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UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

October 12, 2011

Mr. Henry B. Barron  
President and Chief Executive Officer  
Constellation Energy Nuclear Group, LLC  
100 Constellation Way, Suite 200C  
Baltimore, MD 21202

SUBJECT: REQUEST FOR ADDITIONAL INFORMATION RE: PROPOSED MERGER  
BETWEEN EXELON CORPORATION AND CONSTELLATION ENERGY  
GROUP, INC. (TAC NOS. ME6234 THROUGH ME6238)

Dear Mr. Barron:

By application dated May 12, 2011, as supplemented by letters dated June 17 and August 12, 2011, pursuant to Section 184 of the Atomic Energy Act of 1954, as amended, Title 10 of the *Code of Federal Regulations* (10 CFR) Section 50.80, "Transfer of licenses" and 10 CFR 72.50, "Transfer of license," Exelon Generation Company, LLC (Exelon Generation), acting on behalf of itself, Exelon Corporation (Exelon), and Exelon Ventures Company, LLC (Exelon Ventures), and Constellation Energy Nuclear Group, LLC (CENG), on behalf of itself, and its subsidiary licensees, Calvert Cliffs Nuclear Power Plant, LLC, Nine Mile Point Nuclear Station, LLC, and R.E. Ginna Nuclear Power Plant, LLC requested that the Nuclear Regulatory Commission (NRC) consent to the indirect transfers of control of the above-listed NRC licenses as a result of the proposed merger between Exelon and one of CENG's parent companies, Constellation Energy Group, Inc. (CEG).

The NRC staff has determined that additional information regarding decommissioning funding assurance and foreign ownership, control, or domination (FOCD) will be necessary in order to continue the review. The staff has also determined that two questions contain proprietary information and will be withheld from public disclosure pursuant to 10 CFR 2.390(a)(4). Therefore, the request for additional information (RAI) is being transmitted in both a public and non-public enclosure. The RAI has previously been discussed with your staffs. You are requested to respond to the enclosed RAI within 30 days of the date of this letter.

In addition, as discussed during the closed meeting of September 26, 2011, at NRC Headquarters in Rockville, MD, you are also requested to provide a redacted version of the CENG Nuclear Advisory Committee report that was submitted as proprietary information in the CENG letter dated August 12, 2011.

Enclosure 2 transmitted herewith contains Official use Only –  
Proprietary Information. When separated from Enclosure 2, this  
document is decontrolled.

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H. Barron

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Please feel free to contact me at 301-415-1364 if you have any questions.

Sincerely,



Douglas V. Pickett, Senior Project Manager  
Plant Licensing Branch I-1  
Division of Operating Reactor Licensing  
Office of Nuclear Reactor Regulation

Docket Nos. 50-220, 50-244, 50-317,  
50-318, 50-410, 72-8, and 72-67

Enclosures:

1. Request for Additional Information (public)
2. Request for Additional Information (non-public)

cc w/encls:

Mr. Christopher M. Crane, President  
Exelon Generation Company, LLC  
10 South Dearborn Street  
Chicago, IL 60603

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REQUEST FOR ADDITIONAL INFORMATION (RAI)  
APPLICATION FOR APPROVAL OF INDIRECT TRANSFER OF CONTROL OF LICENSES  
RESULTING FROM THE PROPOSED MERGER BETWEEN EXELON CORPORATION  
AND CONSTELLATION ENERGY GROUP, INC.  
CALVERT CLIFFS NUCLEAR POWER PLANT, UNIT NOS. 1 AND 2  
CALVERT CLIFFS INDEPENDENT SPENT FUEL STORAGE INSTALLATION (ISFSI)  
NINE MILE POINT NUCLEAR STATION, UNIT NOS. 1 AND 2  
R.E. GINNA NUCLEAR POWER PLANT  
R.E. GINNA ISFSI  
DOCKET NOS. 50-317, 50-318, 72-8, 50-220, 50-410, 50-244, AND 72-67

