



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

February 18, 2014

Mr. Steven L. Miller  
Senior Vice President, General Counsel, Secretary  
Constellation Energy Nuclear Group, LLC  
100 Constellation Way, Suite 200C  
Baltimore, MD 21202

SUBJECT: CALVERT CLIFFS NUCLEAR POWER PLANT, UNITS 1 AND 2; CALVERT CLIFFS INDEPENDENT SPENT FUEL STORAGE INSTALLATION; NINE MILE POINT NUCLEAR STATION, UNITS 1 AND 2; NINE MILE POINT NUCLEAR STATION INDEPENDENT SPENT FUEL STORAGE INSTALLATION; R.E. GINNA NUCLEAR POWER PLANT; AND R.E. GINNA INDEPENDENT SPENT FUEL STORAGE INSTALLATION SAFETY EVALUATION FOR ON THE THRESHOLD DETERMINATION UNDER 10 CFR 50.80 (TAC NOS. MF1961, MF1962, MF1963, MF1964, AND MF1965)

Dear Mr. Miller:

By letter dated May 9, 2013, (Agencywide Documents Access and Management System (ADAMS) Accession No. ML13141A408), Constellation Energy Nuclear Group (CENG), submitted a letter requesting the NRC to make a threshold determination that the proposed internal restructuring transaction does not involve any direct or indirect transfer of the CENG licenses that would require the Nuclear Regulatory Commission's (NRC's) approval under Title 10 of the *Code of Federal Regulations* (10 CFR) Section 50.80, "Transfer of licenses."

Based on its review, the NRC staff concludes that the proposed internal restructuring as described in the May 9, 2013, letter, and in this threshold determination, will not constitute direct or indirect transfers of control of the CENG Licenses. Thus, CENG does not require the NRC's approval under Section 184 of the Atomic Energy Act of 1954, as amended, and 10 CFR 50.80 in connection with the proposed internal restructuring. In addition, the conclusions within this threshold determination have no effect on the NRC's evaluation of the proposed direct or indirect transfers of control of the licenses as a result of Exelon's announcement on July 30, 2013, that the CENG Licenses will be operationally integrated into the Exelon Generation Company, LLC nuclear fleet.

S. Miller

- 2 -

Please contact me at (301) 415-1476 or email [Mohan.Thadani@nrc.gov](mailto:Mohan.Thadani@nrc.gov), if you have any questions on this issue.

Sincerely,

A handwritten signature in black ink that reads "Mohan Thadani". The signature is written in a cursive, flowing style.

Mohan C. Thadani, Senior Project Manager  
Plant Licensing Branch I-1  
Division of Operating Reactor Licensing  
Office of Nuclear Reactor Regulation

Docket Nos. 50-317, 50-318, 72-8, 50-220, 50-410, 72-1036, 50-244, and 72-67

cc w/enclosures:

Mr. George H. Gellrich, Vice President  
Calvert Cliffs Nuclear Plant, LLC  
Calvert Cliffs Nuclear Power Plant  
1650 Calvert Cliffs Parkway  
Lusby, MD 20657-4702

Mr. Christopher Costanzo  
Vice President Nine Mile Point  
Nine Mile Point Nuclear Station, LLC  
P.O. Box 63  
Lycoming, NY 13093

Mr. Joseph E. Pacher  
Vice President R.E. Ginna Nuclear Power Plant  
R.E. Ginna Nuclear Power Plant, LLC  
1503 Lake Road  
Ontario, NY 14519

Additional Distribution via Listserv



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

THRESHOLD DETERMINATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION,

THE CONSTELLATION ENERGY NUCLEAR GROUP'S LICENSES:

CALVERT CLIFFS NUCLEAR POWER PLANT, UNITS 1 AND 2;

CALVERT CLIFFS INDEPENDENT SPENT FUEL STORAGE INSTALLATION;

NINE MILE POINT NUCLEAR STATION, UNITS 1 AND 2;

