



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

December 1, 2011

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

SUBJECT: EXELON GENERATION COMPANY, LLC – THRESHOLD DETERMINATION
UNDER 10 CFR 50.80 – (TAC NOS. ME6269 – ME6287)

Dear Mr. Crane:

By letter dated May 12, 2011, pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) 50.80 and 72.50, Constellation Energy Nuclear Group, LLC (CENG) and Exelon Generation Company, LLC (Exelon Generation), sought Nuclear Regulatory Commission (NRC) approval of the indirect transfer of the NRC licenses held by subsidiaries of CENG that would result from the proposed corporate merger between Exelon Corporation (Exelon) and one of CENG's parent companies, Constellation Energy Group, Inc. (CEG). Furthermore, by letter dated May 18, 2011, Exelon Generation requested the NRC staff to make a threshold determination that the proposed corporate merger does not involve any direct or indirect transfer of control of the Exelon Generation licenses that would require approval pursuant to 10 CFR 50.80.

The NRC staff has completed its review of the threshold determination and concludes that the proposed merger between Exelon and CEG will not constitute a direct or indirect transfer of control of the Exelon Generation licenses. Therefore, Exelon Generation does not require the NRC's approval under Section 184 of the Atomic Energy Act of 1954, as amended, and 10 CFR 50.80 with respect to the licenses currently held by Exelon in connection with the proposed merger between Exelon and CEG.

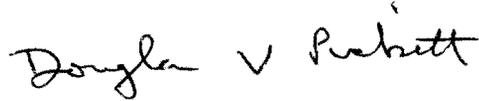
The NRC staff review of the proposed merger between Exelon and CEG remains ongoing. As described in the merger application, EDF Inc., a subsidiary of Electricité de France S.A., has a 49.99 percent ownership interest in CENG. Furthermore, EDF Inc. owns approximately 7.21 percent of CEG stock. As a result, issues of foreign ownership, control, or domination (FOCD) are involved due to ownership interests of EDF Inc. in CENG and the conversion of EDF Inc.'s shares in CEG to Exelon shares. FOCD will be addressed in the review of the proposed merger and may result in actions that affect Exelon and CEG.

C. Crane

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Please contact me at 301-415-1364 if you have any questions. Our safety evaluation is enclosed.

Sincerely,



Douglas V. Pickett, Senior Project Manager
Plant Licensing Branch I-1
Division of Operating Reactor Licensing
Office of Nuclear Reactor Regulation

Docket Nos. STN 50-456, STN 50-457, STN 50-454, STN 50-455,
50-461, 50-10, 50-237, 50-249, 50-373, 50-374, 50-352,
50-353, 50-219, 50-171, 50-277, 50-278, 50-254, 50-265,
50-272, 50-311, and 50-289

Enclosure:
As stated

cc w/encl: 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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THRESHOLD DETERMINATION OF THE EXELON GENERATION LICENSES
BRAIDWOOD STATION, UNIT NOS. 1 AND 2; BYRON STATION, UNIT NOS. 1 AND 2;
CLINTON POWER STATION, UNIT 1; DRESDEN NUCLEAR POWER STATION,
UNITS 1, 2, AND 3; LASALLE COUNTY STATION, UNITS 1 AND 2; LIMERICK GENERATING
STATION, UNITS 1 AND 2; OYSTER CREEK NUCLEAR GENERATING STATION; PEACH
BOTTOM ATOMIC POWER STATION, UNITS 1, 2, AND 3; QUAD CITIES NUCLEAR POWER
STATION, UNITS 1 AND 2; SALEM GENERATING STATION, UNITS 1 AND 2; AND
THREE MILE ISLAND NUCLEAR STATION, UNIT 1
DUE TO THE PROPOSED MERGER BETWEEN EXELON CORPORATION AND
CONSTELLATION ENERGY GROUP, INC.
DOCKET NOS. 50-456, 50-457, 50-454, 50-455, 50-461, 50-10, 50-237, 50-249, 50-373,
50-374, 50-352, 50-353, 50-219, 50-171, 50-277, 50-278, 50-254,
50-265, 50-272, 50-311, AND 50-289

1.0 INTRODUCTION

By letter dated May 18, 2011, (Agencywide Documents Access and Management System (ADAMS) Accession No. ML111390172), as supplemented on June 24 (ADAMS Accession No. ML111751789), August 3 (ADAMS Accession No. ML112150519), November 11 (ADAMS Accession No. ML113180265), and November 18, 2011 (ADAMS Accession No. ML11325A258), Exelon Generation Company, LLC (Exelon Generation), requested the Nuclear Regulatory Commission (NRC) to make a threshold determination that the proposed merger between Exelon Corporation (Exelon) and Constellation Energy Group, Inc. (CEG), would not involve a direct or indirect transfer of control of the licenses held by Exelon Generation that would require NRC approval pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Section 50.80, "Transfer of licenses."