By application dated May 12, 2011, (Agencywide Documents Access and Management System (ADAMS) Accession No. ML11138A159), as supplemented by letter dated June 17, 2011, (ADAMS Accession No. ML11173A067), and August 12, 2011, (ADAMS Accession No. ML11234A062), (collectively, "the application"), pursuant to Section 184 of the Atomic Energy Act of 1954, as amended, Title 10 of the *Code of Federal Regulations* (10 CFR) Section 50.80, "Transfer of licenses" and 10 CFR 72.50, "Transfer of license," Exelon Generation Company, LLC (Exelon Generation), acting on behalf of itself, Exelon Corporation (Exelon), and Exelon Ventures Company, LLC (Exelon Ventures), and Constellation Energy Nuclear Group, LLC (CENG), on behalf of its subsidiary licensees, Calvert Cliffs Nuclear Power Plant, LLC, Nine Mile Point Nuclear Station, LLC, and R.E. Ginna Nuclear Power Plant, LLC (together, "the Applicants") requested that the Nuclear Regulatory Commission (NRC) consent to the indirect transfers of control of the above-listed NRC licenses as a result of the proposed merger between Exelon and one of CENG's parent companies, Constellation Energy Group, Inc. (CEG). Based on its review, the NRC requests the following additional information regarding decommissioning funding assurance and foreign ownership, control, or domination (FOCD).

1. Decommissioning Funding Assurance:

Under Section VI, "Financial Qualifications," subheading B, "Decommissioning Funding," the Applicants state that "[. . .] decommissioning funding assurance for the CCNPP [Calvert Cliffs Nuclear Power Plant] ISFSI will be maintained consistent with the requirements of 10 CFR 72.30(c)." However, the Applicants did not provide the decommissioning cost estimate or funding assurance methods for the CCNPP ISFSI and the Ginna ISFSI.

Regarding an ISFSI, the NRC regulation 10 CFR 72.50(b)(1) states that:

An application for transfer of a license must include as much of the information described in §§ 72.22 and 72.28 with respect to the identity and the technical and financial qualifications of the proposed transferee as would be required by those sections if the application were for an initial license.

In order to demonstrate financial qualifications in order to be issued a license, 10 CFR 72.22(e) provides that the applicant must submit information that shows that the applicant either possesses the necessary funds, or has reasonable assurance of obtaining the necessary funds to cover construction, operating, and decommissioning costs.

The provisions of 10 CFR 72.30 require the licensee to provide financial assurance for decommissioning an ISFSI. Based on information provided within the application, the NRC needs the following additional information in order to complete its review:

- a) The minimum prescribed amount of decommissioning financial assurance required of reactor licensees specified in 10 CFR 50.75 does not include the costs of decommissioning an ISFSI.

For each ISFSI, provide the estimated decommissioning costs, and the latest version of the decommissioning funding plan used to provide reasonable assurance that funds for decommissioning will be available when needed.

- b) Explain the procedure that will be used to add financial assurance adequate to cover the cost of decommissioning each ISFSI to the amount of financial assurance required for the reactors.
- c) Explain the procedure that will be used to separately identify the amounts of financial assurance provided for each reactor and ISFSI.

## 2. Foreign Ownership, Control, or Domination:

In the supplement dated August 12, 2011, the Applicants provided additional information to the NRC regarding FOCD as it relates to the CENG subsidiary licenses and Exelon.

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

[E]xelon'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.

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. In order for the NRC to complete its review, provide the following additional information:

