



a joint venture of



Constellation
Energy



EDF

100 Constellation Way
Suite 200C
Baltimore, Maryland 21202

Henry B. Barron
President, CEO & Chairman

August 12, 2011

U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

ATTENTION: Document Control Desk

SUBJECT: **Calvert Cliffs Nuclear Power Plant**
Unit Nos. 1 & 2; Docket Nos. 50-317 & 50-318
Calvert Cliffs Independent Spent Fuel Storage Installation
Docket No. 72-8
Nine Mile Point Nuclear Station
Unit Nos. 1 & 2; Docket Nos. 50-220 & 50-410
R. E. Ginna Nuclear Power Plant
Docket No. 50-244
R.E. Ginna Independent Spent Fuel Storage Installation
General License
Docket No. 72-67

Response to NRC's Request for Additional Information on License Transfer Application

- REFERENCES:**
- (a) Letter from Douglas V. Pickett (NRC) to Henry B. Barron (Constellation Energy Nuclear Group, LLC), dated July 14, 2011 – Request for Additional Information – Proposed Merger Between Constellation Energy Group, Inc. and Exelon Corporation
 - (b) Letter from Henry B. Barron (Constellation Energy Nuclear Group, LLC) and Christopher M. Crane (Exelon Generation Company, LLC) to Document Control Desk (NRC), dated May 12, 2011, Application for Approval of Indirect Transfer of Control of Licenses

The purpose of this letter is to provide the response of Constellation Energy Nuclear Group, LLC (CENG) to the Nuclear Regulatory Commission's request for additional information (Reference a) regarding the Application for Approval of Indirect Transfer of Control of Licenses (Reference b). The requested information is provided in Attachment (1). Question 2.h concerns the Exelon Board of Directors. Exelon has responded to the question in separate correspondence.

Copies of the requested current executed Support Agreements between CEG and the Subsidiary Licensees and EDFI and the Subsidiary Licensees are provided in Attachment (2).

This letter contains proprietary information requested to be withheld from public disclosure under 10 CFR 2.390. The letter is non-proprietary upon removal of Attachment (4).

A001
11/5/2011

Please note that Attachment (4), a copy of the Nuclear Advisory Committee's annual report to the CENG Board of Directors, is being provided in a separately-bound proprietary enclosure. Attachment (4) contains confidential and proprietary information and thus we request that this attachment be withheld from public disclosure pursuant to 10 CFR 2.390(a)(4) and 9.17(a)(4). An affidavit supporting the request for withholding Attachment (4) from public disclosure is provided as Attachment (3).

This correspondence does not contain any regulatory commitments.

If there are any questions regarding this transmittal, please contact Bruce Montgomery at 410-470-3777 (Bruce.Montgomery@cengllc.com).

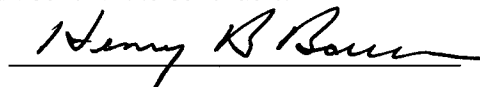
Sincerely,



Henry B. Barron
President and Chief Executive Officer, Constellation
Energy Nuclear Group, LLC

STATE OF MARYLAND :
: **TO WIT:**
CITY OF BALTIMORE :

I, Henry B. Barron, state that I am the President and Chief Executive Officer of Constellation Energy Nuclear Group, LLC and the Executive Vice President of Constellation Energy Group, Inc., and that I am duly authorized to execute and file this response on behalf of these companies. To the best of my knowledge and belief, the statements contained in this document with respect to these companies are true and correct. To the extent that these statements are not based on my personal knowledge, they are based upon information provided by employees and/or consultants of the companies. Such information has been reviewed in accordance with company practice, and I believe it to be reliable.

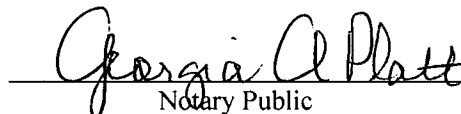


Subscribed and sworn before me, a Notary Public in and for the State of Maryland and City of Baltimore, this 12th day of August, 2011.

WITNESS my Hand and Notarial Seal:

My Commission Expires: 5/7/2014

HBB/EMT/bjd



Notary Public
8/12/2011
Date

Document Control Desk
August 12, 2011
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Attachments: (1) Response to NRC Request for Additional Information
(2) Existing Executed Support Agreements
(3) 10 CFR 2.390 Affidavit of Henry B. Barron
(4) Initial Report of the Nuclear Advisory Committee to the CENG Board of Directors

cc: **With Attachment 4**
D. V. Pickett, NRC
R. V. Guzman, NRC
E. A. Brown, NRC

Without Attachment 4
W. M. Dean, NRC
Resident Inspector, NRC (Calvert Cliffs)
Resident Inspector, NRC (Ginna)
Resident Inspector, NRC (Nine Mile Point)
S. Gray, Maryland DNR
A. L. Peterson, NYSERDA
P. D. Eddy, NYSDPS

ATTACHMENT 1

RESPONSE TO NRC REQUEST FOR ADDITIONAL INFORMATION

ATTACHMENT 1

RESPONSE TO NRC REQUEST FOR ADDITIONAL INFORMATION

For convenience of the reader, references are placed at the end of this attachment.

Requested Information 1: Financial Qualifications

In accordance with 10 CFR 50.33(f)(2), the Applicants provided financial information on CENG and the licensees to demonstrate that they possess, or have reasonable assurance of obtaining the funds necessary to cover the projected operating costs of Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2 (CCNPP 1 and 2, including its ISFSI), R.E. Ginna Nuclear Power Plant (Ginna, including its ISFSI), Nine Mile Point Nuclear Station (NMPNS 1), and a pro rata share of the estimated operating costs of NMPNS 2 associated with a total 82 percent undivided ownership interest for the period of their respective licenses.

- a) *Based on information provided within the application, CENG states that it currently "maintains a cash pooling arrangement that provides an additional vehicle for managing the working capital needs of the Licensees" (CENG, has three NRC licensee subsidiary companies, Calvert Cliffs Nuclear Power Plant, LLC, Nine Mile Point Nuclear Station, LLC, and R.E. Ginna Nuclear Power Plant, LLC), as reviewed by the NRC in connection with the Electricité de France (EDF) license transfer in 2009.*

Provide the amount of funds currently available under the cash pooling arrangement, which was included in the NRC staff's Safety Evaluation (SE) for the Direct and Indirect Transfers of Control of the aforementioned licenses due to the proposed corporate restructuring, and in the October 30, 2009 "Order Superseding Order of October 9, 2009, Approving Application Regarding Proposed Corporate Restructuring." Also, state whether Exelon Generation will have the ability to modify the existing cash pooling arrangement and future financial support agreements.

Response

Constellation Energy Nuclear Group (CENG) maintains a cash pooling arrangement to help manage the working capital needs of its three licensee subsidiaries as described on page 10 of Attachment (1) to Reference 1 (the application) and as previously reviewed by the Nuclear Regulatory Commission (NRC) in the Safety Evaluation for the CENG/EDF Inc. license transfer (Reference 2, page 15). Constellation Energy Nuclear Group's total liquidity, for ongoing working capital requirements, was approximately \$187 million as of the end of June 2011. This total liquidity amount included net cash on-hand for cash pool funding purposes of approximately \$92 million, as well as \$95 million of additional available resources under CENG's recent 2011-2012 member credit facility. The member credit facility for 2011-2012 is one of the additional funding mechanisms available under the CENG Operating Agreement as noted in Reference 1 (Attachment (1), page 10). The approximately \$187 million in total liquidity available is in addition to the cumulative credit support provided to the CENG licensee subsidiaries through the financial Support Agreements described in the application and Reference 3.

As noted in Reference 1, the applicants will continue the CENG cash pooling arrangement following the closing of the proposed merger transaction. The NRC's orders approving the CENG/EDF license transfers (*see, e.g.,* Reference 4, Section III(B)(3)(a) and (b)) contain the following conditions:

CENG and [licensee subsidiary] shall take no action to cause CEG and/or EDF Development, or their successors and assigns, to void, cancel or materially modify the working capital and cash pooling arrangements in the Operating Agreement without the prior written consent of the NRC staff.

