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

February 15, 2012

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

SUBJECT: ORDERS APPROVING CORPORATE MERGER BETWEEN EXELON CORPORATION AND CONSTELLATION ENERGY GROUP, INC., AND RESULTANT INDIRECT TRANSFER OF RENEWED FACILITY OPERATING LICENSES - CALVERT CLIFFS NUCLEAR POWER PLANT, UNIT NOS. 1 AND 2, AND INDEPENDENT SPENT FUEL STORAGE INSTALLATION, NINE MILE POINT NUCLEAR STATION, UNIT NOS. 1 AND 2, AND R.E.GINNA NUCLEAR POWER PLANT (TAC NOS. ME6234, ME6235, ME6236, ME6237, AND ME6238)

Dear Mr. Crane:

The U.S. Nuclear Regulatory Commission (NRC) has completed its review of the application dated May 12, 2011, as supplemented by letters dated June 17, August 12, October 13, November 10, November 11, November 18, and November 22, 2011, and January 19, and January 25, 2012, requesting approval of the indirect transfer of the licenses listed below, as a result of the proposed merger between Exelon Corporation and Constellation Energy Group, Inc. (CEG). CEG and EDF Inc. are the parent companies of Constellation Energy Nuclear Group, LLC (CENG). CEG indirectly owns 50.01 percent of CENG, and EDF Inc. owns the remaining 49.99 percent of CENG. The following licensees are indirect subsidiaries of CENG:

1) Calvert Cliffs Nuclear Power Plant, LLC, is the owner of Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2 (Docket Nos. 50-317 and 50-318), Renewed Facility Operating License Nos. DPR-53 and DPR-69

2) Calvert Cliffs Nuclear Power Plant, LLC, is the owner of the Calvert Cliffs Independent Spent Fuel Storage Installation (ISFSI) (Docket No. 72-8), Materials License No. SNM-2505

3) Nine Mile Point Nuclear Station, LLC, is the owner of Nine Mile Point Nuclear Station, Unit Nos. 1 and 2 (Docket Nos. 50-220 and 50-410), Renewed Facility Operating License Nos. DPR-63 and NPF-69

4) R.E. Ginna Nuclear Power Plant, LLC, is the owner of the R.E. Ginna Nuclear Power Plant (Docket No. 50-244), Renewed Facility Operating License No. DPR-18 and the R.E. Ginna ISFSI (Docket No. 72-67), operated under a general license

Enclosures 1, 2, and 3 are the NRC Orders approving the proposed indirect ownership transfers under Title 10 of the *Code of Federal Regulations* (10 CFR) 50.80, "Transfer of licenses," and 10 CFR 72.50, "Transfer of license," for (1) the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2 and the Calvert Cliffs ISFSI, (2) the Nine Mile Point Nuclear Station, Unit Nos. 1 and 2,

and (3) the R.E. Ginna Nuclear Power Plant and the R.E. Ginna ISFSI, respectively. The Orders are subject to the conditions described therein.

Enclosures 4 and 5 contain the nonproprietary and proprietary versions, respectively, of the NRC staff's safety evaluation (SE) related to the preceding actions. The nonproprietary version of the SE will be placed in the NRC Public Document Room and added to the Agencywide Documents Access and Management System Public Electronic Reading Room Library.

The Orders have been forwarded to the Office of the Federal Register for publication.

Sincerely,

Douglas V Pickett

Douglas V. Pickett, 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
and 50-244

Enclosures:
1. Order for Calvert Cliffs
2. Order for Nine Mile Point
3. Order for R.E. Ginna
4. Safety Evaluation (Nonproprietary)
5. Safety Evaluation (Proprietary)

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

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ENCLOSURE 1

ORDER APPROVING APPLICATION REGARDING PROPOSED CORPORATE MERGER AND INDIRECT TRANSFER OF LICENSES CALVERT CLIFFS NUCLEAR POWER PLANT, UNIT NOS. 1 AND 2 AND CALVERT CLIFFS ISFSI

7590-01-P

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
EXELON CORPORATION	)	
	)	
CONSTELLATION ENERGY GROUP, INC.	)	
	)	
CALVERT CLIFFS NUCLEAR POWER PLANT, LLC	)	
	)	
Calvert Cliffs Nuclear Power Plant, Unit Nos. 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, Unit Nos. 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.

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[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, Unit Nos. 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

Michele G. Evans

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

Catherine Haney

Catherine Haney, Director
Office of Nuclear Material Safety and Safeguards

ENCLOSURE 2

ORDER APPROVING APPLICATION REGARDING PROPOSED CORPORATE MERGER AND INDIRECT TRANSFER OF LICENSES NINE MILE POINT NUCLEAR STATION, UNIT NOS. 1 AND 2

7590-01-P

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
EXELON CORPORATION	)	
	)	
CONSTELLATION ENERGY GROUP, INC.	)	
	)	
	)	
NINE MILE NUCLEAR STATION, LLC	)	
	)	
Nine Mile Point Nuclear Station,	)	Docket Nos. 50-220 and 50-410
Unit Nos. 1 and 2	)	License Nos. DPR-63 and NPF-69
	)	

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

I.

Nine Mile Point Nuclear Station, LLC (NMPNS, LLC, or the licensee) is the holder of Renewed Facility Operating License No. DPR-63, which authorizes the possession, use, and operation of Nine Mile Point Nuclear Station, Unit No. 1. NMPNS, LLC is also the 82 percent owner and the licensed operator of Renewed Facility Operating License No. NPF-69, which authorizes the possession, use, and operation of Nine Mile Point Nuclear Station, Unit No. 2. Long Island Power Authority owns the remaining 18 percent of Nine Mile Point Nuclear Station, Unit No. 2. The facilities are located at the licensee's site in Oswego County, New York.

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, consent to the proposed indirect license transfer of Renewed Facility Operating License Nos. DPR-63 and NPF-69, to the extent held by NMPNS, LLC, that would be effected by the indirect transfer of control of the ownership and operating interests in NMPNS, LLC. Long Island Power Authority is unaffected by the merger and associated indirect license transfers. 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 NMPNS, 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.

Notice of the request for approval and opportunity for a hearing was published in the *Federal Register* on July 7, 2011 (76 FR 39910). No comments or hearing requests were received.

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

Pursuant to 10 CFR 50.80(a), 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," dated October 30, 2009, concerning the corporate restructuring of CENG and associated indirect transfer of control of the operating licenses held by NMPNS, LLC, shall remain in full force and effect and are incorporated herein as if fully set forth, except as they are amended therein.

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 Nine Mile Point Nuclear Station, Unit Nos. 1 and 2, 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

Michele G Evans

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

ENCLOSURE 3

ORDER APPROVING APPLICATION REGARDING PROPOSED
CORPORATE MERGER AND INDIRECT TRANSFER OF LICENSE
R.E. GINNA NUCLEAR POWER PLANT

7590-01-P

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
EXELON CORPORATION	)	
	)	
CONSTELLATION ENERGY GROUP, INC.	)	
	)	
R.E. GINNA NUCLEAR POWER PLANT, LLC	)	
	)	
R.E. Ginna Nuclear Power Plant	)	Docket Nos. 50-244 and 72-67 License No. DPR-18
	)	
R.E. Ginna Independent Spent Fuel Storage Installation	)	Docket No. 72-67 General License
	)	

ORDER APPROVING APPLICATION REGARDING PROPOSED CORPORATE MERGER AND INDIRECT TRANSFER OF LICENSE

I.

R.E. Ginna Nuclear Power Plant, LLC (R.E. Ginna LLC, or the licensee), is the holder of Renewed Facility Operating License No. DPR-18, which authorizes the possession, use, and operation of the R.E. Ginna Nuclear Power Plant (Ginna). R.E. Ginna, LLC, is also the holder of the general license for the R.E. Ginna Independent Spent Fuel Storage Installation (ISFSI) which authorizes the possession, use and operation of the R.E. Ginna ISFSI and authorizes R.E. Ginna, LLC to receive, possess, transfer, and store power reactor spent fuel at the R.E. Ginna ISFSI. The facilities are located in Wayne County, New York.

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, consent to the proposed indirect license transfer of Renewed Facility Operating License No. DPR-18, that would be effected by the indirect transfer of control of the ownership and operating interests in R.E. Ginna, LLC. The transfer being sought is 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 R. E. Ginna, 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 transfer.

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

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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 8, 2011 (76 FR 40403). No comments or hearing requests were received.

