

NUCLEAR REGULATORY COMMISSION

[NRC-2011-0157]

In the Matter of)	
)	
EXELON CORPORATION)	
)	
CONSTELLATION ENERGY GROUP, INC.)	
)	
CALVERT CLIFFS NUCLEAR POWER PLANT, LLC)	
)	
Calvert Cliffs Nuclear Power Plant, Units 1 and 2)	Docket Nos. 50-317 and 50-318 License Nos. DPR-53 and DPR-69
)	
Calvert Cliffs Independent Spent Fuel Storage Installation)	Docket No. 72-8 Materials License No. SNM-2505
)	

**ORDER APPROVING APPLICATION REGARDING PROPOSED CORPORATE
MERGER AND INDIRECT TRANSFER OF LICENSES**

I.

Calvert Cliffs Nuclear Power Plant, LLC (CCNPP, LLC or the licensee), is the holder of Renewed Facility Operating License Nos. DPR-53 and DPR-69, which authorizes the possession, use, and operation of the Calvert Cliffs Nuclear Power Plant, Units 1 and 2 (CCNPP 1 and 2), and of Materials License No. SNM-2505, which authorizes the possession and use and operation of the Calvert Cliffs Independent Spent Fuel Storage Installation (ISFSI), and authorizes CCNPP, LLC to receive, possess, transfer, and store power reactor spent fuel at the Calvert Cliffs ISFSI. The facilities are located at the licensee's site in Calvert County, Maryland.

II.

By letter dated May 12, 2011, as supplemented on June 17, August 12, October 13, November 10, November 11, November 18, and November 22, 2011, and January 19, and January 25, 2012 (collectively, the application), 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), acting on behalf of itself, and the licensee, requested that the U.S. Nuclear Regulatory Commission (NRC, the Commission), pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) 50.80 and 10 CFR 72.50, consent to the proposed indirect license transfer of Renewed Facility Operating License Nos. DPR-53 and DPR-69 and Materials License No. SNM-2505, that would be effected by the indirect transfer of control of the ownership and operating interests in CCNPP, LLC. The transfers being sought are a result of the proposed merger between Exelon and one of CENG's parent companies, Constellation Energy Group, Inc. (CEG), whereby CEG would be merged into Exelon and ownership of CEG's 50.01 percent of CENG would be transferred to Exelon. The remaining 49.99 percent ownership of CENG is held by EDF, Inc.

The licensee is a direct wholly owned subsidiary of Constellation Nuclear Power Plants, LLC, which, in turn, is a direct wholly owned subsidiary of CENG.

The proposed merger will be accomplished in several steps and the involvement of the following entities: CEG, Exelon, Exelon Generation, Exelon Ventures, Bolt Acquisition Corporation (Bolt) (an Exelon subsidiary formed for the sole purpose of merging with CEG), and Constellation Nuclear, LLC (CNL) (a wholly owned subsidiary of CEG and intermediate parent company of CCNPP, LLC). Following the closing of the transfers, Exelon will be the ultimate parent company of CNL, CENG, and the licensee.

Exelon Ventures and Bolt are direct wholly owned subsidiaries of Exelon. Exelon Generation is a direct wholly owned subsidiary of Exelon Ventures. First, the acquisition of CEG by Exelon will be effected by the merger of Bolt with and into CEG, with CEG being the surviving corporation. As a result of the merger, CEG will be a direct wholly owned subsidiary of

Exelon, and former CEG shareholders will become shareholders of Exelon. Immediately after the merger, CEG will distribute to Exelon, as a dividend, 100 percent of the equity interests of several companies unrelated to CEG's nuclear and other generation business, including Baltimore Gas and Electric Company. Second, and concurrent with the distribution of CEG's equity interests in RF HoldCo LLC (the holding company for Baltimore Gas and Electric Company), CEG will merge into Exelon, resulting in the termination of CEG's corporate existence. Exelon will then contribute 100 percent of its equity interest in CEG to Exelon Ventures, which, in turn, will contribute the equity interest to Exelon Generation, resulting in CEG becoming a direct wholly owned subsidiary of Exelon Generation. CEG will then cease to exist, making CNL a direct wholly owned subsidiary of Exelon Generation. Exelon will indirectly own 100 percent of CNL through its wholly owned subsidiary, Exelon Generation.¹

CNL, through wholly owned subsidiaries, has a 50.01 percent ownership interest in CENG; EDF Inc. has a 49.99 percent ownership interest in CENG. EDF Inc. is a U.S. corporation organized under the laws of the State of Delaware and is a wholly owned subsidiary of E.D.F. International SAS, a limited company organized under the laws of France, which is, in turn, a wholly owned subsidiary of Electricité de France SA, a French limited company. As a result of the merger, CNL, as a direct subsidiary of Exelon Generation, will continue to indirectly hold a 50.01 percent ownership interest in CENG; EDF Inc. will continue to have a 49.99 percent ownership interest in CENG. EDF Inc.'s 49.99 percent ownership interest in CENG is unaffected by the merger of Exelon and CEG and associated indirect license transfers.

No physical changes to the facilities or operational changes are being proposed in the application.

¹ See Revised Figure 3, "Post-Transaction Final Organization," from letter dated November 11, 2011.

Notice of the request for approval and opportunity for a hearing was published in the *Federal Register* on July 7, 2011 (76 FR 39908). No comments or hearing requests were received.

Pursuant to 10 CFR 50.80(a) and 10 CFR 72.50, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the application as supplemented and other information before the Commission, and relying upon the representations and agreements in the application, the NRC staff has determined that the proposed indirect transfer of control of the subject licenses held by the licensee to the extent such will result from the proposed merger of CEG and Exelon, as described in the application, will not affect the qualifications of the licensee to hold the respective licenses and is otherwise consistent with the applicable provisions of law, regulations, and Orders issued by the NRC pursuant thereto, subject to the conditions set forth below.