* * *

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CENG and [licensee subsidiary] shall take no action to cause CEG and/or EDF Development, or their successors and assigns, to void, cancel or materially modify the Support Agreements as submitted without the prior written consent of the NRC staff.

Under these conditions, Exelon would not have the ability to modify the cash pooling arrangement or future financial Support Agreements without prior NRC approval.

- b) *In a supplement to the application dated June 17, 2011 (ADAMS Accession No. ML11173A067), CENG provided a draft Form of Support Agreement between Exelon/CEG (the Applicants state they will notify the NRC once the Applicants have identified the appropriate parent entity that will provide this support agreement), and aforementioned subsidiary licensees for funding "[. . .] not to exceed 50.01 percent [. . .] or \$205.029 million. . . ."*

The NRC staff notes that the draft EDF Support Agreement that was submitted on February 26, 2009 (ADAMS ML090630426), is between EDF International, SA, and the Subsidiary Licensees, and does not reflect its change in corporate form from a "société anonyme" (SA to a "société par actions simplifiée" (SAS) based on a letter dated April 15, 2011, that was sent to the NRC by CENG (ADAMS ML11109A035).

Provide copies of the current executed support agreements between CEG and the Subsidiary Licensees, and E.D.F. International SAS (EDFI) and the Subsidiary Licensees for the NRC staff's review, which were previously submitted as a draft on February 26, 2009. Also, state if the EDF Support Agreement will be updated to reflect the new corporate form of EDF from a "société anonyme" (SA) to a "société par actions simplifiée" (SAS) based on the aforementioned April 15, 2011, letter.

Copies of the requested current executed Support Agreements between CEG and the Subsidiary Licensees and EDFI and the Subsidiary Licensees are provided in Attachment (2).

There are no plans to update the EDFI Support Agreement to reflect the change to the new corporate form of E.D.F. International from a société anonyme (SA) to a société par actions simplifiée (SAS), because an update is not necessary. As explained in Reference 5, the same legal entity continues to exist after the change in corporate form, except that it has the "SAS" form rather than the "SA" form and is named E.D.F. International SAS. E.D.F. International SAS is subject to the rights and obligations of E.D.F. International SA under the existing Support Agreement by operation of law.

Further, the existing Support Agreement provides in Section 10 that "This Agreement shall be binding upon the parties hereto and their respective successors and assigns." Accordingly, it is not necessary to update the EDFI Support Agreement to reflect the change in corporate form.

Requested Information 2: Foreign Ownership, Control, or Domination

In Section IV, "Foreign Ownership or Control," of the May 12, 2011, submittal, the licensees state that:

...Exelon's acquisition of CEG will not result in CENG or the Licensees being owned, controlled, or dominated by an alien, foreign corporation, or foreign government within the meaning of Sections 103d or 104d of the Atomic Energy Act, or the licensee eligibility requirements of 10 CFR 50.38.

However, in a letter responding to the United States Securities and Exchange Commission (SEC), dated June 30, 2010, CEG stated that:

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As evidenced by the composition of the CENG Board of Directors (i.e., split equally between EDF and CEG) and the fact that significant day-to-day operating activities are governed at the Board level as specified in the Operating Agreement, control over the decisions and activities in the normal course of business is shared equally by the two equity holders.

Further, Constellation stated that:

In summary, based on our analysis of the totality of the rights and obligations of CEG and EDF as joint owners of CENG, we believe that EDF, through its equal representation on the CENG Board of Directors, has the contractual and ownership rights to effectively and substantively participate in significant day-to-day operating, strategic, and governance decisions and activities in the ordinary course of operating the CENG joint venture [. . .] As a result, we concluded that CEG and EDF have joint control over CENG, and because CEG no longer holds a controlling financial interest in CENG as defined under the accounting rules, deconsolidation of the joint venture is the appropriate, required accounting treatment.

Section 103d of the Atomic Energy Act prohibits the NRC from issuing a license to:

[a]n alien or any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation or a foreign government.

Section 50.38 of 10 CFR is the regulatory provision that implements this statutory prohibition.

Based on the statements above, and in order to for the NRC staff to evaluate the foreign ownership, control, or domination (FOCD) regarding CENG, provide the following additional information:

- a) Explain how joint control of CENG by CEG and EDF complies with the NRC's FOCD restrictions for nuclear generating facilities, consistent with guidance provided in Standard Review Plan "Foreign Ownership, Control, or Domination of Applicants for Reactor Licenses," dated June 1999.*

Response

The Exelon-CEG application did not propose any change with respect to EDF Inc.'s current ownership interest in CENG, which was previously reviewed and approved by the NRC in References 2 and 4. As shown in the organizational chart in Figure 3 of Attachment (2) of Reference 1, EDF Inc.'s existing 49.99% ownership in CENG remains unchanged. The proposed transaction involves a merger between Exelon and CEG, where CEG will become a direct subsidiary of Exelon Generation. CEG will continue to be a parent company of CENG and will continue indirectly to hold a 50.01% ownership interest in CENG, with EDF Inc. continuing to hold its interest in CENG as it does currently.

Constellation Energy Group has provided a detailed discussion of its correspondence with the SEC in the response to Requested Information 2(g) below. In summary, CEG's correspondence with the SEC addressed the proper accounting treatment for the financial results of the CENG joint venture. In particular, it addressed whether, under applicable financial accounting standards in Accounting Standards Codification (ASC) 810--Consolidation, the financial results of CENG should be consolidated with those of CEG or "deconsolidated" (i.e., reported separately from the parent). Under ASC 810, the analysis depends on whether the corporate parent has a "controlling financial interest" in the subsidiary, in which case consolidation of financial results with the parent is required. For an approximately 50/50 joint venture like CENG, deconsolidation of the joint venture's financial results from those of the parent would usually be considered to provide a more fair presentation. In this regard, CEG determined that CEG and EDF should be considered to have joint control of CENG under the applicable accounting standards of

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ASC 810, and thus neither CEG nor EDF Inc. would be considered to have a controlling financial interest. As a result, CEG determined that deconsolidation of the joint venture is the appropriate, required accounting treatment.

As explained in the response to Requested Information 2(g), this determination was solely for financial accounting purposes and did not purport to evaluate control under the NRC's FOCD restrictions. In particular, while CEG determined that EDF should be deemed to have joint control over the day-to-day business of CENG within the meaning of ASC 810, it at all times remains subject to the casting vote authority of the Chairman, who must be a U.S. citizen, over matters of nuclear safety, security and reliability. As CEG explained to the SEC (Reference 7, page 6):

CENG's operating agreement states that each equity holder (CEG and EDF) has the right to appoint five members to the board of directors of CENG through which they jointly control all activities of the entity (subject to the tie-breaking authority held by the chairman of the board, who is appointed by CEG, in the event of deadlock on certain matters, such as safety, security and reliability of the plants...). (emphasis added)

Under Sections 103d and 104d of the Atomic Energy Act (AEA) and the NRC's regulations at 10 CFR 50.38, certain restrictions apply in the case of foreign ownership of U.S. nuclear power facilities. The NRC's FOCD restrictions are "made with an orientation toward the common defense and security", as stated in 64 Fed. Reg. 52355, 52357 (Sept. 28, 1999), *Final Standard Review Plan on Foreign Ownership, Control, and Domination* (SRP). As explained in the SRP (64 Fed. Reg. at 52358), where an applicant "is partially owned by a foreign entity, for example, partial ownership of 50% or greater, [it] may still be eligible for a license if certain conditions are imposed, such as requiring that officers and employees of the applicant responsible for special nuclear material must be U.S. citizens."