Pursuant to 10 CFR 50.80(a), 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 license 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 license 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 transfer 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," dated October 30, 2009, concerning the corporate restructuring of CENG and associated

indirect transfer of control of the operating license held by R.E. Ginna, 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 R.E. Ginna Nuclear Power Plant, 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

Michele G. Evans

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

ENCLOSURE 4

NON-PROPRIETARY SAFETY EVALUATION

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

SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION

INDIRECT TRANSFER OF CONTROL OF FACILITY OPERATING LICENSES

DUE TO 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

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

1.0 INTRODUCTION

By letter dated May 12, 2011 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML11138A159), as supplemented on June 17 (ML11173A067), August 12 (ML11234A062), October 13 (ML113050083), November 10 (ML11335A024), November 11 (ML113180265), November 18 (ML11325A258), and November 22, 2011 (ML113260456), January 19 (ML12019A0346), and January 25, 2012 (ML12032A153), (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), 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 (together, "the applicants") requested that, under Section 184 of the Atomic Energy Act of 1954, as amended (AEA), Title 10 of the *Code of Federal Regulations* (10 CFR) 50.80, and 10 CFR 72.50, the U.S. Nuclear Regulatory Commission (NRC) consent to the proposed indirect transfers of control of the NRC licenses, to the extent effected by the proposed merger between Exelon and one of CENG's parent companies, Constellation Energy Group, Inc. (CEG), for the following facilities (referred to here as "the facilities"):

(1) Calvert Cliffs Nuclear Power Plant, Unit 1, Renewed Facility Operating License No. DPR-53

(2) Calvert Cliffs Nuclear Power Plant, Unit 2, Renewed Facility Operating License No. DPR-69

(3) Calvert Cliffs Nuclear Power Plant Independent Spent Fuel Storage Installation (Calvert Cliffs ISFSI), Materials License No. SNM-2505

(4) Nine Mile Point Nuclear Station, Unit 1, Renewed Facility Operating License No. DPR-63

(5) Nine Mile Point Nuclear Station, Unit 2, Renewed Facility Operating License No. NPF-69

(6) R.E. Ginna Nuclear Power Plant, Renewed Facility Operating License No. DPR-18 and the R.E. Ginna Nuclear Power Plant (Ginna ISFSI) licensed under a general license.

In a separate letter dated May 18, 2011 (ML111390172), as supplemented on June 24 (ML111751789), August 3 (ML112150519), November 11 (ML113180265) and November 18, 2011 (ML11325A258), Exelon Generation asked the NRC to make a threshold determination that the proposed merger between Exelon and CEG would not involve a direct or indirect transfer of control of the licenses held by Exelon Generation that would require NRC approval under 10 CFR 50.80.

By letter dated December 1, 2011 (ML112450212), the NRC staff concluded that the proposed merger between Exelon and CEG would not constitute a direct or indirect transfer of control of the licenses held by Exelon Generation, and thus, Exelon Generation would not require the NRC's approval under Section 184 of the AEA and 10 CFR 50.80 with respect to the licenses currently held by Exelon Generation in connection with the proposed merger between Exelon and CEG.

2.0 BACKGROUND

2.1 Description of the Merger

On April 28, 2011, Exelon and CEG executed a merger agreement by which Exelon would acquire CEG in an all-stock transaction. The proposed merger will be accomplished in several steps with 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 CENG). CENG is the second tier parent company of the licensees. Following the closing of the transfers, Exelon will be the ultimate parent company of CNL, and a 50.01 percent parent company of CENG, Calvert Cliffs Nuclear Power Plant, LLC (CCNPP, LLC), Nine Mile Point Nuclear Station, LLC (NMPNS, LLC) and R.E. Ginna Nuclear Power Plant, LLC (R.E. Ginna, LLC) (collectively referred to here as "the licensees").

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. The proposed merger is an all-stock transaction, in which each share of CEG common stock will be cancelled and CEG stockholders will receive Exelon common stock in exchange for each share of Exelon common stock. 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 concurrently 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.[1]

As a result of these two mergers, the corporate structure of Exelon will include CNL as a direct wholly owned subsidiary of Exelon Generation. Exelon will indirectly own 100 percent of CNL through its wholly owned subsidiary, Exelon Generation. The elimination of CEG as an intermediate parent company will not affect the governance of CENG because CNL's ownership of CE Nuclear LLC, its 50.01 percent ownership of CENG (the remaining 49.99 percent is owned by EDF Inc.), and CENG's ownership of Constellation Nuclear Power Plants, LLC will remain unchanged. In addition, NMPNS, LLC is the 82 percent owner and the licensed operator of NMP 2 and Long Island Power Authority owns the remaining 18 percent of NMP 2. Long Island Power Authority is unaffected by the merger and associated license transfers.

Upon completion of the merger, Exelon shareholders will own approximately 78 percent of the combined company, and current CNL shareholders will own approximately 22 percent on a fully diluted basis.

After the proposed merger between Exelon and CEG, CENG will continue to be an intermediate parent company of the licensees. According to the application, the merger between Exelon and CEG will not affect the qualifications of the licensees to own and operate their licensed facilities in accordance with the existing licenses. The applicants also stated that the proposed merger will not result in any change in the role of the licensees as the operators of the facilities and will not result in any adverse changes to their financial qualifications, decommissioning funding assurance, or technical qualifications.

2.2 Constellation Energy Group, Inc.

According to the application, CEG, through its subsidiaries, is a major generator of electric power and a supplier of competitive electricity, with a current power generation portfolio of approximately 9,000 megawatts. CEG is one of two parent companies of CENG: CEG, through

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

its subsidiaries, has a 50.01 percent ownership interest, and EDF Inc. has a 49.99 percent ownership interest in CENG. As discussed above, CENG is the intermediate parent company of the licensees, CCNPP, LLC, NMPNS, LLC, and R.E. Ginna, LLC which own and operate the facilities of the same names. Additionally, CCNPP, LLC and R.E. Ginna, LLC own and operate the NRC-licensed ISFSI facilities at Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2 (CCNPP 1 and 2) and R.E. Ginna Nuclear Power Plant (Ginna), respectively.

2.3 Exelon Corporation

According to the application, Exelon is one of the Nation's largest energy companies, with approximately $19 billion in annual revenues. Exelon distributes electricity to approximately 5.4 million customers in Illinois and Pennsylvania and natural gas to approximately 490,000 customers in southeastern Pennsylvania. Exelon's operations include energy generation, power marketing, and energy delivery. Exelon operates the largest nuclear fleet in the United States and is the owner and operating licensee of 14 nuclear power plants and is the owner or partial owner of 8 additional plants.

2.4 EDF Inc.

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 (EDFI), 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.

3.0 REGULATORY EVALUATION

The applicants' request for approval of the indirect transfer of control of the licenses for the units discussed in this safety evaluation (SE) is made under 10 CFR 50.80 and the indirect transfer of the Calvert Cliffs ISFSI license under 10 CFR 72.50. The Commission's regulation at 10 CFR 50.80(a) states the following:

> No license for a production or utilization facility...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.

The regulation at 10 CFR 72.50 states the following:

> No license or any part included in a license issued under this part for an ISFSI or MRS [monitored retrievable storage installation] shall be transferred, assigned, or in any manner disposed of...unless the Commission gives its consent in writing.

In addition, the regulations at 10 CFR 50.80(b) and (c) and 10 CFR 72.50(b) and (c) apply. 10 CFR 50.80(b) states that an application for a license transfer shall include as much information described in 10 CFR 50.33, "Contents of Applications; General Information," and

10 CFR 50.34, "Contents of Applications; Technical Information," "with respect to the identity and technical and financial qualifications of the proposed transferee as would be required by those sections if the application were for an initial license."
The regulation at 10 CFR 50.80(c) states the following:

> [t]he Commission will approve an application for the transfer of a license, if the Commission determines: (1) That the proposed transferee is qualified to be the holder of the license; and (2) That transfer of the license is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

The regulations at 10 CFR 72.50(b) and (c) state the same requirements regarding a license for an ISFSI. For indirect transfers of control of the licenses, where the licensee remains the same, the NRC must find that the proposed merger between Exelon and CEG will not affect the qualifications of the holders of the licenses.

4.0 FINANCIAL QUALIFICATIONS

The regulation at 10 CFR 50.33(f) provides that each application shall state the following:

> Except for an electric utility applicant for a license to operate a utilization facility of the type described in § 50.21(b) or § 50.22, [an application shall state] information sufficient to demonstrate to the Commission the financial qualification of the applicant to carry out, in accordance with regulations in this chapter, the activities for which the permit or license is sought.