NINE MILE POINT INDEPENDENT SPENT FUEL STORAGE INSTALLATION;

R.E. GINNA NUCLEAR POWER PLANT; AND

R.E. GINNA INDEPENDENT SPENT FUEL STORAGE INSTALLATION

DOCKET NOS. 50-317, 50-318, 72-8, 50-220, 50-410, 72-1036, 50-244, and 72-67

1.0 INTRODUCTION

By letter dated May 9, 2013, (Agencywide Documents Access and Management System (ADAMS) Accession No. ML13141A408), Constellation Energy Nuclear Group (CENG), submitted a letter requesting the Nuclear Regulatory Commission (NRC) to make a threshold determination that the proposed internal restructuring transaction does not involve any direct or indirect transfer of the CENG's licenses that would require approval under Title 10 of the *Code of Federal Regulations* (10 CFR) Section 50.80, "Transfer of licenses."

CENG has three member managed NRC licensees' subsidiary companies, Calvert Cliffs Nuclear Power Plant, LLC (Calvert, LLC), Nine Mile Point Nuclear Station, LLC, (Nine Mile Point, LLC), and R.E. Ginna, Nuclear Power Plant LLC (Ginna, LLC), (collectively referred to as the "CENG Licensees"), which own and operate the nuclear power plants of the same respective names.<sup>1</sup> Nine Mile Point, LLC is the 82 percent owner and licensed operator of Nine Mile Point Nuclear Station, Unit 2 and Long Island Power Authority owns the remaining 18 percent of Nine Mile Point Nuclear Station, Unit 2. Additionally, Calvert, LLC, Nine Mile Point, LLC, and Ginna, LLC own and operate the NRC-licensed independent spent fuel storage installation facilities at Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Nine Mile Point Nuclear Station, Units 1 and 2, and R.E. Ginna Nuclear Power Plant.

---

<sup>1</sup> The CENG Facility Operating Licenses include: Calvert Cliffs Nuclear Power Plant, Units 1 and 2; Nine Mile Point Nuclear Station, Units 1 and 2; R.E. Ginna Nuclear Power Plant; the Calvert Cliffs Independent Spent Fuel Storage Installation Facility (ISFSI); the Nine Mile Point Nuclear Station ISFSI licensed under a general license; and the R.E. Ginna ISFSI licensed under a general license, (herein referred to as the "Licenses").

Enclosure

On February 15, 2012, the NRC approved the indirect transfer of control of the CENG Licensees as a result of the merger between Exelon Corporation (Exelon) and Constellation Energy Group, Inc. (CEG), pursuant to which Exelon Generation Company, LLC (Exelon Generation) acquired Constellation Nuclear, LLC (CN) and its 50.01 percent controlling interest in CENG.<sup>2</sup> The proposed merger was completed on March 12, 2012, as reported in letters submitted to the NRC. The merger did not affect EDF Inc.'s 49.99 percent ownership interest in CENG.

## 2.0 EVALUATION

The NRC staff reviewed CENG's request for a threshold determination that the proposed internal restructuring transaction will not involve direct or indirect transfers of control of the NRC licenses held by the CENG Licensees that would require prior NRC approval pursuant to 10 CFR 50.80.

The regulation at 10 CFR 50.80(a) states:

No license for a production or utilization facility (including, but not limited to, permits under this part and part 52 of this chapter, and licenses under parts 50 and 52 of this chapter), or any right thereunder, shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, unless the Commission gives its consent in writing.