Consistent with the guidance provided in the SRP, and the NRC orders approving the CENG/EDF license transfers (Reference 4), CENG has implemented negotiation measures to ensure that final decision making authority over matters of nuclear safety, security and reliability remains in the hands of U.S. citizens. Under the CENG Operating Agreement, the Chairman of the CENG Board of Directors, who must be a U.S. citizen, has tie-breaking authority in the event of a deadlock of the board on specific matters, including matters related to regulatory strategy or the relationship with the U.S. Government including the NRC; the safety, security and reliability of the nuclear facilities; and any matter that, in view of U.S. laws or regulations, requires or makes it reasonably necessary to assure U.S. control. This authority is stated in the CENG Operating Agreement, Section 7.3(c). These measures ensure continued U.S. control over all matters required to be under U.S. control by the AEA and 10 CFR 50.38. These negotiation measures for CENG remain in place and are unaffected by the proposed Exelon/CEG merger.

The NRC-approved CENG governance structure, particularly with respect to allowing board members appointed by the foreign owner to vote on business decisions, is in accordance with NRC precedent, including NRC orders approving license transfers for the acquisition of nuclear power plants by AmerGen Energy Company, LLC.¹ As CENG had explained in the license transfer application for the CENG/EDF

¹ In addition, in National Grid Group's acquisition of New England Electric System, the parent of New England Power Company (NEP) which owned 9.9% of one nuclear power plant and 12.2% of another, the full board of directors had the authority to vote on "fundamental business decisions," which included (1) the right to vote as to whether or not to close a facility and to begin its decommissioning, and as to whether to seek relicensing; (2) the right to decide to sell, lease, or otherwise dispose of NEP's interest in a facility; and (3) the right to take any action which is ordered by the NRC or any other agency or court of competent jurisdiction. The applicant in that proceeding argued that these rights are essential to the protection of the economic and legal interests of National Grid, the foreign parent company, and thus must be left to the full Board (Reference 9 at 8-9). The NRC did not

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license transfers (Reference 6), AmerGen was formed in 1997 as a joint venture between PECO Energy and British Energy. AmerGen acquired the Three Mile Island Unit 1, Clinton, and Oyster Creek nuclear plants, and was the licensed owner and operator of those facilities. In order to address the NRC's FOCD restrictions, PECO Energy and British Energy established corporate governance restrictions in the AmerGen Limited Liability Company Agreement (AmerGen LLC Agreement) to preclude foreign control.

Under the AmerGen LLC Agreement, only decisions pertaining to "safety" were subject to the U.S. Chairman's casting vote authority, whereas all other matters, including business matters, were left to the full AmerGen management committee, which was made up of half U.S. citizens and half U.K. citizens. As the NRC discussed in the Safety Evaluation (Reference 8, page 12) for the transfer of the Clinton plant to AmerGen in 1999:

Under the Limited Liability Company Agreement (LLC Agreement) by which AmerGen was formed, the "property, business, and affairs" of AmerGen are directed and controlled by a Management Committee The Chairman of the Management Committee has a tie-breaking vote on the Management Committee regarding "all [s]afety issues." (emphasis added)

Under the AmerGen LLC Agreement, there was a specific provision in Section 6.5, "Disagreements Relating to Safety Issues," allowing British Energy to contest at any time whether a safety issue subject to the U.S. chairman's casting vote existed (and to request monetary relief). During its review of license transfers for the AmerGen plants, the NRC does not appear to have raised any concern about this dispute provision of the AmerGen operating agreement. In contrast to the AmerGen model, the dispute resolution provision of the CENG Operating Agreement (Section 13.4) contains an exclusion for matters subject to resolution pursuant to the Chairman's casting vote authority in Section 7.3(c).

The negation measures implemented by CENG to ensure U.S. control in accordance with the SRP go beyond those approved by the NRC for AmerGen. For example, the CENG Operating Agreement in Section 7.3(c) expands the Chairman's casting vote authority to include matters of security and reliability and provides greater specificity with respect to a determination by the Chairman to exercise the casting vote. Further, CENG is advised by an independent Nuclear Advisory Committee (NAC), which provides additional oversight in order to assure that there is no foreign domination or control of CENG. As noted above, matters subject to resolution through the Chairman's casting vote are excluded from the dispute resolution process in the CENG Operating Agreement. The measures have been previously approved by the NRC as satisfying the AEA and NRC regulations, and they are unchanged and unaffected by the proposed merger transaction.

- b) *Provide a copy of the Nuclear Advisory Committee's (NAC) latest prepared report that was delivered to the Board of Directors. Also, state whether the NAC has provided advice on and recommendations for appropriate additional policies to prudently assure the Company has continued compliance with provisions of U.S. law and regulations as stated within Section 7.5 "Nuclear Advisory Committee," of the Operating Agreement.*

object to these provisions in approving the requested license transfer, stating that "[t]he staff regards the safeguards provided in NEP's application as adequate protection to prevent NEP from being in violation of the foreign control prohibition contained in Section 103d" (Reference 9 at 10). Similarly, when the NRC approved PacifiCorp/Scottish Power owning 2.5% of a nuclear power plant, the applicants in that license transfer proceeding had the same provisions with respect to the business decisions that must be decided by the full board (Reference 10 at 5).

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Response

The NAC held its first meeting on December 1, 2009 and provided its initial report to the CENG Board of Directors on December 15, 2010. A copy of the NAC's initial report, which is the only report issued to date, is provided in a separately bound proprietary attachment (Attachment 4). We request that this proprietary attachment be withheld from public disclosure pursuant to 10 CFR 2.390(a)(4) and 9.17(a)(4), as described in the affidavit submitted with this response (Attachment 3). The NAC and NAC Charter, as currently structured, will remain in place unchanged following the proposed Exelon/CEG merger.

As explained in the report, the NAC concluded that CENG's measures to negate foreign control over CENG were sufficient and thus the NAC did not provide recommendations for additional policies to assure continued compliance with provisions of U.S. law and regulations. In its report (at page 14), which covers the time period between the closing of the CENG/EDF transaction in November 2009 through mid-December 2010, the NAC explained that it "evaluated whether additional measures need to be undertaken by CENG to: 1) ensure the Company's compliance with U.S. laws and regulations regarding [FOCD] over the nuclear assets of the Company and 2) ensure that action by a foreign government would not adversely impact the reliable and safe operation of the Company's nuclear assets." Based on its review of a wide range of information as documented in the report, the NAC concluded that additional measures were not necessary to ensure compliance with U.S. laws and regulations regarding foreign control, although it provided observations for the management of CENG to consider (page 15). The NAC further noted that it had not identified any significant matters that could potentially affect the safe, secure, or reliable operation of the company's nuclear assets that would require independent reporting to the NRC.

c) *Please provide the names and citizenship of the current members of the NAC.*

Response

The membership of the NAC has remained the same since its formation as part of the CENG/EDF license transfer. All members of the NAC are U.S. citizens. The NAC consists of the following individuals:

- General John A. Gordon, Chairman - United States Air Force, Ret., formerly the Homeland Security Adviser to President George W. Bush
- John J. Hamre - currently the President and Chief Executive Officer of the Center for Strategic and International Studies and formerly Under Secretary of Defense
- Dr. Richard A. Meserve - former Chairman of the NRC, and currently the President of the Carnegie Institution
- Robert I. Hanfling - formerly a member of the Secretary of Energy Advisory Board
- James K. Asselstine - former NRC Commissioner

d) *Describe any unanimous consent issues which would potentially include foreign board members, quorum provisions, and other pertinent operational issues which may be subject to foreign control, either indirect or direct, related to NRC licensed activities, nuclear safety and security, access to restricted data, or responsibility for special nuclear material.*

Unanimous approval of the directors of CENG is required with respect to the special matters enumerated in Section 7.2(j) of the CENG Operating Agreement. These special matters relate to economic and budget matters, strategic business decisions, and governance matters (see discussion below under the response to Requested Information 2(g)). As explained in the response to Requested Information 2(a) above, NRC precedent has recognized that such business decisions can appropriately be reserved for the full board of licensees with foreign directors. In this regard, the NRC reviewed this provision of the

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CENG Operating Agreement during the CENG/EDF license transfer proceeding in 2009, noting as follows in its Safety Evaluation (Reference 2, page 25):

The application also states that under the Operating Agreement, certain fundamental business decisions and actions require unanimous approval of the CENG Board of Directors. For these special matters, all of the directors appointed by a member must vote in the same manner (i.e., as a block), either for or against.