The regulation at 10 CFR 50.2, "Definitions," states, in part, that an electric utility is the following:

> Any entity that generates or distributes electricity and which recovers the cost of this electricity, either directly or indirectly, through rates established by the entity itself or by a separate regulatory authority.

The NRC finds that the licensees of the following facilities do not qualify as electric utilities as defined in 10 CFR 50.2:

(1) Calvert Cliffs Nuclear Power Plant, Unit 1; DPR-53
(2) Calvert Cliffs Nuclear Power Plant, Unit 2; DPR-69
(3) Nine Mile Point Nuclear Station, Unit 1; DPR-63
(4) Nine Mile Point Nuclear Station, Unit 2; NPF-69
(5) R.E. Ginna Nuclear Power Plant; DPR-18

In accordance with 10 CFR 50.33(f), a non-utility applicant must provide information sufficient to demonstrate its financial qualifications to carry out the activities for which the license is being sought. The information must show that the applicant possesses, or has reasonable assurance

of obtaining, the funds necessary to cover estimated operating costs for the period of the license. In making this showing, the applicant must submit estimated total annual operating costs for the first 5 years of facility operations and indicate the source(s) of funds to cover these costs. For license transfers, direct or indirect, the relevant 5-year period is that time immediately following the proposed merger. For indirect license transfers, the information submitted must demonstrate that the proposed merger and indirect transfers will not affect the financial qualifications of the licensees.

Also, 10 CFR 50.33(k)(1) requires that the licensees for the aforementioned facilities must provide information as described in 10 CFR 50.75, "Reporting and Recordkeeping for Decommissioning Planning," demonstrating that there will be no effect on the licensees' provision of reasonable assurance that funds will be available to decommission the aforementioned facilities. Section 5.0 of this SE discusses decommissioning funding assurance.

The NRC evaluated whether the financial qualifications of the licensees would be affected by the proposed transfers in a manner that is consistent with the guidance provided in NUREG-1577, Revision 1, "Standard Review Plan on Power Reactor License Financial Qualifications and Decommissioning Funding Assurance," issued March 1999. The NRC reviewed the financial projections for the reasonableness of estimated operating costs, the reasonableness of financial projections and underlying assumptions, and the sensitivity of plant revenue projections to determine if the licensees possess or have reasonable assurance of obtaining the funds necessary to cover estimated operating costs for the period of the licenses.

4.1 Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2

CENG's wholly owned subsidiary, CCNPP, LLC is the 100 percent owner and licensed operator of CCNPP 1 and 2. CCNPP, LLC also maintains an ISFSI at the CCNPP 1 and 2 site. EDF Inc.'s 49.99 percent ownership interest in CENG is unaffected by the merger of Exelon and CEG and associated indirect license transfers.

According to the applicants, there will be no change in the financial qualifications of CCNPP, LLC as a result of the indirect transfers of control of the licenses for CCNPP 1 and 2 the associated Calvert Cliffs ISFSI due to the proposed merger between Exelon and CEG. According to the application, the Projected Income Statement includes revenue that is presented using information from the approved 2011–2015 Strategic Plan, and these revenues reflect firm obligations of the CENG parents. In addition, there are no legacy power purchase agreements at CCNPP, LLC.

The following is an abbreviated version of the projected income statement submitted in Attachment 3 to the application:

Table 1
(Abbreviated) Projected Income Statement
Calvert Cliffs Nuclear Power Plant, LLC
(Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2)
$ million

	2012	2013	2014	2015	2016
Total Revenue:	[				]
Total Op. Exp.:	[				]
Operating Income:	[				]
Less Expenses & Tax:	[				]
Net Income:	[				]

The NRC staff's review indicates that the supporting data supplied within the application as the basis for this summary Projected Income Statement appear to be reasonable. The NRC finds that CCNPP, LLC's projected income statement shows that the anticipated revenues from sales of energy and capacity will exceed the anticipated expenses for the 5-year period summarized in the projections.

Consistent with the 2009 NRC Orders[2] approving the transfers of licenses, CEG and EDFI, EDF Inc.'s direct parent company, currently maintain support agreements with each licensee. These two support agreements provide approximately $290 million in financial support from CEG and EDFI. However, according to the applicants, the CEG support agreement will be updated and amended to ensure that the total amount of funding available is sufficient in light of changes in estimated fixed operating and maintenance costs for a 6-month outage. In Reference 3 of the June 17, 2011, submittal, the applicants provided a draft of the proposed support agreement for the Exelon/CEG side of CENG. However, because the corporate parent structure will lead to the elimination of CEG as described above, the applicants submitted a revised draft of the proposed support agreement to specify the agreement between Exelon Generation and the CENG subsidiary licensees. In Enclosure 2 of the November 11, 2011, submittal, the applicants provided a revised draft support agreement for approximately $205 million that, when combined with the EDFI support agreement, will provide approximately $350 million in financial support.

2 Order for Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2: "Order Superseding Order of October 9, 2009, Approving Application Regarding Proposed Corporate Restructuring and Approving Conforming Amendments," (ADAMS Accession No. ML093000631).

In addition to the financial support agreements, the application also referenced the working funding capital arrangements outlined in the CENG Operating Agreement (Attachment 7 to the application). The applicants stated that the licensees will have continued access to equity contributions and member loans or advances, as provided in the CENG Operating Agreement. In addition, CENG currently maintains a cash pooling arrangement that provides an additional vehicle for managing the working capital needs of the licensees, which is funded by capital contributions.

Accordingly, based on the above, the NRC staff finds that CCNPP, LLC has reasonable assurance of obtaining the funds necessary to cover estimated operating costs for the period of the license, including a 6-month outage and, thus, will continue to be financially qualified to hold the license subsequent to the indirect transfer related to the proposed merger between Exelon and CEG.

4.1.1 Calvert Cliffs Independent Spent Fuel Storage Installation

The regulations at 10 CFR 72.50(a) state the following:

> No license or any part included in a license issued under this part for an ISFSI or MRS shall be transferred, assigned, or in any manner disposed of...unless the Commission gives its consent in writing.

Further, 10 CFR 72.50(b)(1) states the following:

> 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.

The NRC staff notes that the cost of casks used to store spent fuel in the Calvert Cliffs ISFSI are included as part of the nuclear fuel batch cost and are recorded as expenses in Table 1 above. Operating costs resulting from loading spent nuclear fuel into casks for storage in the Calvert Cliffs ISFSI are included in the projections for operations and maintenance, which are included in the "Total Op. Exp." of Table 1 above.

Accordingly, the NRC finds that CCNPP, LLC has reasonable assurance of obtaining the funds necessary to cover estimated operating costs for the period of the license and, thus, will continue to be financially qualified to hold the Calvert Cliffs ISFSI license, notwithstanding the proposed license transfer related to the proposed merger between Exelon and CEG.

4.2 Nine Mile Point Nuclear Station, Unit Nos. 1 and 2

CENG's wholly owned subsidiary, NMPNS, LLC is the 100 percent owner and licensed operator of the Nine Mile Point Nuclear Station, Unit No. 1 (NMP 1), and is also the 82 percent owner and the licensed operator for NMP 2. Long Island Power Authority owns the remaining

18 percent of NMP 2, and is unaffected by the merger and associated license transfers. In addition, EDF Inc.'s 49.99 percent ownership interest in CENG is unaffected by the merger of Exelon and CEG and associated indirect license transfers.

According to the applicants, there will be no change in the financial qualifications of NMPNS, LLC as a result of the indirect transfers of control of the licenses for NMP 1 and 2 due to the proposed merger between Exelon and CEG. As stated in the application, the projected income statement includes revenue for NMP 1 that is presented using projected information from the approved 2011–2015 Strategic Plan, and revenues reflect firm obligations of the CENG parents. In addition, projected revenue is expected from the sale of the generating output of NMP 1 and 2 from both third-party power purchase agreements and sales of energy at market, which are affected by market prices. Further, NMP 2 has a revenue-sharing agreement that started in December 2011 and is set to expire in November 2021. Lastly, the applicants stated that revenue for 2016 is estimated by escalating 2014 revenue by 3 percent for 2 years; the applicants used 2014 because even years are Unit 2 outage years.

The following is an abbreviated version of the projected income statement submitted in Attachment 3 to the application.

