



a joint venture of



Constellation  
Energy



100 Constellation Way  
Suite 200C  
Baltimore, MD 21202-3106  
410.470.3312  
443.213.3680 Fax  
steven.miller@cengllc.com

**Steven L. Miller**  
Senior Vice President  
General Counsel, Secretary

10 CFR 50.80  
10 CFR 72.50

January 25, 2012

U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

**ATTENTION:** Document Control Desk

**SUBJECT:** **Calvert Cliffs Nuclear Power Plant**  
Unit Nos. 1 & 2; Docket Nos. 50-317 & 50-318  
**Calvert Cliffs Independent Spent Fuel Storage Installation**  
Docket No. 72-8  
**Nine Mile Point Nuclear Station**  
Unit Nos. 1 & 2; Docket Nos. 50-220 & 50-410  
**R. E. Ginna Nuclear Power Plant**  
Docket No. 50-244  
**R.E. Ginna Independent Spent Fuel Storage Installation**  
General License  
Docket No. 72-67

Supplemental Information

**REFERENCES:** (a) Letter from Mr. Henry B. Barron (Constellation Energy Nuclear Group, LLC) and Christopher M. Crane (Exelon Generation Company, LLC) to Document Control Desk (NRC), dated May 12, 2011, Application for Approval of Indirect Transfer of Control of Licenses

This letter provides information requested by the NRC Staff during a teleconference on January 20, 2012. Specifically, the Staff requested information concerning the impact on Constellation Energy Nuclear Group, LLC (CENG) of certain terms contained in a Settlement Agreement entered into by EDF Inc. (EDF), Constellation Energy Group, Inc. (CEG), and Exelon Corporation (Exelon), along with certain of their affiliates, to resolve concerns raised by EDF related to the proposed merger of Exelon and CEG.

The Settlement Agreement was entered into on January 16, 2012 in connection with the Maryland Public Service Commission proceeding to review the proposed Exelon-CEG merger. The Settlement Agreement provides that, following consummation of the merger, the Second Amended and Restated Operating Agreement of CENG (Operating Agreement), dated as of November 6, 2009,<sup>1</sup> will be amended to provide, among other things, that "EDF shall have the right to appoint the Chief Financial Officer for

<sup>1</sup> The Operating Agreement was provided to the NRC in Attachment (7) to Reference (a).

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CENG.” During the January 20, 2012 teleconference, the Staff discussed this term of the Settlement Agreement with representatives of the applicants. At the conclusion of the teleconference, the Staff requested that the applicants provide a description of the duties of the Chief Financial Officer (CFO) for CENG and explain the limitations on the CFO’s authority with respect to matters of nuclear safety and security.<sup>2</sup>

The CFO is the head finance officer of CENG, reporting directly to the Chief Executive Officer (CEO) of CENG. The CFO provides oversight of financial planning and analysis, and provides input on financial decisions for the company. 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. The CFO is a member of the executive management team of CENG, but is not a member of the CENG Board of Directors. 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 referred to above with respect to Exelon. As provided in the Operating Agreement (in Section 7.3(d)), the “CEO shall have the power and authority to run the Company on a day-to-day basis.” The CEO 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.

Moreover, the CFO’s powers are subject to a number of limitations under the CENG Operating Agreement. First, as provided in the Operating Agreement, the Chairman of the CENG Board of Directors (appointed by the U.S. member (owner) of CENG), 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 foreign ownership, control, or domination (FOCD) under 10 CFR 50.38. In this regard, Section 7.3(I) of the current 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 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.”

Second, 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. This includes implementation or compliance with NRC requirements, such as an NRC generic letter, bulletin, order, confirmatory order, or similar requirement. Thus, for example, if a capital improvement were necessary for one or more of the CENG plants to satisfy an NRC requirement and the CENG Board was deadlocked on authorizing the expenditure, the matter would be subject to the Chairman’s casting vote authority, notwithstanding any financial recommendation by the CFO.