The findings set forth above are supported by a safety evaluation (SE) dated February 15, 2012.

III.

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended (the Act), 42 U.S.C. Sections 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, IT IS HEREBY ORDERED that the application regarding the indirect license transfers related to the proposed corporate merger, as described herein, is approved, subject to the following conditions:

1. All conditions contained in the "Order Superseding Order of October 9, 2009, Approving Application Regarding Proposed Corporate Restructuring and Approving Conforming Amendments," dated October 30, 2009, concerning the corporate

- restructuring of CENG and associated indirect and direct transfers of control of the operating licenses held by CCNPP, LLC, shall remain in full force and effect and are incorporated herein as if fully set forth, except as they are amended herein.
2. The Nuclear Advisory Committee of Constellation Energy Nuclear Group, LLC, shall prepare an Annual Report regarding the status of foreign ownership, control, or domination of the licensed activities of power reactors under the control, in whole or part, of Constellation Energy Nuclear Group, LLC. The Report shall be submitted to the NRC within 30 days of completion of the Nuclear Advisory Committee Report, or by January 31 of each year (whichever occurs first). No action shall be taken by Constellation Energy Nuclear Group, LLC, or any entity to cause Constellation Nuclear, LLC, Exelon Generation, LLC, or their parent companies, subsidiaries or successors to modify the Nuclear Advisory Committee Report before submittal to the NRC. The Report shall be made available to the public, with the potential exception of information that meets the requirements for withholding such information from public disclosure under the regulations of 10 CFR 2.390, "Public Inspections, Exemptions, Requests for Withholding."
 3. Records of all votes by EDF Inc., or its representatives, on the Constellation Energy Nuclear Group, LLC, Board of Directors and the use of the Chairman's casting vote will be sent to the Nuclear Advisory Committee and shall be reviewed by the Nuclear Advisory Committee to ensure that no foreign interests have exercised foreign ownership, control, or domination over the licensed activities of Calvert Cliffs Nuclear Power Plant, Units 1 and 2, and the Calvert Cliffs ISFSI, and that no action taken by a foreign interest

involved with licensed activities is inimical to the common defense and security. The results of the Nuclear Advisory Committee's review shall be summarized in the Nuclear Advisory Committee Report and shall include discussions of any use of the Chairman's casting vote, determinations whether an exercise of foreign ownership, control, or domination has occurred, or that foreign involvement with licensed activities was inimical to the common defense and security.

4. Exelon Generation, LLC shall enter into the \$205 million Support Agreement for Constellation Energy Nuclear Group, LLC, as described in the November 11, 2011, supplement to the May 12, 2011, indirect license transfer application, no later than the time the proposed transactions and indirect license transfers occur. The Exelon Generation, LLC, Support Agreement shall supersede the Support Agreement provided by Constellation Energy Group, Inc., and shall be consistent with the representations contained in the application. Constellation Energy Nuclear Group, LLC, shall take no action to cause Exelon Generation, LLC, or its successors and assigns, to void, cancel, or materially modify the Support Agreement or cause it to fail to perform, or impair its performance under the Support Agreement, without the prior written consent of the NRC. The Support Agreement may not be amended or modified without 30 days prior written notice to the Director of the Office of Nuclear Reactor Regulation or his designee. An executed copy of the Support Agreement shall be submitted to the NRC no later than 30 days after the completion of the proposed merger and the indirect license transfers. Constellation Energy Nuclear Group, LLC, shall

- inform the NRC in writing no later than 10 days after any funds are provided to Constellation Energy Nuclear Group, LLC, or any of the licensees by Exelon Generation, LLC, under the Support Agreement.
5. Upon consummation of the merger, Constellation Energy Nuclear Group, LLC, shall submit to the NRC, the amended and restated Constellation Energy Nuclear Group, LLC, Operating Agreement, reflecting the terms set forth in the Settlement Agreement, including the proposed revisions provided in the January 25, 2012, supplement to the application. The amended and restated Operating Agreement may not be modified in any respect concerning decisionmaking authority over nuclear safety, security, and reliability without the prior written consent of the Director, Office of Nuclear Reactor Regulation.
 6. Should the proposed corporate merger not be completed within 1 year from the date of this Order, this Order shall become null and void, provided, however, upon written application and good cause shown, such date may be extended by Order.

IT IS FURTHER ORDERED that, after receipt of all required regulatory approvals of the proposed indirect transfer action, Exelon Generation shall inform the Director of the Office of Nuclear Reactor Regulation in writing of the date of the closing of the corporate merger of Exelon and CEG.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated May 12, 2011 (Agencywide Documents Access and Management System Accession No. ML11138A159), as supplemented by letters dated June 17 (ML11173A067), August 3

(ML112150519), August 12 (ML11234A062), October 13 (ML113050083), November 10 (ML11335A024), November 11 (ML113180265), November 18 (ML11325A258), and November 22, 2011 (ML113260456), and January 19 (ML12019A0346), and January 25, 2012 (ML12032A153), and the SE dated February 15, 2012, which are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01 F21, 11555 Rockville Pike (first floor), Rockville, MD. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR reference staff by telephone at 1-800-397-4209 or 301-415-4737, or by e-mail to pdr.resource@nrc.gov.

Dated at Rockville, Maryland, this 15th day of February 2012.

FOR THE NUCLEAR REGULATORY COMMISSION

/ra/

Michele G. Evans, Director
Division of Operating Reactor Licensing
Office of Nuclear Reactor Regulation

/ra/

Catherine Haney, Director
Office of Nuclear Material Safety and Safeguards