All the directors appointed by a member must vote as a block on the special matters. This provision ensures that the CENG board will either vote unanimously on a special matter or be deadlocked. In the latter case, the deadlock, if related to any of the several matters subject to the U.S. Chairman's casting vote (including, but not limited to, NRC licensed activities, nuclear safety and security, access to restricted data, or responsibility for special nuclear material), would be decided by the U.S. Chairman. In this way, the governance provisions of the CENG Operating Agreement prevent foreign directors from controlling, directly or indirectly, matters required to be under U.S. control.

Similarly, the quorum provisions of the CENG Operating Agreement (Section 7.2(g)) do not allow FOCD of CENG by EDF. Section 7.2(g) of the Operating Agreement provides that except as set forth in Section 7.2(j) for special matters (described above), the action of a majority of the directors present in person or by proxy at a meeting at which a quorum is present constitutes an action of the CENG Board of Directors, provided that at least one director appointed by each of CEG and EDF votes in favor of the action, with the exception of matters decided by a casting vote pursuant to Section 7.3(c). The exception for matters subject to the Chairman's casting vote ensures U.S. control over all pertinent NRC licensed activities.

Under Section 7.3(c) of the CENG Operating Agreement, in the event of a deadlock of the CENG Board of Directors, the Chairman will have the casting vote on the following matters:

1. Any matter that, in view of U.S. laws or regulations, requires or makes it reasonably necessary to assure U.S. control;
2. Any matter relating to nuclear safety, security or reliability, including, but not limited to, the following matters:
 - a) Implementation or compliance with any NRC generic letter, bulletin, Order, Confirmatory Order, or similar requirement issued by the NRC;
 - b) Prevention or mitigation of a nuclear event or incident or the unauthorized release of radioactive material;
 - c) Placement of the plant in a safe condition following any nuclear event or incident;
 - d) Compliance with the Atomic Energy Act, the Energy Reorganization Act, or any NRC regulation;
 - e) The obtaining of or compliance with a specific license issued by the NRC and its technical specifications;
 - f) Compliance with a specific Final Safety Analysis Report, or other licensing basis document;
 - g) Any decision relating to U.S. regulatory strategy or the relationship with the NRC;

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- h) The adoption of any charter, any change in the authority or composition, or any matter relating to compensation, of the Nuclear Advisory Committee; and
 - i) Settlement of certain claims in connection with a dispute involving a U.S. or Canadian governmental authority.
3. Any other issue reasonably determined by the Chairman in his prudent exercise of discretion to be an exigent nuclear safety, security or reliability issue; and
4. Staffing of key executive officer positions of CENG.

Further, the listing of matters on which the Chairman of CENG has a casting vote does not affect the authority and responsibilities of the Chief Nuclear Officer or the management of CENG's licensee subsidiary companies for Calvert Cliffs, Nine Mile Point, and Ginna. It is intended only to make clear the specific board-level decisions that are reserved for the casting vote process because they must be subject to ultimate control by a U.S. citizen appointed by CEG (Reference 2, pages 24-25).

Thus, the Chairman of CENG's Board of Directors has the final decision making authority over any matter that the AEA and the NRC regulations require must be under control of a U.S. citizen, including all pertinent operational issues related to CENG's licensed facilities. The members of CENG (CEG and EDF) generally only have the right to participate in the management of the company through the right to appoint directors and nominate or designate certain officers. The NRC-approved CENG governance structure prevents foreign board members from having the power to control, directly or indirectly, any decisions related to NRC licensed activities contrary to the AEA or NRC regulations.

- e) *Do any non-U.S. citizens on CENG's Board of Directors have the power to control, directly or indirectly, or cause the direction of any decisions related to activities licensed by the NRC of your organization?*

Response

As explained above, the CENG Operating Agreement prevents non-U.S. directors from having the power to control or direct matters on numerous items, including any matter pertaining to nuclear safety, security, and reliability. Constellation Energy Group and EDF each appoint five members to the CENG Board of Directors, with a casting (deciding) vote on matters related to (among several other things) nuclear safety, security and reliability reserved exclusively to the Chairman, who must be a U.S. citizen appointed by CEG. As noted in response to Requested Information 2(d), for special matters under Section 7.2(j) of the CENG Operating Agreement, all directors appointed by a member must vote in the same manner (i.e., as a block), either for or against. Thus, it would not be possible for one or more foreign directors to control or direct, either directly or indirectly, any decisions related to activities licensed by the NRC. Consequently, the CENG board will either vote unanimously on a special matter (including any decisions related to activities licensed by the NRC) or be deadlocked. In the latter case, the deadlock, if related to any of the several matters subject to the U.S. Chairman's casting vote (including, but not limited to, activities licensed by the NRC), would be decided by the U.S. Chairman.

- f) *State whether EDF will have the power to control, directly or indirectly, or cause the direction of any decisions related to activities licensed by the NRC regarding Exelon Generation and its current licensed facilities.*

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Response

EDF Inc. will not have any power to control, directly or indirectly, or cause the direction of any decisions related to activities licensed by the NRC regarding Exelon Generation and its current licensed facilities. As explained in Reference 1, the existing chain of ownership for Exelon Generation's current licensed facilities is unaffected by the proposed transaction. Moreover, EDF Inc., by virtue of its ownership of CEG stock, would own less than 2% of the outstanding shares of Exelon if at the time the merger is consummated, EDF Inc. owned the same number of shares as reported in the most recently available CEG SEC reports.

- g) *Section 50.33(d)(3)(iii) states that the application shall state whether it is owned, controlled, or dominated by an alien, foreign corporation, or foreign government.*

Provide additional detail regarding the information filed with the SEC, stating that EDF had joint control of CENG, and that EDF shares equally in the control over the decisions and activities in the normal course of CENG's business of operating nuclear power reactors. Include sufficient detail on the extent of EDF's control over matters involving NRC licensees for the staff to determine whether the negotiation action plan adequately negates foreign ownership, control, and domination.

Response

The information in this response to Requested Information 2(g) was provided to CENG by CEG, which was responsible for the filings with the SEC. The correspondence filed by CEG with the SEC responded to an SEC request that CEG provide information on its assessment of whether, following the sale of the 49.99% ownership interest in CENG to EDF, the financial results of CENG should continue to be consolidated with CEG or were required to be deconsolidated under the technical accounting guidance in ASC 810 – Consolidation. Thus, CEG's correspondence with the SEC addressed a financial accounting question and not whether there was foreign ownership, control and domination (FOCD) over CENG under NRC standards and precedent, nor did it contradict or alter any information submitted to the NRC in connection with the CENG/EDF license transfer.

In its correspondence, CEG explained to the SEC that deconsolidation of CENG's financial results was appropriate because CEG ceased to have a "controlling financial interest" in CENG for financial accounting purposes after the formation of the CENG joint venture with EDF. A key factor in this evaluation, as described in accounting literature, is participation in "day-to-day" business decisions. Many of the decisions considered by the accounting literature to be "day-to-day" decisions are to be made by CENG's Board of Directors, which consists of five members selected by CEG and five members selected by EDF. Moreover, CEG concluded that, under the standards contained in the applicable accounting literature, the Chairman's casting vote, which permits deadlocks to be broken on certain matters specified in CENG's Operating Agreement, did not alter the conclusion that for financial accounting purposes CEG and EDF would be considered to have "joint control" over the day-to-day business activities of CENG. Therefore, under relevant accounting standards, CEG would not be deemed to have a "controlling financial interest" in CENG and, consequently, would be required to deconsolidate the financial results of CENG from those of CEG.