Table 2
(Abbreviated) Projected Income Statement
Nine Mile Point Nuclear Station, LLC
(Nine Mile Point Nuclear Station, Unit Nos. 1 and 2)
$ million

	2012	2013	2014	2015	2016
Total Revenue:	[				]
Total Op. Exp.:	[				]
Operating Income:	[				]
Less Expenses & Tax:	[				]
Net Income:	[				]

The NRC staff's review indicates that the supporting data supplied in the application as the basis for this summary Projected Income Statement appear to be reasonable. The NRC finds that NMPNS, LLC's projected income statement shows that the anticipated revenues from sales of energy and capacity from NMP 1 and 2 will exceed the anticipated expenses of NMP 1 and 2 for the 5-year period summarized in the projections.

Consistent with the 2009 NRC Orders[3] approving the transfers of licenses, CEG and EDFI, EDF Inc.'s direct parent company, currently maintain support agreements with each licensee. These two support agreements provide approximately $290 million in financial support from CEG and EDFI. However, according to the applicants, the CEG support agreement will be updated and amended to ensure that the total amount of funding available is sufficient in light of changes in estimated fixed operating and maintenance costs for a 6-month outage. In Reference 3 of the June 17, 2011, submittal, the applicants provided a draft of the proposed support agreement for the Exelon/CEG side of CENG. However, because the corporate parent structure will lead to the elimination of CEG as described above, the applicants submitted a revised draft of the proposed support agreement to specify the agreement between Exelon Generation and the CENG subsidiary licensees. In Enclosure 2 of the November 11, 2011, submittal, the applicants provided a revised draft support agreement for approximately $205 million that, when combined with the EDFI support agreement, will provide approximately $350 million in financial support.

In addition to the financial support agreements, the application also referenced the working funding capital arrangements outlined in the CENG Operating Agreement (Attachment 7 to the application). The applicants stated that the licensees will have continued access to equity contributions and member loans or advances, as provided in the CENG Operating Agreement. In addition, CENG currently maintains a cash pooling arrangement that provides an additional vehicle for managing the working capital needs of the licensees, which is funded by capital contributions.

Based on the above, the NRC staff finds that NMPNS, LLC has reasonable assurance of obtaining the funds necessary to cover estimated operating costs for the period of the license, including a 6-month outage and, thus, will continue to be financially qualified to hold the license subsequent to the indirect license transfer related to the proposed merger between Exelon and CEG.

4.3 R.E. Ginna Nuclear Power Plant, LLC

CENG's wholly owned subsidiary, R.E. Ginna, LLC is the 100 percent owner and licensed operator of R.E. Ginna Nuclear Power Plant (Ginna), under a license issued by the NRC. R.E. Ginna, LLC also operates an ISFSI at Ginna under a general license pursuant to NRC 10 CFR Part 72. EDF Inc.'s 49.99 percent ownership interest in CENG is unaffected by the merger of Exelon and CEG and associated indirect license transfer.

According to the applicants, there will be no change in the financial qualifications of R.E. Ginna, LLC as a result of the indirect transfer of control of the license for Ginna and the general license for the ISFSI due to the proposed merger between Exelon and CEG. According to the application, the Projected Income Statement includes revenue that is presented using

[3] Order for Nine Mile Point Nuclear Station, Unit Nos. 1 and 2: "Order Superseding Order of October 9, 2009, Approving Application Regarding Proposed Corporate Restructuring," (ADAMS Accession No. ML093000635).

information from the 2011–2015 Strategic Plan. In addition, revenue for Ginna includes a power purchase agreement with Rochester Gas & Electric, which will expire in June 2014. The applicants stated that 2016 is a non-outage year for Ginna and that the revenues are based on megawatt-hours in 2013, as this represents a typical non-outage year.

The following is an abbreviated version of the projected income statement submitted in Attachment 3 to the application.

Table 3
(Abbreviated) Projected Income Statement
R.E. Ginna Nuclear Power Plant, LLC
(R.E. Ginna Nuclear Power Plant)
$ million

	2012	2013	2014	2015	2016
Total Revenue:	[				]
Total Op. Exp.:	[				]
Operating Income:	[				]
Less Expenses & Tax:	[				]
Net Income:	[				]

The application indicates that R.E. Ginna, LLC has a negative net income for the period 2012–2016. In addition to the projected income statement, the application also included a projected statement of operating cash flows for Ginna, and the 5-year cash flow projections show a negative cash flow for 2012, 2014, and 2015. Based solely on the projected income statement above and the projected statement of operating cash flows included in the application, the NRC staff would be unable to find that R.E. Ginna, LLC has reasonable assurance of obtaining the funds necessary to cover estimated operating costs for the period of the license.

The NRC staff has previously made only two findings of reasonable assurance of financial qualifications for plants with a negative income statement as part of an indirect license transfer. The first finding, summarized in the July 28, 2008, SE for an indirect transfer of control related to a restructuring of Entergy Corporation (ML081080352), addressed a negative net income statement for Vermont Yankee Nuclear Power Station (VY). The NRC staff found VY financially qualified, based in part on additional financial arrangements provided by support agreements

put in place by Entergy Corporation, the parent company of VY, and access to a line of credit. The second finding, summarized in the October 30, 2009, SE[4] for direct and indirect transfers of control related to corporate restructuring and EDF Inc.'s acquisition of a 49.99 percent ownership interest in CENG (ML093010003), addressed a negative net income statement for Ginna. The NRC staff found Ginna financially qualified, based in part on additional financial arrangements provided by support agreements from CEG and EDF Inc. and a master demand note. For Ginna, the master demand note stated that CENG agrees to make available and lend to R.E. Ginna, LLC a total principal amount of at least [ ] if so requested by R.E. Ginna, LLC. CENG stated in the application it will maintain in effect the current master demand note for Ginna, which was previously accepted by the NRC in connection with the corporate restructuring with EDF Inc., and was included as a condition of the Order Supeseding Order of October 9, 2009, Approving Application Regarding Proposed Corporate Restructuring and Approving Conforming Amendments, dated October 30, 2009[5], concerning the corporate restructuring of CENG and associated indirect and direct transfers of the operating licenses held by CCNPP, LLC, NMPNS, LLC and R.E. Ginna, LLC.

The amount provided by the master demand note is sufficient to cover the largest annual projected negative cash flow amount for Ginna, as submitted in the 5-year projected income statement included in the May 12, 2011, application. The master demand note for the amount of [ ] will remain in place following the proposed merger between Exelon and CEG. Consistent with the 2009 NRC orders approving the transfers of licenses, CEG and EDFI, EDF Inc.'s direct parent company, currently maintain support agreements with each licensee. These two support agreements provide approximately $290 million in financial support from CEG and EDFI. However, according to the applicants, the CEG support agreement will be updated and amended to ensure that the total amount of funding available is sufficient in light of changes in estimated fixed operating and maintenance costs for a 6-month outage. In Reference 3 of the June 17, 2011, submittal, the applicants provided a draft of the proposed support agreement for the Exelon/CEG side of CENG. However, because the corporate parent structure will lead to the elimination of CEG as described above, the applicants submitted a revised draft of the proposed support agreement to specify the arrangement between Exelon Generation and the CENG subsidiary licensees. In Enclosure 2 of the November 11, 2011, submittal, the applicants provided a revised draft support agreement for approximately $205 million that, when combined with the EDFI support agreement, will provide approximately $350 million in financial support.

In addition to the financial support agreements, the application also referenced the working funding capital arrangements outlined in the CENG Operating Agreement (Attachment 7 to the application). The applicants stated that the licensees will have continued access to equity

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4 See "Revised SE 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," dated October 30, 2009 (ADAMS Accession No. ML093010003).

5 Order for R.E. Ginna Nuclear Power Plant: "Order Superseding Order of October 9, 2009, Approving Application Regarding Proposed Corporate Restructuring" (ADAMS Accession No. ML093000633).

contributions and member loans or advances, as provided in the CENG Operating Agreement. In addition, CENG currently maintains a cash pooling arrangement that provides an additional vehicle for managing the working capital needs of the licensees, which is funded by capital contributions.

Based on the above, the NRC staff finds that R.E. Ginna, LLC has reasonable assurance of obtaining the funds necessary to cover estimated operating costs for the period of the license, including a 6-month outage and, thus, will continue to be financially qualified to hold the license subsequent to the indirect license transfer related to the proposed merger between Exelon and CEG.