As described in its May 9, 2013, letter, based upon on-going business evaluations, Exelon Generation Company, LLC (Exelon Generation) is planning to undertake an internal restructuring that will facilitate certain tax and other corporate efficiencies. Specifically, the proposed transaction would involve the merger of a second tier subsidiary of Exelon Generation into another second tier subsidiary of Exelon Generation. Under the proposed transaction, Constellation Power Source Generation, Inc. (CPSGI), a wholly-owned subsidiary of Constellation Holdings, LLC (CHL)<sup>3</sup>, and a second tier subsidiary of Exelon Generation, will merge into a planned (yet to be formed) limited liability company that will be a wholly-owned subsidiary of Constellation Nuclear, LLC (CN). According to CENG, it is expected that this subsidiary of CN will be Constellation Power Source Generation, LLC (CPSGL), and it will not hold any interests in CENG or any of CENG's parent companies. The merger will result in the dissolution of CPSGI and the transfer of its assets and liabilities to CPSGL, with CPSGL being the surviving company. As a result of the merger, CHL will remain a wholly-owned subsidiary of Exelon Generation, and it will receive a nonvoting minority interest in CN. Exelon Generation will continue to hold the entire voting interest in CN. As part of its May 9, 2013, letter, CENG provided the resulting structure as shown in the letter's Attachment (2), "Post-Transaction Simplified Ownership of the CENG Licenses."

---

<sup>2</sup> See the following NRC Orders: Order for Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, and Independent Spent Fuel Storage Installation: "Order Approving Application Regarding Proposed Corporate Merger and Indirect Transfer of Licenses." (ADAMS Accession No. ML113560397); Order for Nine Mile Point Nuclear Station, Unit Nos. 1 and 2: "Order Approving Application Regarding Proposed Corporate Merger and Indirect Transfer of Licenses." (ADAMS Accession No. ML120340031); Order for R.E. Ginna Nuclear Power Plant: "Order Approving Application Regarding Proposed Corporate Merger and Indirect Transfer of Licenses." (ADAMS Accession No. ML120340010).

<sup>3</sup> CHL is a wholly-owned subsidiary of Exelon Generation.

As a result of the proposed transaction, CHL will enter the chain of ownership of CENG. However, it will only hold a minority nonvoting equity interest in CN, and it will have no control over CN. Rather, Exelon Generation will hold 100 percent of the voting interests in CN, as well as more than 90 percent of the equity interests in CN. CHL will have a nonvoting equity interest in CN representing less than 10 percent of the entire equity interest in CN. Exelon Generation will continue to exercise indirect control of CENG and its member managed subsidiaries, which hold the affected NRC licenses.

Since the proposed transaction does not result in any direct or indirect transfer of control with respect to the CENG Licenses, the NRC staff finds that the financial qualifications of the CENG Licensees to own and control the NRC licenses it holds prior to the internal restructuring shall remain the same financial qualifications after the proposed transaction and that its financial qualifications shall remain presumed, and that no financial qualification review is needed.

The CENG Licensees currently provides decommissioning funding assurance for its nuclear facilities through the allowable funding mechanisms outlined in 10 CFR 50.75(e). In a separate proceeding, pursuant to the 2013 Decommissioning Funding Status (DFS) report submitted by CENG to the NRC on March 27, 2013, (ADAMS Accession No. ML13098A084), the NRC staff is reviewing the financial assurance for decommissioning for each of its licenses. The decision criterion applied by the NRC staff for the threshold determination is whether the proposed internal restructuring will affect CENG Licensees existing financial assurance for decommissioning. The NRC staff finds that the proposed merger will not adversely affect the CENG Licensees decommissioning funding assurance for its NRC licenses and that the decommissioning funding assurance provided by the CENG Licensees, immediately prior to the proposed transaction, shall remain the same decommissioning funding assurance provided after the proposed transaction.

Regarding the foreign ownership, control or domination; Section 103d and of the Atomic Energy Act of 1954, as amended, provides, in relevant part, that no license may be issued to:

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. In any event, no license may be issued to any person within the United States if, in the opinion of the Commission, the issue of a license to such person would be inimical to the common defense and security or to the health and safety of the public.

The NRC's regulation 10 CFR 50.38 contains language to implement this statutory prohibition.