In undertaking its assessment under the accounting rules, CEG reviewed the range of matters over which the CENG Board of Directors has decision making authority, noting that with respect to such matters, and subject to the Chairman's casting vote, EDF and CEG had equal representation in the decision making process for day-to-day business decisions. These matters, which are set forth fully in Section 7.2(j) of CENG's Operating Agreement, include the following activities:

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RESPONSE TO NRC REQUEST FOR ADDITIONAL INFORMATION

- Operating Activities: Such as adopting a budget and strategic plan; selecting the CENG CEO; entering into certain large contracts or large indebtedness; making distributions to the equity holders; and decisions requiring additional capital contributions.
- Strategic Business Activities: Such as reorganization, dissolution, or bankruptcy; entering into a new line of business, material acquisition, divestiture, joint venture or partnership; and decisions on whether or not to stop operations, decommission, seek relicensing, or buy, sell, lease or otherwise dispose of its interest in a nuclear facility.
- Governance Activities: Such as any material change to the organization, governance, or management of any subsidiary of CENG; decisions to enter into a change of control transaction to effect an initial public offering; and a grant of materially different authority to the Chairman, CEO or other officers of the company.

As a result of the equal representation of CEG and EDF on the CENG Board of Directors, CEG observed that the two companies would be considered, for accounting purposes, to exercise "joint control" over the relevant universe of issues under the accounting literature: substantive, day-to-day activities of operating CENG in the ordinary course of business.

As discussed in response to Requested Information 2(a) above, CEG explained to the SEC that the "joint control" over CENG is subject to the Chairman's casting vote authority, where the CENG Chairman, who must be a U.S. citizen, has the authority to cast the deciding vote on all matters related to nuclear safety, security, and reliability (among several other matters), as specified in Section 7.3(c) of the CENG Operating Agreement. Nothing in the CENG Operating Agreement allows for any block on, or delay of, matters subject to and decided by the CENG Chairman's casting vote. Thus, the CENG Board of Directors and its Chairman are in charge of day-to-day business activities of CENG rather than CEG for purposes of the financial accounting standards. The casting vote authority of the Chairman separately ensures that the governance of CENG satisfies the NRC's FOCD restrictions.²

In its letter to the SEC, CEG also observed that "if a party disagrees that a matter is subject to the Chairman's tie-breaking authority, it may seek to have this dispute" resolved under the escalation (and potentially arbitration) procedures of Section 13.4 of the CENG Operating Agreement. However, these procedures in no way limit or negate the CENG Chairman's authority or his right to exercise his casting vote. Section 13.4 clearly states that its dispute resolution procedures apply "[i]n the event of a deadlock vote of the Board of Directors on a matter presented for their determination . . . (other than a matter subject to resolution pursuant to Section 7.3(c) [the Chairman's casting vote])." Thus, while Section 13.4 provides a mechanism to resolve a claim of breach of the operating agreement (after the alleged breach occurs), it does not provide a party with the authority or right to stop or impede an action conducted in accordance with the agreement.

Moreover, the matters covered by the Chairman's casting vote are so critical and of such great consequence—or so clear-cut (e.g., nuclear safety, security and reliability; staffing of key executive officers; certain governmental settlements; changes to the NAC charter, authority or composition)—that there is no reasonable possibility that EDF would attempt to interfere with this authority. EDF is a responsible operator of nuclear facilities and in deciding to invest in CENG accepted and agreed to the requirements for U.S. control to be maintained over various significant matters and agreed to the

² As explained, the question of the proper accounting treatment is directed at whether CEG has financial control of CENG. For purposes of the NRC's FOCD restrictions, it is not necessary that CEG control CENG. Rather, what is required is that CENG not be subject to FOCD by EDF.

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mechanism of the CENG Chairman's casting vote to ensure that this would occur as and when required by U.S. law.

Constellation Energy Group based its SEC response on the governance provisions of the CENG Operating Agreement. The CENG negation action plan is implemented primarily through the governance controls under the CENG Operating Agreement. The NRC reviewed these measures in connection with the CENG-EDF license transfer in 2009 and found them adequate to negate foreign control for purposes of the AEA under NRC standards and precedent. Importantly, CENG's negation action plan was developed based on the NRC's SRP and NRC precedent in previous license transfer orders, including those for AmerGen, as discussed in the response to Requested Information 2(a). No changes in the current foreign ownership of CENG have been proposed as part of the present license transfer application for the CEG-Exelon merger. Accordingly, CENG's negation action is adequate to negate FOCD concerns.

(h) Describe the functions of the compensation committee, corporate governance committee, audit committee, and risk oversight committee of Exelon's Board of Directors, and describe how they specifically relate to NRC activities (e.g., decommissioning funding assurance). Also, describe the roles and responsibilities of the directors on the aforementioned committees and state how Exelon will negate potential foreign influence and control over the committees as they pertain to NRC activities.

Response

Exelon is responding to this requested information in a separate letter (Reference 11).

REFERENCES:

- (1) Letter from Henry B. Barron (Constellation Energy Nuclear Group, LLC) and Christopher M. Crane (Exelon Generation Company, LLC) to Document Control Desk (NRC), dated May 12, 2011, Application for Approval of Indirect Transfer of Control of Licenses (ML11138A159)
- (2) Revised Safety Evaluation by the Office of Nuclear Reactor Regulation, Direct and Indirect Transfers of Control of Renewed Facility Operating Licenses Due to the Proposed Corporate Restructuring, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2; Calvert Cliffs Independent Spent fuel Storage Installation; Nine Mile Point Nuclear Station, Unit Nos. 1 and 2; and R. E. Ginna Nuclear Power Plant, Docket Nos. 50-317, 50-318, 72-8, 50-220, 50-410, and 50-244 (October 30, 2009) (ML093010003)
- (3) Letter from Steven L. Miller (Constellation Energy Nuclear Group, LLC) to Document Control Desk (NRC), dated June 17, 2011, Supplement to Application for Approval of Indirect Transfer of Control of Licenses (ML11173A067)
- (4) Order Superseding October 9, 2009, Order Approving the Transfer of Renewed Facility Operating License Nos. DPR-53 and DPR-69 for the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, and Materials License No. SNM-2505 for the Calvert Cliffs Independent Spent Fuel Storage Installation, and Conforming Amendments (TAC Nos. ME0443 AND ME0444) (October 30, 2009) (ML093000631)
- (5) Letter from James A. Spina (Constellation Energy Nuclear Group, LLC) to Document Control Desk (NRC), dated April 15, 2011, Notice Regarding Change in Corporate Form of E.D.F. International SA (ML11109A035)

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- (6) Letter from Michael J. Wallace (Constellation Energy Nuclear Group, LLC) to Document Control Desk (NRC), dated January 22, 2009, Application for an Order Approving License Transfers and Conforming License Amendment Request
- (7) Letter from Jonathan W. Thayer (Constellation Energy Group, Inc.) to Scott Stringer (U.S. Securities and Exchange Commission), dated May 19, 2010, Constellation Energy Group, Inc. Form 10-K for Fiscal Year Ended December 31, 2009, filed February 26, 2010, File No. 1-12869
- (8) Safety Evaluation of the Proposed Transfer of the Clinton Power Station Operating License from Illinois Power Company to AmerGen Energy Company, LLC, Docket No. 50-461 (November 24, 1999)
- (9) Safety Evaluation of Proposed Merger of New England Electric System and the National Grid Group PLC (December 10, 1999) (ML993540045)
- (10) Safety Evaluation for the Proposed Merger of PacifiCorp and Scottish Power PLC (November 10, 2009) (ML993260013)
- (11) Letter from J. Bradley Fewell to Document Control Desk (NRC), dated August 3, 2011, Response to Request For Additional Information - Proposed Merger Between Constellation Energy Group, Inc. and Exelon Corporation

ATTACHMENT 2

EXISTING EXECUTED SUPPORT AGREEMENTS

SUPPORT AGREEMENT

Between

E.D.F. International S.A.

and

Calvert Cliffs Nuclear Power Plant, LLC
Nine Mile Point Nuclear Station, LLC, and
R. E. Ginna Nuclear Power Plant, LLC

THIS SUPPORT AGREEMENT, dated as of November 6, 2009 between E.D.F. International S.A. ("EDFI"), and Calvert Cliffs Nuclear Power Plant, LLC, Nine Mile Point Nuclear Station, LLC and R. E. Ginna Nuclear Power Plant, LLC, each individually herein referred to as a "Subsidiary Licensee" and all collectively herein referred to as "Subsidiary Licensees."