Exelon Generation is the owner and operating licensee of Braidwood Station, Units 1 and 2; Byron Station, Units 1 and 2; Clinton Power Station, Unit 1; Dresden Nuclear Power Station, Units 1, 2 and 3; LaSalle County Station, Units 1 and 2; Limerick Generating Station, Units 1 and 2; Oyster Creek Nuclear Generating Station; and Three Mile Island Nuclear Station, Unit 1. Exelon Generation owns 100-percent of Peach Bottom Atomic Power Station, Unit 1 and has a 50-percent ownership interest in Peach Bottom Atomic Power Station, Units 2 and 3. Exelon

Enclosure

Generation also has a 75-percent ownership interest in Quad Cities Nuclear Power Station, Units 1 and 2. Finally, Exelon Generation has a 42.59-percent ownership interest in Salem Generating Station, Units 1 and 2, (collectively referred to herein as the "licensed facilities").

2.0 BACKGROUND

In a related application dated May 12, 2011 (ADAMS Accession No. ML11138A159), Exelon Generation, acting on behalf of itself, Exelon, and Exelon Ventures Company, LLC (Exelon Ventures), and Constellation Energy Nuclear Group, LLC (CENG), on behalf of 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, pursuant to Section 184 of the Atomic Energy Act of 1954, as amended, 10 CFR 50.80, and 10 CFR 72.50, "Transfer of license," the NRC consent to the indirect transfers of control of the NRC licenses that will be effected due to the proposed merger between Exelon and one of CENG's parent companies, CEG.¹ On June 17 (ADAMS Accession No. ML11173A067), August 12 (ADAMS Accession No. ML11234A062), November 10 (ADAMS Accession No. ML11335A024), and November 22, 2011 (ADAMS Accession No. ML113260456), Exelon Generation and CENG provided supplemental information regarding the proposed merger. The NRC staff's review of the application is ongoing, and therefore has not yet been acted upon as of the date of this Safety Evaluation (SE).

3.0 EVALUATION

The NRC staff reviewed Exelon Generation's request for a threshold determination that the proposed merger between Exelon and CEG will not involve a direct or indirect transfer of control of Exelon Generation's licensed facilities that would require approval pursuant to 10 CFR 50.80. The regulation at 10 CFR 50.80(a) states:

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

On April 28, 2011, Exelon and CEG reached a definitive merger agreement by which Exelon would acquire CEG in an all-stock transaction. The Merger Agreement, dated April 28, 2011, is publicly available and was filed with the United States Securities and Exchange Commission (SEC).²

¹ The CENG subsidiary Facility Operating Licenses include: Calvert Cliffs Nuclear Power Plant, Units 1 and 2 and the Independent Spent Fuel Storage Installation Facility (ISFSI); Nine Mile Point Nuclear Station, Units 1 and 2; and R.E. Ginna Nuclear Power Plant and ISFSI.

² Merger Agreement – <http://www.exeloncorp.com/performance/investors/secfilings.aspx>

The proposed transaction will be accomplished through the involvement of five entities: CEG, Exelon, Exelon Generation, Exelon Ventures, and Bolt Acquisition Corporation (Bolt, an Exelon subsidiary formed for the sole purpose of merging with CEG). Exelon will be the top tier parent company of the entities. Exelon Ventures and Bolt are direct wholly owned subsidiaries of Exelon. Exelon Generation is a direct wholly owned subsidiary of Exelon Ventures. 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 proposed transaction, each shareholder of CEG common stock will be canceled and CEG stockholders will receive 0.930 shares of Exelon common stock in exchange for each share of CEG common stock. Effective upon such merger, CEG will be a direct wholly owned subsidiary of Exelon and former CEG shareholders will become shareholders of Exelon. Immediately after such 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. 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 Constellation Nuclear, LLC (CNL) becoming a direct wholly owned subsidiary of Exelon and the termination of CEG's corporate existence.

