

CENGSM

a joint venture of



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).

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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.

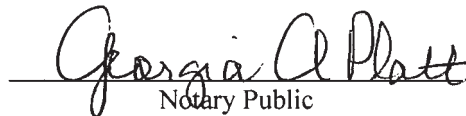


Subscribed and sworn before me, a Notary Public in and for the State of Maryland and City of Baltimore, this 12th day of August, 2011.

WITNESS my Hand and Notarial Seal:

My Commission Expires: 5/7/2014

HBB/EMT/bjd



Notary Public

8/12/2011
Date

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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

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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 negation 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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- 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

²As 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)