WITNESSETH:

WHEREAS, through its intermediate subsidiary companies, EDFI is the indirect owner of 49.99% of the Subsidiary Licensees;

WHEREAS, Constellation Energy Group, Inc. ("CEG"), through its intermediate subsidiary companies, is the indirect owner of 50.01% of the Subsidiary Licensees;

WHEREAS, the Subsidiary Licensees are the corporate entities that hold the NRC licenses for Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 & 2, Operating Licenses DPR-53 & DPR-69, Nine Mile Point Nuclear Station, Unit Nos. 1 & 2, Operating Licenses DPR-63 & NPF-69, and R. E. Ginna Nuclear Power Plant, Operating License DPR-18 (individually, each a "Facility," and collectively the "Facilities");

WHEREAS, EDFI and the Subsidiary Licensees desire to take certain actions to assure the ability of the Subsidiary Licensees to pay their respective approved expenses of maintaining the Facilities safely and reliably and of protecting the public health and safety (the "Operating Expenses") and to meet Nuclear Regulatory Commission ("NRC") requirements during the life of each Facility (the "NRC Requirements");

WHEREAS, CEG is entering into a separate agreement with the Subsidiary Licensees that has substantially the same terms and purposes as this Support Agreement (hereinafter, the "CEG Agreement");

WHEREAS, EDFI and CEG, as provided in the Second Amended and Restated Operating Agreement by and among CEG, Constellation Nuclear, LLC, CE Nuclear, LLC, EDFI, EDF Development Inc. ("EDF Development"), and Constellation Energy Nuclear Group, LLC ("CENG"), dated as of November 6, 2009 ("Operating Agreement"), plan to provide the Subsidiary Licensees with adequate resources for approved working capital and other needs on an ongoing basis through various mechanisms such as capital contributions, member loans or advances, or other mutually approved funding mechanisms as discussed in the Operating Agreement; however, if these funding sources, at any time, cannot meet those needs, then CEG and EDFI have agreed to provide credit to the Subsidiary Licensees, in the manner as described below, to allow the Subsidiary Licensees to meet their obligations to protect public health and safety.

NOW, THEREFORE, in consideration of the mutual promises herein contained, the parties hereto agree as follows:

1. *Availability of Funding.* Upon the written request of a Subsidiary Licensee, EDFI shall provide or cause to be provided to such Subsidiary Licensee such funds as the Subsidiary Licensee determines to be necessary to pay Operating Expenses or meet NRC Requirements at the same time or times as the same amount is paid by CEG under the CEG Agreement; provided, however, that EDFI's maximum liability to provide funding hereunder shall not exceed the lesser of (x) 49.99 percent of the total funding required by the Subsidiary Licensee pursuant to this Support Agreement and the CEG Agreement, or (y) \$144.971 million cumulatively over the life of this Support Agreement, unless, and to the extent that, advances of funds under this Support Agreement have been reimbursed in whole or part through repayments by the Subsidiary Licensee to EDFI. As such, the aggregate amount outstanding under this Support Agreement at any one time shall not exceed \$144.971 million, and this shall be the maximum unreimbursed amount EDFI is obligated to provide under this Support Agreement.
2. *Request for an Advance.* If the funding mechanisms as described under the Operating Agreement, at any time, are not sufficient to allow a Subsidiary Licensee to meet its needs, the Subsidiary Licensee may submit to EDFI a request for an advance of funds under this Support Agreement. Each request for an advance of funds under this Support Agreement shall be made not later than noon Eastern Time (USA) on the tenth business day prior to the proposed drawdown by notice from the Subsidiary Licensee to EDFI (pursuant to procedures that may be changed from time to time by mutual agreement) specifying the amount of the

advance and a certification that such advance is for the purpose specified in Section 6.¹

3. *Substitution.* EDFI can terminate funding provided under this Support Agreement upon 45 days' written notice to the Subsidiary Licensee if EDFI has procured a substitute loan facility and/or letter of credit for the Subsidiary Licensee that is mutually agreed to by EDFI and CEG and meets the financial assurance requirements of the NRC to protect the public health and safety.
4. *Interest.* Interest on any principal amount outstanding shall accrue daily at such rate, and shall be payable at such times, as mutually established by EDFI and CEG at the time of an advance under this Support Agreement. The interest rate applicable to any advance and the time of payment shall be noted in a note or other writing. Such notation shall be conclusive absent manifest error.
5. *Optional Prepayments.* The Subsidiary Licensee, at its option, may repay all or any part of the principal amount outstanding from time to time without penalty or premium, upon notice to EDFI made not later than noon Eastern Time (USA) on at least the second business day prior to such prepayment (which notice, if oral, shall be confirmed promptly in writing); provided, however, that if the interest rate is LIBOR based, a prepayment penalty may be assessed against the Subsidiary Licensee. Any prepayment penalty would be mutually established by EDFI and CEG at the time of an advance. EDFI, at its option, may waive such notice requirements as to any prepayment.
6. *Use of Proceeds.* In order to provide financial assurance, any advance may be used by a Subsidiary Licensee only to meet its approved Operating Expenses and NRC Requirements, including payments for nuclear property damage insurance and a retrospective premium pursuant to Title 10, Part 140, Section 21 of the Code of Federal Regulations (10 CFR 140.21).
7. *No Guarantee.* This Support Agreement is not, and nothing herein contained, and no action taken pursuant hereto by EDFI shall be construed as, or deemed to constitute, a direct or indirect guarantee by EDFI to any person of the payment of the Operating Expenses or of any liability or obligation of any kind or character whatsoever of the Subsidiary Licensees. This Agreement may, however, be relied

¹ The NRC's Director of the Office of Nuclear Reactor Regulation must be notified in writing no later than 10 days after any funds are provided, in accordance with Conditions A.(1)(a) and A.(3)(a) in the October 30, 2009 Orders.

upon by the NRC in determining the financial qualifications of each Subsidiary Licensee to hold the operating license for a Facility.


8. *Waivers.* EDFI hereby waives any failure or delay on the part of the Subsidiary Licensees in asserting or enforcing any of their rights or in making any claims or demands hereunder.
9. *Amendments and Termination.* This Agreement may not be amended or modified at any time without 30 calendar days prior written notice to the NRC. This Agreement shall terminate at such time as EDFI is no longer the direct or indirect owner of any of the shares or other ownership interests in a Subsidiary Licensee. This Agreement shall also terminate with respect to the Operating Expenses and NRC Requirements applicable to a Facility whenever such Facility permanently ceases commercial operations and certification is made as to the permanent removal of fuel from the reactor vessel; provided, however, that this Agreement may be extended for successive periods of two years each upon the mutual agreement of the parties.
10. *Successors.* This Agreement shall be binding upon the parties hereto and their respective successors and assigns.
11. *Third Parties.* Except as expressly provided in Sections 3 and 6 with respect to the NRC, this Agreement is not intended for the benefit of any person other than the parties hereto, and shall not confer or be deemed to confer upon any other such person any benefits, rights, or remedies hereunder.
12. *Other Financial Support Arrangements.* This Agreement supersedes any other support arrangement relating to NRC requirements, if any exists prior to the date hereof, between EDFI and a Subsidiary Licensee to provide funding when necessary to pay Operating Expenses and meet NRC Requirements for the Facilities, and any such other financial support arrangement is hereby voided, revoked and rescinded. Accordingly, the total available funding provided for in this Support Agreement shall be limited as set forth in Section 1 herein and shall not be cumulative with any other financial support arrangement for purposes of meeting NRC Requirements. For avoidance of doubt, the parties agree that this Section 12 does not apply to financial guarantees or commitments made to third parties, even where such agreements may relate to compliance with NRC requirements.

