  
10 no there's no requirement that you be there and we  
11 won't think any the less of you if you decide not to  
12 be there. And that applies to everyone, so entirely  
13 up to you.

14 MR. MARIOTTE: With the new baby I'm just  
15 not traveling that well.

16 CHAIR SPRITZER: Very well. You'll have  
17 enough traveling, I suspect, as it is. Let me ask,  
18 Mr. Mariotte, are you going to be the representative  
19 for all of the intervenor's at the hearing? Is that  
20 your current plan or is anybody else going to be --

21 MR. MARIOTTE: Yes, I will be. Some of  
22 the others may attend, I don't know, but I'll be the  
23 representative.

24 CHAIR SPRITZER: You'll be the one doing  
25 the talking in other words, to the --

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1 MR. MARIOTTE: Correct.

2 CHAIR SPRITZER: Making opening and  
3 closing statement.

4 MR. MARIOTTE: Correct.

5 CHAIR SPRITZER: Okay, very good. All  
6 right, unless anybody has anything further we will  
7 adjourn and we'll get an order out shortly. We'll  
8 also get you the information, the contact number,  
9 where you can contact our law clerk on the 25th and,  
10 if necessary, the 26th. And anything else we've  
11 mentioned at the hearing.

12 And if there are procedural issues,  
13 logistical issues, whatever that come up between now  
14 and the date of the hearing feel free to contact  
15 Kirsten. Do they have your phone number? She'll give  
16 you her phone number in case you don't have it.

17 MS. STODDARD: Yes, my phone is 301-415-  
18 5534. You can also email me, it's  
19 kirsten.stoddard@nrc.gov. I think it's on all the  
20 services lists too.

21 CHAIR SPRITZER: All right, unless anybody  
22 has anything further I think we will adjourn the  
23 prehearing conference at this point. Thank you all.

24 (Whereupon, the conference in the above-  
25 mentioned matter was adjourned at 11:44 a.m.)

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Proceeding: Calvert Cliffs Unit 3  
Pre-Hearing Conference

Docket Number: 52-016-COL

ASLBP Number: 09-874-02-COL-BD01

Location: Teleconference

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