4.4 Conclusion on Financial Qualifications

In view of the foregoing, the NRC staff concludes that the projected income statements, Operating Agreement, financial support agreements, and master demand note submitted by the applicants provide sufficient financial assurance to demonstrate reasonable assurance that sources of funding are available to cover operating costs for each of the facilities, as needed. In consideration of all of the foregoing, the NRC staff finds that the financial qualifications of the licensees for the subject facilities and ISFSIs will not be adversely affected by the proposed indirect transfers related to the merger between Exelon and CEG.

However, to ensure that CENG and the licensees will continue to have an adequate source of funds, the NRC staff has determined that the new form of the Exelon Generation financial support agreement referenced in the application shall be subject to the following condition of the Orders approving the proposed license transfers, essentially as follows:

(1) 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.

(2) 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, and the "Order Superseding Order of October 9, 2009, Approving Application Regarding Proposed Corporate Restructuring," 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, NMPNS, LLC, and R.E. Ginna, LLC, shall remain in full force and effect and are incorporated herein as if fully set forth, except as they are amended [in the Order].

5.0 DECOMMISSIONING FUNDING ASSURANCE

The NRC has determined that the provision of reasonable assurance of decommissioning funding is necessary to ensure the adequate protection of public health and safety. The regulation at 10 CFR 50.33(k) requires that an applicant for an operating license for a utilization facility must demonstrate how reasonable assurance will be provided that funds will be available to decommission the facility. A similar requirement is imposed on ISFSIs under 10 CFR 72.22(e).

The regulation at 10 CFR 50.75(b) requires the following:

> Each power reactor applicant for or holder of an operating license...for a production or utilization facility of the type and power level specified in paragraph (c) of this section shall submit a decommissioning report, as required by § 50.33(k).

Further, the regulation at 10 CFR 50.75(c) provides the "Table of minimum amounts (January 1986 dollars) required to demonstrate reasonable assurance of funds for decommissioning by reactor type and power level, P (in MWt); adjustment factor."

In accordance with 10 CFR 50.75(f)(1), CENG reported information on the status of decommissioning funding for CCNPP 1 and 2, NMP 1 and 2, and Ginna as of December 31, 2010, to the NRC in CENG's decommissioning funding status (DFS) report, dated March 29, 2011 (ML110940057), and supplemented by letter dated June 24, 2011 (ML11187A302). The NRC staff documented its review of the operating plants' DFS reports in SECY-11-0149, "Summary Findings Resulting from the Staff Review of the 2010 Decommissioning Funding Status Reports for Operating Power Reactor Licensees," dated October 26, 2011 (ML112620046).

5.1 Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2

CCNPP, LLC currently provides decommissioning funding assurance for CCNPP 1 and 2 through existing prepaid decommissioning trust fund assets, in accordance with 10 CFR 50.75(e)(1)(i).

The NRC staff verified the calculations provided by the applicant in the aforementioned DFS report for CCNPP 1 and 2 as of December 31, 2010. Based on its review of the 2010 DFS report, the NRC staff determined that CCNPP 1 and 2 was providing adequate decommissioning funding assurance in accordance of the NRC's regulations.

In addition, in accordance with 10 CFR 72.30(b), the applicant provided an ISFSI decommissioning funding plan in connection with the licensing of the Calvert Cliffs ISFSI, which has subsequently been updated and submitted to the NRC. The applicant also stated that it is providing decommissioning funding assurance for the Calvert Cliffs ISFSI in accordance with 10 CFR 72.30(c)(5), and that the Calvert Cliffs ISFSI decommissioning trust fund is separately identified and not included as part of the CCNPP 1 and 2 radiological trust fund reported in CENG's DFS report.

Based on the discussion above, the NRC staff concludes that the applicant has complied with the regulations at 10 CFR 50.75(b) and (c) with respect to providing decommissioning funding assurance for CCNPP 1 and 2, and with the regulations at 10 CFR 72.30(c) with respect to providing decommissioning funding assurance for the Calvert Cliffs ISFSI.

5.2 Nine Mile Point Nuclear Station, Unit Nos. 1 and 2

NMPNS, LLC currently provides decommissioning funding assurance for NMP 1 and its ownership share of NMP 2 through existing prepaid decommissioning trust fund assets in accordance with 10 CFR 50.75(e)(1)(i).

The NRC staff verified the calculations provided by the applicant in the aforementioned DFS report for NMP 1 and 2 as of December 31, 2010. Based on its review of the 2010 DFS report, the NRC staff determined that NMP 1 and 2 was providing adequate decommissioning funding assurance in accordance of the NRC's regulations.

Based on its analysis, the NRC staff concludes that the applicant has complied with the regulations at 10 CFR 50.75(b) and (c) with respect to providing decommissioning funding assurance for NMP 1 and its ownership share of NMP 2.

5.3 R.E. Ginna Nuclear Power Plant

R.E. Ginna currently provides decommissioning funding assurance for Ginna through its existing decommissioning trust fund assets, in accordance with 10 CFR 50.75(e)(1)(ii).

The NRC staff verified the calculations provided by the applicant in the aforementioned DFS report for Ginna as of December 31, 2010. Based on its review of the 2010 DFS report, the NRC staff determined that Ginna was providing adequate decommissioning funding assurance in accordance of the NRC's regulations.

The applicant also stated that it is providing financial assurance for the decommissioning of the Ginna ISFSI as part of its site-specific safe storage (SAFSTOR) decommissioning cost study, which was submitted to the NRC on November 20, 2009 (ML093340088).

Based on its analysis, the NRC staff concludes that the applicant has complied with the regulations at 10 CFR 50.75(b) and (c) with respect to providing decommissioning financial assurance for Ginna.

5.4 Conclusion on Decommissioning Funding Assurance

The decision criterion applied to an indirect license transfer case is whether the proposed shift in ultimate corporate control will affect the licensee's existing financial assurance. The proposed merger will not affect the decommissioning funding arrangements previously reported for the facilities. After the merger, the trustee for all of the licensees' decommissioning funds will remain the Bank of New York Mellon. CCNPP, LLC will remain responsible for providing decommissioning funding assurance for CCNPP 1 and 2, NMPNS, LLC will continue to provide decommissioning funding assurance for NMP 1 and its ownership share of NMP 2, and R.E. Ginna, LLC will continue to provide decommissioning funding assurance for Ginna. Thus, no change in current funding practices will occur as a result of the proposed merger. The NRC staff concludes that the merger will not have any adverse impact on the decommissioning funding assurance provided by the licensees.

6.0 TECHNICAL QUALIFICATIONS

As stated in the application dated May 12, 2011, the applicants seek approval under 10 CFR 50.80 and 10 CFR 72.50 for the indirect transfer of control of the following NRC licenses: (1) Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Renewed Facility Operating Licenses DPR-53 and DPR-69, (2) Calvert Cliffs ISFSI, Materials License No. SNM-2505, (3) Nine Mile Point Nuclear Station Unit Nos. 1 and 2, Renewed Operating Licenses DPR-63 and NFP-69, and (4) R.E. Ginna Nuclear Power Plant, Renewed Operating License DPR-18, as well as the Ginna ISFSI licensed under a general license. The indirect transfers of control would result from the proposed merger between Exelon and CEG.

The applicants stated that the technical qualifications of the licensees are not affected by the proposed indirect transfer of control of the CCNPP 1 and 2, NMP 1 and 2, and Ginna licenses. There will be no physical changes to the facilities and no changes in the day-to-day operations in connection with the merger. In addition, the proposed indirect transfer of control of the licenses will not involve any changes to the current licensing bases.

In addition, the applicants stated that the nuclear organization and staff responsible for the operation and maintenance of the licenses will remain essentially unchanged. Furthermore, the applicants stated that the technical and administrative abilities will remain essentially unchanged and that no material changes in the management or organization of any of the nuclear generating stations are expected.

6.1 Management and Technical Support Organization

The NRC staff recently reviewed CENG's technical qualifications. In a SE dated October 30, 2009 (ML093010003), the NRC staff reviewed and approved CENG's technical qualifications as a result of the corporate restructuring that occurred when EDF Inc. acquired a 49.99 percent ownership interest in CENG.

The NRC staff reviewed the application to determine the acceptability of the proposed corporate management and technical support organization. The NRC staff evaluated the application using the applicable acceptance criteria contained in NUREG-0800, "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants: LWR Edition" (hereafter referred to as the "SRP"), Section 13.1.1, "Management and Technical Support Organization."