13. *Governing Law.* This Agreement shall be governed by the laws of the State of New York.
14. *Dispute Resolution.* In the event of any dispute arising out of or in connection with this Support Agreement, executives of EDFI and the Subsidiary Licensee will exercise good faith efforts to resolve the dispute in a timely manner. In the event that the executives of EDFI and the Subsidiary Licensee are unable to reach a resolution, the dispute, including any dispute regarding the existence, termination or validity of this Support Agreement, each Party shall have the right to have recourse to and shall be bound by the pre-arbitral referee procedure of the International Chamber of Commerce in accordance with its Rules for a Pre-Arbitral Referee Procedure. All disputes arising out of or in connection with this Support Agreement (including as to existence, termination and validity) shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce (the "Rules") by three arbitrators appointed in accordance with said Rules. The place of the pre-arbitral referee procedure and of the arbitration procedure shall be New York, New York, United States of America. The proceedings before the arbitral tribunal (including with respect to the Pre-Arbitral Referee Procedure) shall be governed by the Rules. The rules of law to be applied by the arbitral tribunal to the merits of the dispute shall be the rules of law of the State of New York. The language of the arbitration shall be English. Evidence shall be provided in English and pleadings shall be done in English. The arbitral tribunal shall render its decision within six months from the date of signature of the terms of reference. Any decision or award of the arbitral tribunal shall be final and binding upon the parties to the arbitration proceeding. The parties waive to the extent permitted by applicable law any rights to appeal or to review of such award by any court or tribunal. The parties agree that the arbitral award may be enforced against the parties to the arbitration proceeding or their assets wherever they may be found and that a judgment upon the arbitral award may be entered in any court having jurisdiction thereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered by their respective officers thereunto duly authorized as of the day and year first above written.

ACKNOWLEDGED AND AGREED

E.D.F. International S.A.

By: 

Name: Daniel Camus

Title: Chairman

Calvert Cliffs Nuclear Power Plant, LLC

By: _____

Name: _____

Title: _____

Nine Mile Point Nuclear Station, LLC

By: _____

Name: _____

Title: _____

R. E. Ginna Nuclear Power Plant, LLC

By: _____

Name: _____

Title: _____

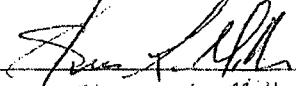
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered by their respective officers thereunto duly authorized as of the day and year first above written.

ACKNOWLEDGED AND AGREED

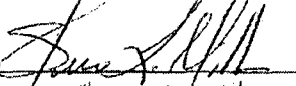
E.D.F. International S.A.

By: _____
Name: _____
Title: _____

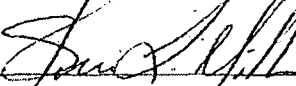
Calvert Cliffs Nuclear Power Plant, LLC

By: 
Name: Steven L. Miller
Title: Secretary

Nine Mile Point Nuclear Station, LLC

By: 
Name: Steven L. Miller
Title: Secretary

R. E. Ginna Nuclear Power Plant, LLC

By: 
Name: Steven L. Miller
Title: Secretary

SUPPORT AGREEMENT

Between

Constellation Energy Group, Inc.

and

Calvert Cliffs Nuclear Power Plant, LLC
Nine Mile Point Nuclear Station, LLC, and
R. E. Ginna Nuclear Power Plant, LLC

THIS SUPPORT AGREEMENT, dated as of November 6, 2009 between Constellation Energy Group, Inc. ("CEG"), and Calvert Cliffs Nuclear Power Plant, LLC, Nine Mile Point Nuclear Station, LLC and R. E. Ginna Nuclear Power Plant, LLC, each individually herein referred to as a "Subsidiary Licensee" and all collectively herein referred to as "Subsidiary Licensees."

WITNESSETH:

WHEREAS, through its intermediate subsidiary companies, CEG is the indirect owner of 50.01% of the Subsidiary Licensees;

WHEREAS, E.D.F. International S.A. ("EDFI"), through its intermediate subsidiary companies, is the indirect owner of 49.99% of the Subsidiary Licensees;

WHEREAS, the Subsidiary Licensees are the corporate entities that hold the NRC licenses for Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 & 2, Operating Licenses DPR-53 & DPR-69, Nine Mile Point Nuclear Station, Unit Nos. 1 & 2, Operating Licenses DPR-63 & NPF-69, and R. E. Ginna Nuclear Power Plant, Operating License DPR-18 (individually, each a "Facility," and collectively the "Facilities");

WHEREAS, CEG and the Subsidiary Licensees desire to take certain actions to assure the ability of the Subsidiary Licensees to pay their respective approved expenses of maintaining the Facilities safely and reliably and of protecting the public health and safety (the "Operating Expenses") and to meet Nuclear Regulatory Commission ("NRC") requirements during the life of each Facility (the "NRC Requirements");

WHEREAS, EDFI is entering into a separate agreement with the Subsidiary Licensees that has substantially the same terms and purposes as this Support Agreement (hereafter, the "EDFI Agreement");

WHEREAS, CEG and EDFI, as provided in the Second Amended and Restated Operating Agreement by and among CEG, Constellation Nuclear, LLC, CE Nuclear, LLC, EDFI, EDF Development Inc. ("EDF Development"), and Constellation Energy Nuclear Group, LLC ("CENG"), dated as of November 6, 2009 ("Operating Agreement"), plan to provide the Subsidiary Licensees with adequate resources for approved working capital and other needs on an ongoing basis through various mechanisms such as capital contributions, member loans or advances, or other mutually approved funding mechanisms as discussed in the Operating Agreement; however, if these funding sources, at any time, cannot meet those needs, then CEG and EDFI have agreed to provide credit to the Subsidiary Licensees, in the manner as described below, to allow the Subsidiary Licensees to meet their obligations to protect public health and safety.

NOW, THEREFORE, in consideration of the mutual promises herein contained, the parties hereto agree as follows:

1. *Availability of Funding.* Upon the written request of a Subsidiary Licensee, CEG shall provide or cause to be provided to such Subsidiary Licensee such funds as the Subsidiary Licensee determines to be necessary to pay Operating Expenses or meet NRC Requirements at the same time or times as the same amount is paid by EDFI under the EDFI Agreement; provided, however, that CEG's maximum liability to provide funding hereunder shall not exceed the lesser of (x) 50.01 percent of the total funding required by the Subsidiary Licensee pursuant to this Support Agreement and the EDFI Agreement, or (y) \$145.029 million cumulatively over the life of this Support Agreement, unless, and to the extent that, advances of funds under this Support Agreement have been reimbursed in whole or part through repayments by the Subsidiary Licensee to CEG. As such, the aggregate amount outstanding under this Support Agreement at any one time shall not exceed \$145.029 million, and this shall be the maximum unreimbursed amount CEG is obligated to provide under this Support Agreement.
2. *Request for an Advance.* If the funding mechanisms as described under the Operating Agreement, at any time, are not sufficient to allow a Subsidiary Licensee to meet its needs, the Subsidiary Licensee may submit to CEG a request for an advance of funds under this Support Agreement. Each request for an advance of funds under this Support Agreement shall be made not later than noon Eastern Time (USA) on the tenth business day prior to the proposed drawdown by notice from the Subsidiary Licensee to CEG (pursuant to procedures that may be changed from time to time by mutual agreement) specifying the amount of the

advance and a certification that such advance is for the purpose specified in Section 6.¹