Third, the CFO is subject to the provisions of the Operating Agreement on removal of officers. Specifically, Section 7.3(a) of the current Operating Agreement provides that “All officers or agents of the Company may be removed at any time by the Board of Directors.” Thus, if the CFO were to act in a

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<sup>2</sup> CENG will add a description of the CFO’s duties to the Operating Agreement, as suggested by the NRC Staff during the January 20, 2012 teleconference. A draft of proposed revisions to the Operating Agreement to incorporate a description of the CFO’s duties and related changes is included in Attachment (1) hereto. Upon consummation of the merger, the Operating Agreement will be amended and restated to reflect the terms set forth in the Settlement Agreement, including the proposed revisions substantially in the form set forth in Attachment (1). Note that these proposed changes should be considered to supplement CENG’s August 12, 2011 response to the NRC’s request for additional information, wherein CENG described relevant provisions of the Operating Agreement.

manner inconsistent with the NRC's FOCD restrictions, the Chairman could recommend removal of the CFO, in which case the CENG Board of Directors would vote on the proposed removal. Under Section 7.2(j)(x) of the Operating Agreement, the staffing of key executive officer positions is considered a "special matter" for the Board of Directors, and all directors appointed by a member must vote as a block, either for or against. 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's right to designate a successor CFO. Section 7.3(c) of the Operating Agreement, among other things, gives the Chairman broad discretion over matters affecting nuclear safety, security, reliability, and U.S. laws and regulations.

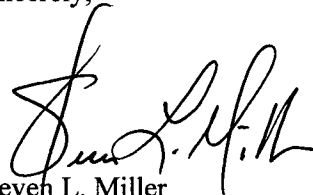
As a final example, with respect to decommissioning funding, if there were a shortfall in the decommissioning funding for one or more of the CENG plants, and the CFO opposed increasing the funds to address the shortfall, the CFO could recommend to the CEO that the funds not be increased. However, the CEO, in consultation with the CNO, would make the decision on how to address the shortfall. If the matter were considered by the Board of Directors, it would be subject to the Chairman's casting vote authority over matters of nuclear safety, security, reliability, and U.S. regulations/law.

Accordingly, the U.S. citizen Chairman, CEO, and CNO exercise control over decisions that must be under U.S. control to ensure compliance with the NRC's FOCD restrictions in 10 CFR 50.38. The CFO would not be able to use his position to exercise any impermissible foreign control over nuclear safety, security and reliability.

This correspondence does not contain any regulatory commitments.

If any additional information is needed regarding this supplemental information, then please contact Bruce Montgomery, Manager, Nuclear Safety and Security for CENG, at 410.470.3777 or at [Bruce.Montgomery@cengllc.com](mailto:Bruce.Montgomery@cengllc.com).

Sincerely,

A handwritten signature in black ink, appearing to read "Steven L. Miller", written over a horizontal line.

Steven L. Miller  
Senior Vice President, General Counsel &  
Secretary

Attachment (1): Draft Revisions to CENG Operating Agreement

STATE OF MARYLAND

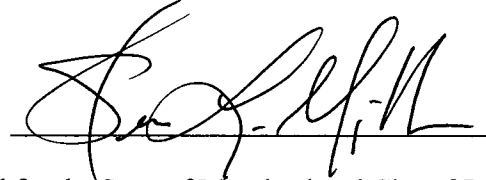
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: TO WIT:

CITY OF BALTIMORE

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I, Steven L. Miller, state that I am the Senior Vice President, General Counsel & Secretary for Constellation Energy Nuclear Group, LLC, and that I am duly authorized to execute and file this correspondence on behalf of the company. To the best of my knowledge and belief, the statements contained in this document with respect to these companies are true and correct. To the extent that these statements are not based on my personal knowledge, they are based upon information provided by employees and/or consultants of the company. Such information has been reviewed in accordance with company practice, and I believe it to be reliable.



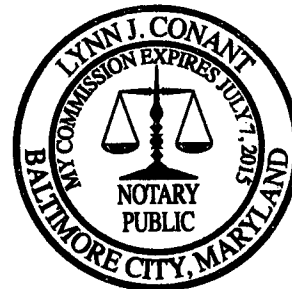
Subscribed and sworn before me, a Notary Public in and for the State of Maryland and City of Baltimore, this 25th day of January, 2012.