CEG is one of two parent companies of CENG. CEG, through its subsidiaries, has a 50.01 percent ownership interest in CENG. EDF Inc. has the remaining 49.99 percent ownership interest in CENG.

According to the application, EDF Inc.'s 49.99 percent ownership interest in CENG is not affected by the corporate merger of Exelon and CEG. EDF Inc. is a U.S. corporation organized under the laws of the State of Delaware and a wholly owned subsidiary of EDFI, 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. The proposed transaction and associated license transfers do not affect the existing chain of ownership for Exelon Generation's current licensed facilities. Accordingly, the proposed transaction does not result in any transfer of control with respect to the licenses for the current Exelon Generation plants.

The application proposes no operational changes or physical changes to the facilities.

6.2 Operating Organizations

The NRC staff reviewed the application to determine the acceptability of the facilities' operating organizations and to evaluate changes to the operating organizations proposed as a result of the license transfer. The initial licensing reviews determined the initial operating organizations to be acceptable. Subsequent safety-related changes to the operating organizations should have been evaluated with an appropriate methodology. Therefore, the existing operating organizations remain acceptable. The NRC staff's review focused on evaluating any changes to the operating organizations proposed as a result of the transfer. The NRC staff evaluated the application using the applicable acceptance criteria contained in SRP Section 13.1.2 - 13.1.3, "Operating Organizations."

The application stated that the nuclear organization and staff responsible for the operation and maintenance of the facilities will remain essentially unchanged. The application further stated the following:

> The overall technical resources available to the CENG organization will be enhanced as a result of Exelon's acquisition of CEG. As the largest nuclear fleet operator in the United States, Exelon Generation will make significant nuclear operational experience available to the CENG organization.

Therefore, CENG's technical qualifications to carry out its responsibilities under Operating Licenses DPR-53, DPR-69, DPR-63, NPF-69, and DPR-18 will remain unchanged and will not be adversely affected by the proposed restructuring.

Because the operating organizations and personnel responsible for the operation and maintenance of the facilities will not be affected by the indirect transfer, the NRC staff concludes that the licensees' onsite organizations established to operate and maintain the facilities under both normal and off-normal conditions are in accordance with SRP Section 13.1.2 - 13.1.3.

6.3 Conclusion on Technical Qualifications

CENG has described the corporate level management, technical support organizations, and the onsite operating organizations that will be responsible for the operation and maintenance of CCNPP 1 and 2, NMP 1 and 2, and Ginna following the proposed change in ownership of CENG and the proposed merger. The NRC staff concludes that CENG will have an acceptable corporate organization. The licensed entities will retain an acceptable onsite organization and adequate resources to provide technical support for the safe operation of the facilities under both normal and off-normal conditions after the proposed corporate restructuring. The application adequately addresses the relevant requirements of 10 CFR 50.40(b), 10 CFR 50.80, and 10 CFR 72.50. Based on the foregoing evaluation, the NRC staff concludes that the above licensees will be technically qualified to hold the licenses for CCNPP 1 and 2, NMP 1 and 2, and Ginna.

7.0 NUCLEAR INSURANCE AND INDEMNITY

According to the application, the proposed indirect transfers of control of the licenses would not affect the existing Price-Anderson indemnity agreements and the required nuclear property damage insurance under 10 CFR 50.54(w) and nuclear energy liability insurance required under Section 1770 of the AEA and 10 CFR Part 140, "Financial Protection Requirements and Indemnity Agreements."

Also, the NRC has no reason to believe that the proposed merger will affect the ability of CENG to meet its financial obligations for its pro rata share of obligations for retrospective premiums for CCNPP 1 and 2, NMP 1 and 2, and Ginna.

Therefore, in consideration of the foregoing, the NRC concludes that the indirect transfers of control of the licensees held by CENG will have no adverse impact on its ability to provide required nuclear insurance and indemnity coverage and its ability to meet its nuclear insurance obligations.

8.0 ANTITRUST

The AEA does not require or authorize antitrust reviews of postoperating license transfer applications (*Kansas Gas and Electric Co., et al.* (Wolf Creek Generating Station, Unit 1, CLI-99-19, 49 NRC 441 (1999)). The application here postdates the issuance of the operating licenses for the facilities under consideration and, therefore, no antitrust review is required or authorized.

9.0 FOREIGN OWNERSHIP, CONTROL, OR DOMINATION

9.1 Background

Sections 103d and 104d of the AEA provide, in relevant part, that no license may be issued to the following:

> 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 at 10 CFR 50.38, "Ineligibility of Certain Applicants," is the regulatory provision that implements this statute. The NRC evaluated the application in a manner that is consistent with the guidance provided in the Standard Review Plan, "Foreign Ownership, Control, or Domination of applicants for Reactor Licenses," dated June 1999, (hereafter referred to as the "SRP on FOCD"), to determine whether the applicant is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government. (64 FR 52357-52359)

The NRC's position outlined in the SRP on FOCD states that "the foreign control prohibition should be given an orientation toward safeguarding the national defense and security." Further, the SRP on FOCD outlines how the effects of foreign ownership may be mitigated through implementation of a "negation action plan" to ensure that any foreign interest is effectively denied control or domination over the applicant.

9.2 Discussion

9.2.1 CEG and EDF Inc.

As previously stated, CEG, through wholly owned subsidiaries, including CNL, has a 50.01 percent ownership interest and EDF Inc. has a 49.99 percent ownership interest in CENG. The NRC approved the indirect transfers of control associated with EDF Inc.'s acquisition of this interest on October 30, 2009. During that review, the NRC evaluated whether the proposed merger would result in CENG or the licensees being owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government within the meaning of Sections 103d or 104d of the AEA, or the licensee eligibility requirements of 10 CFR 50.38. After reviewing the license transfer application, including the applicants' proposed negation action plan, the NRC concluded that it did not know or have reason to believe that CENG and the licensees would be owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government. In addition, the 2009 NRC Orders approving the license transfers associated with the EDF Inc. merger were subject to certain conditions to ensure that CENG and the licensees will not become owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government.

9.2.2 Exelon and CEG

Exelon and CEG are currently publicly traded companies, and their securities are widely held and traded on the New York Stock Exchange. Section 13(d) of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78m(d)), requires that a person or entity that owns or controls more than 5 percent of the securities of a company must file notice with the SEC. According to the application and filings with the SEC, Exelon stated that it is not aware of any alien, foreign corporation, or foreign government that may hold more than 5 percent of the securities of Exelon.

As a result of the merger, the elimination of CEG as an intermediate parent does not affect the governance of CENG because CNL, as a direct subsidiary of 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 and participate as a member in the CENG joint venture, subject to the negation action plan as described and approved in connection with the NRC's October 30, 2009, Orders approving EDF Inc.'s investment in CENG. In addition, the applicants stated that EDF Inc. currently owns approximately 7.2 percent of the voting stock of CEG acquired through open purchases.

According to the applicants, if it maintained ownership of its current shares of stock, EDF Inc. would own approximately 1.5 percent of the issued and outstanding common stock of Exelon, which would be below the reporting threshold for SEC Schedules 13D or 13G.

As stated in the application, Exelon will add 4 current CEG directors to its existing 15-member Board of Directors, for a total of 19 directors. The four additional directors will consist of three independent directors[6] and Mayo Shattuck, the current CEG Chairman of the Board and Chief Executive Officer (CEO), who will serve as Executive Chairman of Exelon. According to the applicants, the addition of the four new directors to the Exelon Board of Directors upon completion of the merger, one of whom is expected to be a Canadian citizen, will not change the existing authority and control of Exelon Generation's current licensed facilities as presently exercised by the existing Exelon Board of Directors. According to the applicants, all Exelon directors will have duties to Exelon shareholders as a whole rather than to any particular group of shareholders, which negates the possibility of any foreign control or influence over Exelon that might raise any implications for nuclear safety or security inconsistent with the prohibition against foreign ownership, control, or domination (FOCD). A list of the directors, officers, and executive personnel of Exelon and the CEG companies was included in Attachment 4 to the May 12, 2011, submittal, and a revised list was included in Attachment 4 to the November 10, 2011, submittal.

Per the application, as a holder of Exelon common stock, EDF Inc. will have no greater or lesser rights than any other holder of Exelon common stock, which includes the right to vote on matters on which shareholders are entitled or asked to vote, such as matters of corporate policy and the election of members of the Board of Directors, and the right to dividends as and when declared payable by the Board of Directors. EDF Inc.'s less-than-1.5 percent shareholder interest in Exelon will give it no right to participate in management decisions of Exelon, including any management decisions concerning nuclear safety or security, or to obtain responsibility for special nuclear material or access to restricted data.