3. *Substitution.* CEG can terminate funding provided under this Support Agreement upon 45 days' written notice to the Subsidiary Licensee if CEG has procured a substitute loan facility and/or letter of credit for the Subsidiary Licensee that is mutually agreed to by CEG and EDFI and meets the financial assurance requirements of the NRC to protect the public health and safety.
4. *Interest.* Interest on any principal amount outstanding shall accrue daily at such rate, and shall be payable at such times, as mutually established by CEG and EDFI at the time of an advance under this Support Agreement. The interest rate applicable to any advance and the time of payment shall be noted in a note or other writing. Such notation shall be conclusive absent manifest error.
5. *Optional Prepayments.* The Subsidiary Licensee, at its option, may repay all or any part of the principal amount outstanding from time to time without penalty or premium, upon notice to CEG made not later than noon Eastern Time (USA) on at least the second business day prior to such prepayment (which notice, if oral, shall be confirmed promptly in writing); provided, however, that if the interest rate is LIBOR based, a prepayment penalty may be assessed against the Subsidiary Licensee. Any prepayment penalty would be mutually established by CEG and EDFI at the time of an advance. CEG, at its option, may waive such notice requirements as to any prepayment.
6. *Use of Proceeds.* In order to provide financial assurance, any advance may be used by a Subsidiary Licensee only to meet its approved Operating Expenses and NRC Requirements, including payments for nuclear property damage insurance and a retrospective premium pursuant to Title 10, Part 140, Section 21 of the Code of Federal Regulations (10 CFR 140.21).
7. *No Guarantee.* This Support Agreement is not, and nothing herein contained, and no action taken pursuant hereto by CEG shall be construed as, or deemed to constitute, a direct or indirect guarantee by CEG to any person of the payment of the Operating Expenses or of any liability or obligation of any kind or character whatsoever of the Subsidiary Licensees. This Agreement may, however, be relied

¹ The NRC's Director of the Office of Nuclear Reactor Regulation must be notified in writing no later than 10 days after any funds are provided, in accordance with Conditions A.(1)(a) and A.(3)(a) in the October 30, 2009 Orders.

upon by the NRC in determining the financial qualifications of each Subsidiary Licensee to hold the operating license for a Facility.

8. *Waivers.* CEG hereby waives any failure or delay on the part of the Subsidiary Licensees in asserting or enforcing any of their rights or in making any claims or demands hereunder.
9. *Amendments and Termination.* This Agreement may not be amended or modified at any time without 30 calendar days prior written notice to the NRC. This Agreement shall terminate at such time as CEG is no longer the direct or indirect owner of any of the shares or other ownership interests in a Subsidiary Licensee. This Agreement shall also terminate with respect to the Operating Expenses and NRC Requirements applicable to a Facility whenever such Facility permanently ceases commercial operations and certification is made as to the permanent removal of fuel from the reactor vessel; provided, however, that this Agreement may be extended for successive periods of two years each upon the mutual agreement of the parties.
10. *Successors.* This Agreement shall be binding upon the parties hereto and their respective successors and assigns.
11. *Third Parties.* Except as expressly provided in Sections 3 and 6 with respect to the NRC, this Agreement is not intended for the benefit of any person other than the parties hereto, and shall not confer or be deemed to confer upon any other such person any benefits, rights, or remedies hereunder.
12. *Other Financial Support Arrangements.* This Agreement supersedes any other support arrangement relating to NRC requirements, if any exists prior to the date hereof, between CEG and a Subsidiary Licensee to provide funding when necessary to pay Operating Expenses and meet NRC Requirements for the Facilities, and any such other financial support arrangement is hereby voided, revoked and rescinded. Accordingly, the total available funding provided for in this Support Agreement shall be limited as set forth in Section 1 herein and shall not be cumulative with any other financial support arrangement for purposes of meeting NRC Requirements. For avoidance of doubt, the parties agree that this Section 12 does not apply to financial guarantees or commitments made to third parties, even where such agreements may relate to compliance with NRC requirements.

13. *Governing Law.* This Agreement shall be governed by the laws of the State of Maryland.
14. *Dispute Resolution.* In the event of any dispute arising out of or in connection with this Support Agreement, executives of CEG and the Subsidiary Licensee will exercise good faith efforts to resolve the dispute in a timely manner. In the event that the executives of CEG and the Subsidiary Licensee are unable to reach a resolution, the dispute, including any dispute regarding the existence, termination or validity of this Support Agreement, each Party shall have the right to have recourse to and shall be bound by the pre-arbitral referee procedure of the applicable rules of the American Arbitration Association. All disputes arising out of or in connection with this Support Agreement (including as to existence, termination and validity) shall be finally settled under the applicable rules of the American Arbitration Association (the "Rules") by three arbitrators appointed in accordance with said Rules. The place of the pre-arbitral referee procedure and of the arbitration procedure shall be Baltimore, Maryland, United States of America. The proceedings before the arbitral tribunal (including with respect to the Pre-Arbitral Referee Procedure) shall be governed by the Rules. The rules of law to be applied by the arbitral tribunal to the merits of the dispute shall be the rules of law of the State of Maryland. The language of the arbitration shall be English. Evidence shall be provided in English and pleadings shall be done in English. The arbitral tribunal shall render its decision within six months from the date of signature of the terms of reference. Any decision or award of the arbitral tribunal shall be final and binding upon the parties to the arbitration proceeding. The parties waive to the extent permitted by applicable law any rights to appeal or to review of such award by any court or tribunal. The parties agree that the arbitral award may be enforced against the parties to the arbitration proceeding or their assets wherever they may be found and that a judgment upon the arbitral award may be entered in any court having jurisdiction thereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered by their respective officers thereunto duly authorized as of the day and year first above written.

ACKNOWLEDGED AND AGREED

Constellation Energy Group, Inc.

By: [Signature]
Name: Charles A. Berardise
Title: SVP & GC

Calvert Cliffs Nuclear Power Plant, LLC

By: [Signature]
Name: Steven L. Miller
Title: Secretary

Nine Mile Point Nuclear Station, LLC

By: [Signature]
Name: Steven L. Miller
Title: Secretary

R. E. Ginna Nuclear Power Plant, LLC

By: [Signature]
Name: Steven L. Miller
Title: Secretary

ATTACHMENT 3

10 CFR 2.390 AFFIDAVIT OF HENRY B. BARRON

Constellation Energy Nuclear Group, LLC
August 12, 2011

ATTACHMENT 3

10 CFR 2.390 AFFIDAVIT OF HENRY B. BARRON

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
Constellation Energy Nuclear Group, LLC, et al.)

AFFIDAVIT

I, Henry B. Barron, President and Chief Executive Officer of Constellation Energy Nuclear Group, LLC (CENG), do hereby affirm and state:

1. I am authorized to execute this affidavit on behalf of CENG and its affiliates.
2. Constellation Energy Nuclear Group, LLC is providing information in support of the application dated May 12, 2011 for an Order approving license transfers. The document being provided in Attachment 4 contains confidential and proprietary information related to a report generated by the Nuclear Advisory Committee (NAC) for the CENG board of directors. The report constitutes proprietary information that should be held in confidence by the NRC pursuant to the policy reflected in 10 CFR 2.390(a)(4) and 9.17(a)(4), because:
 - i. This information is and has been held in confidence by CENG.
 - ii. This information is of a type that is customarily held in confidence by CENG, and there is a rational basis for doing so because the information contains sensitive CENG business information. The report discusses proprietary internal discussions and activities by and between CENG management and the NAC, as well as legal and regulatory analysis prepared by internal and external legal counsel for the benefit of CENG and the NAC.
 - iii. This information is being transmitted to the NRC voluntarily and in confidence.
 - iv. This information is not available in public sources and could not be gathered readily from other publicly available information.
 - v. Public disclosure of this information would create substantial harm to the competitive position of CENG by disclosing internal business discussions and activities as well as the legal and regulatory advice prepared by counsel at the request and for the benefit of CENG management or the NAC that is intended solely for internal use.

ATTACHMENT 3

10 CFR 2.390 AFFIDAVIT OF HENRY B. BARRON

3. Accordingly, we request that the designated document, Attachment 4, be withheld from public disclosure pursuant to the policy reflected in 10 CFR §§ 2.390(a)(4) and 9.17(a)(4).

Henry B. Barron
Henry B. Barron

Subscribed and sworn before me, a Notary Public, in and for the State of Maryland and City of Baltimore, this 12th day of August, 2011.

WITNESS my hand and Notarial Seal:

My Commission Expires: 5/7/2014

Georgia A. Platt
Notary Public
8/12/2011
Date