- a) Describe the type of shares (e.g., common or preferred stock) and shareholder rights of the shares of Exelon stock that EDF Inc. will own at the time the merger is consummated. In addition, state what rights, if applicable, EDF Inc., will have to nominate any Director(s) to Exelon's Board of Directors at the time the transfer is consummated and in the future.
- b) Describe the procedures that will be used to assure that EDF Inc.'s shareholder rights in Exelon do not result in EDF Inc. participating in decisions concerning nuclear safety or security; obtaining responsibility for special nuclear material; or gaining access to restricted data.
- c) Explain what right of appeal to Exelon the Nuclear Advisory Committee (NAC) has in the event the CENG Board or its Chairman takes an action regarding FOCD in a manner not recommended by the NAC.
- d) State whether Exelon will have the power, whether or not exercised, to influence or override the CENG Chairman's casting vote, or a decision by the CENG Board on FOCD matters. In addition, state if in the event Exelon influences or overrides the CENG Chairman's casting vote or a decision by the CENG Board on FOCD matters, whether Exelon is required to obtain the advice and recommendation of the NAC.
- e) Explain how Exelon and CENG will allocate authority and accountability regarding FOCD issues, obtaining the advice of the CENG NAC, and taking action on advice given by the NAC. In addition, explain how Exelon and CENG will resolve any differences of opinion regarding FOCD issues.
- f) Describe the procedures used by CENG to report FOCD matters and concerns to the NAC. In addition, state the rights and obligations, if applicable, Exelon will have to obtain the advice of the NAC on any potential FOCD matters before taking actions that may affect FOCD, and the extent to which the NAC will report to or advise on FOCD matters to Exelon.
- g) Describe the procedures used by the NAC to meet with and discuss FOCD matters to CENG's parent companies within the corporate structure, both pre and post consummation of the transfer.
- h) State if in the event of a deadlock by the EDF Inc. appointed CENG Board of Directors on the budget as it relates to plant improvements, nuclear safety, security and reliability, whether EDF Inc.'s participation is required to form a quorum on NRC-designated activities, other than related to special matters as described in the CENG Operating Agreement.

- i) State whether the NAC would have any authority to prevent a FOCD event or issue from transpiring once it was brought to the attention of the NAC.
- j) State if there will be any changes to CENG's Board of Directors. Also, explain the term "independent director" as it applies to both the Exelon and CEG Board of Directors, and the criteria used to determinate that a director is independent.
- k) In the submittal dated August 12, 2011, CENG stated that:

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 ASC 810, and thus neither CEG nor EDF Inc. would be considered to have a controlling financial interest.

The NRC staff notes that a FOCD determination by the NRC is based on the totality of facts since a foreign entity may exert indirect control due to factors other than voting interests, including financial interests.

Explain how the negation action plan approved in 2009 is still appropriate due to CEG ceasing to have a "controlling financial interest" in CENG since CEG and EDF Inc. are considered to have "joint control" over the day-to-day business activities of CENG, as stated in response to the NRC's RAI on the June 30, 2010, Securities and Exchange Commission letter.

- l) On page 4 of the 2010 Électricité de France S.A. (EDF) Annual Report, EDF states that it owns 48.96 percent of the equity and 50 percent of the voting rights in Edison, an Italian company ([www.edf.com](http://www.edf.com)). On August 3, 2011, the Government Accountability Office issued a report regarding the Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010 for the Senate Armed Services Committee titled: "Firms Reported in Open Sources as Having Commercial Activity in Iran's Oil, Gas, and Petrochemical Sectors." On page 5, Edison is listed as a firm identified by the GAO that had commercial activity in Iran's oil, gas, or petrochemical sectors from January 2010 to May 2011. Indicate the current equity and voting rights of Edison, and any other corporation listed in the August 3, 2011, GAO Report by EDF, and whether the negation action plan previously approved in 2009 is sufficient to negate any indirect impact of the Edison ownership, or other financial arrangements and ownership with foreign corporations as having commercial activity in Iran. In addition, regarding Constellation and Exelon, describe any financial arrangements with foreign corporations having commercial activity with Iran as provided within the GAO Report.

H. Barron

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Please feel free to contact me at 301-415-1364 if you have any questions.

Sincerely,  
/RA/

Douglas V. Pickett, Senior Project Manager  
Plant Licensing Branch I-1  
Division of Operating Reactor Licensing  
Office of Nuclear Reactor Regulation

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cc w/encls:

Mr. Christopher M. Crane, President  
Exelon Generation Company, LLC  
10 South Dearborn Street  
Chicago, IL 60603

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**ADAMS Accession Nos.** PKG ML112840196  
Transmittal Letter ML112840199  
Enclosure 1 (public RAI) ML112840217  
Enclosure 2 (non-public RAI) ML112840230

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