The applicants stated that, following Exelon's acquisition of CEG, the indirect transfers 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 AEA or the licensee eligibility requirements of 10 CFR 50.38. The applicants further stated in the November 11, 2011, letter that the approved negation measures ensure continued U.S. control over all matters required to be under U.S. control by the AEA and 10 CFR 50.38, and that they remain in place and are unaffected by the proposed Exelon and CEG merger, including the elimination of CEG as an intermediate parent.

The CENG Operating Agreement requires the CENG Board of Directors to appoint a Nuclear Advisory Committee (NAC) composed of U.S. citizens who are not officers or directors of CENG, EDF Inc., or CEG. The NAC is responsible for oversight to help ensure that CENG is in compliance with laws and regulations regarding foreign domination and control of nuclear

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6 The independent directors of CENG are people who are not currently employed by CENG or its subsidiaries, have not been employed by CENG or its subsidiaries during the past 3 years or served as an executive officer of CENG or its subsidiaries, are not consultants to CENG or its subsidiaries who have been paid more than $100,000 in any 12-month period in any of the last 3 years, have not engaged in material transactions with CENG or its subsidiaries in the past 3 years that exceed 2 percent of that company's consolidated gross revenues in its most recent fiscal year, and have no other material relationships with CENG or its subsidiaries.

operations and that a decision of a foreign government could not adversely affect or interfere with the reliable and safe operation of any nuclear assets of CENG or its affiliates. As part of its review, the NRC staff requested and reviewed the NAC's "Initial Report of the CENG Nuclear Advisory Committee to the Constellation Energy Group, LLC, Board of Directors," submitted on November 10, 2011, which states the following:

> [t]he AC [Advisory Committee] has not identified any significant matter or matters that could potentially affect the safe, secure, or reliable operation of the Company's nuclear assets that would require an independent reporting to the Nuclear Regulatory Commission.

The NAC report further stated the following:

> [t]he management of CENG has actively brought significant or material issues related to the AC's Charter to the AC for its review, consideration, and insight, including issues that may arise as a result of the extended relationship between the two CENG parent organizations.

Further, although the NAC does not have a decisionmaking role for CENG and there is not a formal right of appeal if the CENG Board or its Chairman acts in a manner inconsistent with a recommendation of the NAC, the NAC can engage CENG's parent companies, including Exelon following completion of the proposed merger, on any matter of concern to the NAC, including matters of compliance with NRC FOCD requirements. In addition, following the merger, Exelon will have corporate oversight responsibility as an ultimate parent company with respect to CENG's performance and compliance with NRC requirements, which would include the NRC's FOCD restrictions. As stated in the application, Exelon will also communicate with the NAC on FOCD matters as part of its corporate oversight.

In addition, the NAC seeks out FOCD issues and will contact individuals at various levels within CENG and CNL organizations on subjects such as cyber security, fuel procurement, staff training, control of Safeguards Information, Foreign Corrupt Practices Act procurements, and so forth. According to the applicants, the NAC will continue to function in the same manner with Exelon and Exelon Generation after the proposed merger closes.

9.2.3 Securities and Exchange Commission Filings

The NRC staff also reviewed various SEC filings related to the merger. In a letter to the SEC, dated June 30, 2010, CEG stated the following:

> As evidenced by the composition of the CENG Board of Directors (i.e., split equally between EDF [EDF Inc.] 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, CEG stated the following:

> In summary, based on our analysis of the totality of the rights and obligations of CEG and EDF [EDF Inc.] as joint owners of CENG, we believe that EDF [EDF Inc.], 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 [EDF Inc.] 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.

Based on the above statements, the NRC staff issued a request for additional information (RAI) requesting an explanation of how joint control of CENG by CEG and EDF Inc. complies with the NRC's FOCD restrictions for nuclear generating facilities, consistent with guidance provided in the SRP on FOCD. In response to the NRC's RAI, CEG stated the following:

> 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 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's FOCD determination is based on the totality of facts because a foreign entity may exert indirect control through factors other than ownership and voting interests, including, but not limited to, financial interests. As a result, the NRC staff issued a second RAI seeking an explanation regarding how the negation action plan approved in 2009 is still appropriate due to CEG ceasing to have a "controlling financial interest" in CENG because CEG and EDF Inc. are considered to have "joint control" over the day-to-day business activities of CENG. The October 30, 2009, NRC Order approved EDF Inc. acquiring a 49.99 percent ownership interest in CENG, not a 50/50 joint venture as previously mentioned. In its November 10, 2011, response to the RAI, the applicant stated that there has been no change in FOCD matters within the meaning of the AEA since the negation action plan was approved in 2009, and that the SEC letter addressed "controlling financial interest" solely for accounting purposes, i.e., to determine whether to deconsolidate the financial results of the CENG joint venture from those of the parent CEG in accordance with a Financial Accounting Standards Board financial accounting standard. According to the applicant, while CEG determined that EDF Inc. should be deemed to have joint financial control over day-to-day business activities of CENG within the meaning of the financial accounting standard, it at all times remains subject to the casting vote authority of the U.S. Chairman over matters of nuclear safety, security, and reliability.

In the November 22, 2011, letter, Exelon stated that it evaluated whether it should consolidate the CENG results in Exelon's postmerger financial reports, and that the decision to consolidate or deconsolidate involves judgments in the application of accounting rules to particular facts and circumstances. Exelon further stated in the letter that a decision to consolidate or deconsolidate CENG in Exelon's financial statements does not affect the governance provisions of the CENG Operating Agreement or the allocation of control over the CENG joint venture, nor does it suggest that EDF Inc. has anything more than a 49.99-percent interest in the joint venture. Exelon stated that it will ensure, consistent with the Operating Agreement, that EDF Inc. will not exercise ownership, control, or domination.

However, in considering CEG's letter to the SEC dated June 30, 2010, and subsequent statements made in the application regarding CEG having joint control with EDF Inc. over CENG, to ensure that CENG and the licensees will not become owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government, the Order approving the indirect license transfers to Exelon will be subject to conditions. Such conditions will include having the NAC prepare an Annual Report regarding FOCD of the licensed activities of power reactors under the control of CENG, which shall be submitted to the NRC for review. In addition, records of all votes by EDF Inc. on the CENG Board of Directors and the use of the Chairman's casting vote will be required to be reviewed by the NAC to ensure that no foreign interests have exercised FOCD over the licensed activities of the facilities, and that no foreign interest involved with licensed activities is inimical to the common defense and security. The results of the NAC's review of these votes shall be summarized in the NAC Report and include a discussion of any use of the Chairman's casting vote, determinations that an exercise of FOCD had occurred, or that foreign involvement with licensed activities was inimical to the common defense and security.

9.2.4 Edison

Subsequent to a meeting held on September 26, 2011, the NRC staff learned that the Électricité de France S.A. (EDF), the parent company to EDF Inc., 2010 Annual Report, stated that EDF owns 48.96 percent of the equity and 50.00 percent of the voting rights in Edison, an Italian company (www.edf.com). On August 3, 2011, the U.S. Government Accountability Office (GAO) issued a report regarding the Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010 for the Senate Armed Services Committee. The report, titled "Firms Reported in Open Sources as Having Commercial Activity in Iran's Oil, Gas, and Petrochemical Sectors," on page 5, lists Edison as a firm identified by GAO as having commercial activity in Iran's oil, gas, or petrochemical sectors from January 2010 to May 2011. In the October 12, 2011, RAI, the NRC staff asked the applicants to identify EDF's current equity and voting rights in Edison, and any other corporation listed in the August 3, 2011, GAO Report, and state whether the negation action plan previously approved in 2009 is sufficient to negate any indirect impact of the ownership of Edison, or other financial arrangements and ownership with foreign corporations having commercial activity in Iran. In addition, the October 12, 2011, RAI asked the applicants to describe any financial arrangements with foreign corporations having commercial activity with Iran as identified in the GAO report.

In its November 10, 2011, submittal, CENG stated that, as reflected in the most recent EDF Annual Report, EDF owns 48.96 percent of the equity and 50.00 percent of the voting rights in Edison. Edison and CENG operate as wholly separate business entities under an ultimate EDF parent organization. Edison has no direct or indirect role in the activities of EDF Inc. or its role as a member of CENG. According to the applicants, there is no relationship between the two entities other than EDF's partial ownership interest in each company. In addition, the applicants also stated, to the best of their knowledge, that they have no financial arrangements with foreign corporations having commercial activity with Iran as identified in the GAO report mentioned above.