As previously stated within this threshold determination, the internal restructuring transaction does not involve any direct or indirect transfer of control of the NRC licenses. Exelon Generation, through wholly-owned subsidiaries, including CN and CENG, has a 50.01 percent interest and EDF Inc. has a 49.99 percent ownership interest in the CENG. As a result of the transaction, Exelon Generation will continue to be a parent company of CENG and will indirectly hold a 50.01 percent ownership interest in CENG; EDF Inc. will continue to have a 49.99 percent ownership interest in CENG.

Based on the above, the NRC staff concludes that the information contained within the May 9, 2013, threshold determination request demonstrates that the CENG Licensees will continue to possess the requisite qualifications to own and operate the licensed facilities in accordance with the NRC licenses. The proposed internal restructuring transaction will not result in any changes in the operation or management of the CENG Licensees and will not result in any adverse effects to its financial qualifications and decommissioning funding assurance. Also, there do not appear to be any problematic foreign ownership, control, or domination issues related to the proposed internal restructuring. The NRC staff concludes that the proposed internal restructuring, as described in the May 9, 2013, letter, and in this threshold determination, will not constitute direct or indirect transfers of control of the CENG Licenses, and thus CENG does not require the NRC's approval under Section 184 of the Atomic Energy Act of 1954, as amended and 10 CFR 50.80, in connection with the proposed internal restructuring. In addition, the conclusions within this threshold determination have no effect on the NRC's evaluation of the proposed direct or indirect transfers of control of the licenses as a result of Exelon's announcement on July 30, 2013,<sup>4</sup> that the CENG Licenses will be operationally integrated into the Exelon Generation nuclear fleet.

Principal Contributor: J. A. Simpson

Date: February 18, 2014

---

<sup>4</sup>[http://www.exeloncorp.com/Newsroom/pr\\_20130730\\_EXGEN\\_CENGConsolidation.aspx?topic=18](http://www.exeloncorp.com/Newsroom/pr_20130730_EXGEN_CENGConsolidation.aspx?topic=18)

S. Miller

- 2 -

Please contact me at (301) 415-1476 or email [Mohan.Thadani@nrc.gov](mailto:Mohan.Thadani@nrc.gov), if you have any questions on this issue.

Sincerely,

*/ra/*

Mohan C. Thadani, Senior Project Manager  
Plant Licensing Branch I-1  
Division of Operating Reactor Licensing  
Office of Nuclear Reactor Regulation

Docket Nos. 50-317, 50-318, 72-8, 50-220, 50-410, 72-1036, 50-244, and 72-67

cc w/enclosures:

Mr. George H. Gellrich, Vice President  
Calvert Cliffs Nuclear Plant, LLC  
Calvert Cliffs Nuclear Power Plant  
1650 Calvert Cliffs Parkway  
Lusby, MD 20657-4702

Mr. Christopher Costanzo  
Vice President Nine Mile Point  
Nine Mile Point Nuclear Station, LLC  
P.O. Box 63  
Lycoming, NY 13093

Mr. Joseph E. Pacher, Vice President  
R. E. Ginna Nuclear Power Plant, LLC  
Constellation Energy Nuclear Group, LLC  
1503 Lake Road  
Ontario, NY 14519

Additional Distribution via Listserv

**DISTRIBUTION:**

PUBLIC  
LPL1-1 Reading File  
J. Wiebe  
B. Vaidya

RidsNrrDorLp1-1  
RidsNrrLAKGoldstein  
RidsNrrDorIDpr  
N. Morgan

RidsNrrPMREGinna  
RidsAcrcAcnw\_MailCTR  
RidsRgn1MailCenter  
Jo Ann Simpson

**ADAMS Accession No.: ML14028A066**

**\* Memos ML13214A421**

OFFICE	LPL1-1/PM	LPL1-1/LA	FAIPB/BC	LPL1-1/BC	LPL1-1/PM
NAME	MThadani	KGGoldstein	AKock*	BBeasley	MThadani
DATE	02/06/14	01/29/14 02/06/14	09/06/13	02/14/14	02/18/14

OFFICIAL RECORD COPY