WITNESS my Hand and Notarial Seal:

  
Notary Public

My Commission Expires:

7/7/15  
Date



cc: D. V. Pickett, NRC  
R. V. Guzman, NRC  
E. A. Brown, NRC  
W. M. Dean, NRC  
Resident Inspector, NRC (Calvert Cliffs)  
Resident Inspector, NRC (Ginna)  
Resident Inspector, NRC (Nine Mile Point)  
S. Uttal, NRC (OGC)  
S. Gray, Maryland DNR  
A. L. Peterson, NYSERDA  
P. D. Eddy, NYSDPS

**ATTACHMENT (1)**  
**DRAFT REVISIONS TO CENG OPERATING AGREEMENT**  
**(Proposed revisions are shown in redline)**

Section 7.3

(a) *Election, Tenure and Removal of Officers.* The officers of the Company shall be elected by the Board of Directors. The Board of Directors shall establish the roles and responsibilities of all officers, consistent with this Operating Agreement. Where this Agreement provides that the holder of a particular office is to be ~~nominated~~ designated by one Member, ~~no any person may be~~ elected to such office ~~must have been nominated unless he is designated to hold such office~~ by such Member. An officer shall serve until his death, resignation or removal. Subject to the provisions of Section 7.3(c), all officers or agents of the Company may be removed at any time by the Board of Directors, irrespective of a Member's right to designate a person to hold such office, but without prejudice to a Member's right to designate a replacement to hold such office. The removal of an officer or agent does not prejudice any of his contract rights. The Board of Directors (or any committee or officer authorized by the Board of Directors) shall fill a vacancy which occurs in any office subject to the ~~nomination~~ designation rights of a Member specified in this Agreement Section 7.3.

(b) *Executive Officers.* The Company shall have a President who shall be the Chief Executive Officer (the "CEO") and who shall be a U.S. Citizen, a Secretary, a Chief Financial Officer (the "CFO"), a Treasurer . . ."

(c)(vii) Subject to the right of the EDF Directors to designate the CFO pursuant to Section 7.3(g), staffing of key executive officer positions of the Company . . . ; provided, however, that the CFO may only be removed pursuant to this Section 7.3(c)(vii) for material misconduct, or for those reasons enumerated in Section 7.3(c)(i), (ii) and (vi).

**NEW Section 7.3(g): *Chief Financial Officer.*** The CFO shall be designated by the EDF Directors and shall report directly to the CEO. Subject to Section 7.3(c)(i)-(vi), and to the exclusive decisionmaking authority of the CEO, CNO and Chairman of the Board of Directors over safety issues as set forth in Section 7.3(m), the CFO shall provide executive oversight of the efficient and effective financial performance of Company objectives, direct the overall financial planning analysis and accounting activities/organizations of the Company, and shall have such other powers and duties as may be assigned to him by the Board of Directors or Chairman of the Board. The CFO shall have exclusive authority to cause CENG to exercise its audit rights set forth in Section of this Agreement, the Shared Services Agreement, and the Power Service Agency Agreement.

Section 7.9 Staffing.

(a) *Non Discrimination Policy.* The Members acknowledge that U.S. law and policy require that certain activities of the Company remain under the control and management of U.S. citizens and direct that the Company at all times comply with such foreign ownership, control or influence limitations as have been established by U.S. law, regulation or agreement with any Governmental Authority. Without in any way diminishing the foregoing, it shall be the policy of the Company to endeavor, to the maximum extent possible consistent with the foregoing, to permit the involvement of Directors, executive officers (including the CFO designated in accordance with Section 7.3(g)), officers and other personnel appointed, designated, seconded, assigned or nominated by EDF Inc. or any of its Affiliates, or its successor, if any, in accordance with this Agreement, the assignment and secondment agreement or the technical services agreement to a position with the Company or a Subsidiary of the company, without regard to nationality. This policy shall be

subject to such exceptions as may be necessary or appropriate to avoid even an appearance of foreign control or influence over such additional areas of the Company's business deemed sensitive by U.S. governmental Authorities, but such exceptions shall be subject to approval by the Board of Directors.