The Committee on Foreign Investment in the United States (CFIUS) reviewed EDF Inc.'s 49.99 percent acquisition of CENG in 2009, under Section 721 of the Defense Production Act of 1950, as amended (50 U.S.C. App. 2170), which considered all relevant national security factors. Based on its review, CFIUS determined that there were no unresolved national security concerns with respect to the transaction and advised relevant members of Congress and congressional committees of this determination. The NRC was notified of the CFIUS action by letter dated April 22, 2009 (ML091250439). Subsequently, the NRC staff and the Office of General Counsel (OGC) verified that Edison was not on the Office of Foreign Assets Control (OFAC) Specially Designated Nationals (SDN)

9.2.5 <u>Settlement Agreement and the CENG Operating Agreement</u>

A Settlement Agreement between EDF Inc. and Exelon Corporation (Exelon), Exelon Energy Delivery Company, LLC (EEDC, LLC), Constellation Energy Group, Inc. (CEG), and Baltimore Gas and Electric (BGE), was entered into on January 16, 2012, and was filed with the SEC on January 17, 2012, in connection with the Maryland Public Service Commission proceeding regarding the proposed merger between Exelon and CEG. On January 19, 2012, the applicants submitted a copy of the Settlement Agreement to the NRC. In the January 19, 2012, submittal, the applicants stated that:

> [w]hile one of the amendments to the Operating Agreement will give EDF [Inc.] the right to appoint CENG's Chief Financial Officer ("CFO"), the CFO does not have ultimate decision-making authority over safety matters.

In addition, the current CENG CFO is a citizen of France and an employee of EDF Inc. In a teleconference held on January 20, 2012, the NRC staff discussed the amendment to the CENG Operating Agreement, specifically, concerning EDF Inc.'s right to appoint the CENG CFO, with representatives of the applicants. At the conclusion of the teleconference, the NRC staff requested that the applicants provide information describing the duties of the CFO for CENG and explain the limitations on the CFO's authority with respect to matters of nuclear safety and security.

In a supplement to the application, dated January 25, 2012, the applicants stated that following consummation of the merger, the CENG Operating Agreement will be amended to provide, among other things, that "EDF shall have the right to appoint the Chief Financial Officer for

CENG." According to the applicants, the CFO is the head finance officer for CENG, reporting directly to the CEO of CENG. The CFO provides oversight of financial planning and analysis, and provides input on financial decisions for CENG. The CFO will have exclusive authority under the Operating Agreement to cause CENG to exercise its audit rights over Exelon and its affiliates with regard to certain provisions concerning related parties under the CENG Operating Agreement and with respect to certain service contracts between CENG and Exelon affiliates. According to the applicants, the CFO's duties include providing recommendations to the CEO on financial matters for CENG, but the CFO does not have any ability to override or circumvent the CEO's decisions, other than with respect to CENG's exercise of the audit rights mentioned above with respect to Exelon. As provided in Section 7.3(d) of the Operating Agreement, the "CEO shall have the power and authority to run the Company [CENG] on a day-to-day basis," and thus has the power to accept or reject recommendations and input provided by the CFO as it pertains to all business matters, other than CENG's exercise of such audit rights.

The CFO's powers are subject to a number of limitations under the CENG Operating agreement, such that the Chairman of the CENG Board of Directors, who is appointed by CNL, the CEO, and the Chief Nuclear Officer (CNO), all of whom must be U.S. citizens, exercise ultimate control over nuclear safety, security, and reliability as needed to comply with the NRC's restrictions on FOCD. In this regard, Section 7.3(l) of the Operating Agreement specifically provides that the Chairman, the CEO, and the CNO:

> shall have the responsibility and authority to ensure, and shall ensure, that the business and activities of the Company [CENG] and its Subsidiaries with respect to its Licensed Facilities are at all times conducted in a manner consistent with the protection of the public health and safety and common defense and security of the United States.

In addition, Section 7.3(c) of the Operating Agreement provides that the Chairman shall have the casting (deciding) vote authority on any matter necessary to assure required U.S. control, including any matter relating to nuclear safety, security or reliability, which includes, but is not limited to, the implementation or compliance with NRC requirements, such as an NRC generic letter, bulletin, order, or confirmatory order. Thus, in the event of a deadlock on authorizing the expenditures by the CENG Board of Directors on matters related to safety, security and reliability (e.g., plant specific capital improvements), the matter would be subject to the Chairman's casting vote authority. While the CFO can provide financial recommendations, the CFO, who is not a member of the CENG Board of Directors, would not be able to exercise control in this matter.

Furthermore, according to the applicants, the CFO is subject to the provisions of the Operating Agreement on removal of officers as provided in Section 7.3(a) of the Operating Agreement. Thus, if the CFO were to act in a manner inconsistent with the NRC's FOCD restrictions, the Chairman could recommend removal of the CFO, which case the CENG Board of Directors would vote on the proposed removal. Since certain fundamental business decisions and actions require unanimous approval of the CENG Board of Directors, such as the staffing of key

executive officer positions, all of the directors appointed by a member must vote in the same manner (i.e., as a block), either for or against. According to the applicants, if there were a deadlock on the issue of removal of the CFO for acting in a manner inconsistent with the NRC requirements, the Chairman could exercise his casting vote to remove the CFO, without prejudice to EDF Inc.'s right to designate a successor CFO.

Accordingly, the Chairman, CEO, and CNO exercise control over decisions that must be under U.S. control to ensure compliance with the NRC's FOCD restrictions. Thus, the CFO would not be able to use their position to exercise any impermissible foreign control over nuclear safety, security and reliability.

In addition, as discussed during the January 20, 2012, teleconference, CENG provided additional information in the January 25, 2012, letter of the CFO's duties and stated that it will add a description of the CFO's duties to the Operating Agreement. A draft of the proposed revisions to the Operating Agreement incorporating a description of the CFO's duties and related changes was included in Attachment 1 to the January 25, 2012, letter, which will be amended and restated to reflect the terms set forth in the Settlement Agreement upon consummation of the merger.

9.3 Conclusion on Foreign Ownership, Control, or Domination

The application states that, in Exelon's acquisition of CEG, the indirect transfers 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 AEA or the licensee eligibility requirements found in the regulations at 10 CFR 50.38. However, in considering (1) the SEC letter dated June 30, 2010, (2) the subsequent statements made in the application regarding CEG having joint control with EDF Inc. over CENG, (3) the Settlement Agreement, and (4) the future amendment to the Operating Agreement that will give EDF Inc. the right to appoint the CFO, the NRC staff has concluded that in order to ensure that CENG and the licensees will not become owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government, the Orders approving the indirect license transfers to Exelon will be subject to the following conditions, as follows:

(1) 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.

The NRC staff believes that the above facts, in addition to the conditions of the Orders, are consistent with making a noninimical finding with respect to protecting the common defense and security of the United States. In light of the aforementioned license conditions, the NRC staff

does not know or have reason to believe that the subject licensees will be owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government.

10.0 CONCLUSION

In view of the foregoing, the NRC staff finds that the proposed indirect transfer of licenses for CCNPP 1 and 2, NMP 1 and the pro rata ownership share of NMP 2, and Ginna as a result of the merger between Exelon and CEG will not affect the qualifications of the holders of the license for all of the units reviewed here, and that the transfer of the licenses is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Principal Contributors: J. Simpson
D. Pickett

Date: February 15, 2012

and (3) the R.E. Ginna Nuclear Power Plant and the R.E. Ginna ISFSI, respectively. The Orders are subject to the conditions described therein.

Enclosures 2 and 3 contain the nonproprietary and proprietary versions, respectively, of the NRC staff's safety evaluation (SE) related to the preceding actions. The nonproprietary version of the SE will be placed in the NRC Public Document Room and added to the Agencywide Documents Access and Management System Public Electronic Reading Room Library.

The Order has been forwarded to the Office of the Federal Register for publication.

Sincerely,
/ra/
Douglas V. Pickett, 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
and 50-244

Enclosures:
1. Order for Calvert Cliffs
2. Order for Nine Mile Point
3. Order for R.E. Ginna
4. Safety Evaluation (Nonproprietary)
5. Safety Evaluation (Proprietary)

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