Upon completion of the transaction, 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.³

As a result of the proposed transaction, the future 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. Exelon Generation will continue to remain a wholly owned subsidiary of Exelon.⁴

Pursuant to the Merger Agreement, upon consummation of the proposed transaction, Exelon will add four current CEG directors to its existing 15 member Board of Directors, for a total of 19 directors. The four additional directors will be comprised of three independent directors and Mayo Shattuck, the current CEG Chairman of the Board and Chief Executive Officer 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 license facilities as presently exercised by the existing Exelon Board of Directors.

The proposed corporate structure that will exist after the merger will not change the existing chain of ownership of Exelon Generation's currently owned licensed facilities. There will be no

³ Fully diluted basis indicates a company's earnings per share (EPS) calculated using fully diluted shares outstanding (i.e. including the impact of stock option grants and convertible bonds). Diluted EPS indicates a "worst case" scenario, one in which everyone who could have received stock without purchasing it directly for the full market value did so.

⁴ Revised Figure 3 – Post-Transaction Final Organization from letter of November 11, 2011

changes in the operation or management of the Exelon Generation licensed facilities as a result of the proposed transaction and associated license transfers. The proposed transaction does not result in transfer of control with respect to Exelon and the licenses currently held by Exelon Generation.

Regarding foreign ownership, control or domination, Section 103d of the Atomic Energy Act of 1954, as amended provides, in part:

No license may be issued to an alien or any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation or a foreign government. In any event, no license may be issued to any person within the United States if, in the opinion of the Commission, the issue of a license to such person would be inimical to the common defense and security or to the health and safety of the public.

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

As a result of the proposed transaction, the Exelon Board of Directors expects to have one director who is not a U.S. citizen. According to the 2011 Proxy Statement filed with the SEC pursuant to Section 14(a) of the Securities Exchange Act, Exelon stated that it is not aware of any alien, foreign corporation, or foreign government that holds or may hold more than 5 percent of the securities of Exelon.

CNL, through wholly owned subsidiaries, has a 50.01-percent ownership interest and 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 transaction, 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. In addition, the Applicants state that EDF Inc. currently owns approximately 7.21-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 less than 2-percent of the shares of the merged company after closing, which would be below the reporting threshold for SEC Schedules 13D or 13G.

The Applicants state that Exelon's acquisition of CEG 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 Atomic Energy Act of 1954, as amended, or the licensee eligibility requirements of 10 CFR 50.38. The applicants further state within the November 10, 2011, letter that the approved negotiation measures ensure continued U.S. control over all matters required to be under U.S. control by the Atomic Energy Act of 1954, as amended and 10 CFR 50.38, and they remain in place and are unaffected by the proposed Exelon and CEG merger, including the elimination of CEG as an intermediate parent.

The NRC has not made a determination with respect to foreign, ownership, control, or domination (FOCD) in this threshold review. The NRC staff will evaluate FOCD as part of its

ongoing review of the application. The NRC's review and conclusions on FOCD will be documented within the NRC's completed SE on the proposed merger, which could result in actions that affect Exelon and its subsidiaries and affiliates, and CNL and its subsidiaries and affiliates.

The information contained within the May 18, 2011, threshold determination request, and subsequent letters submitted by Exelon Generation, demonstrates that Exelon Generation will continue to possess the requisite qualifications to own and operate the licensed facilities. The proposed transaction between Exelon and CEG will not result in any changes in the operation or management of the Exelon Generation licensed facilities as a result of the proposed merger and associated license transfers and will not result in any adverse affects to its financial qualifications and decommissioning funding assurance.

The NRC staff concludes that the proposed transaction between Exelon and CEG will not constitute a direct or indirect transfer of control of the licenses held by Exelon Generation, and thus, Exelon Generation does not require the NRC's approval under Section 184 of the Atomic Energy Act of 1954, as amended, 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. However, due to the ownership interest that EDF Inc. will acquire in Exelon, the issues of FOCD will be addressed in the NRC's review of the proposed merger. The conclusions within this threshold determination SE have no effect on the evaluation of the transfers of control of the CENG subsidiary licenses as a result of the proposed merger between Exelon and CEG, which may result in actions that may affect Exelon and its subsidiaries and affiliates, and CEG and its subsidiaries and affiliates.

Principal Contributor: Jo Ann Simpson

Date: December 1, 2011

Please contact me at 301-415-1364 if you have any questions. Our safety evaluation is enclosed.

Sincerely,
/ra/
Douglas V. Pickett, Senior Project Manager
Plant Licensing Branch I-1
Division of Operating Reactor Licensing
Office of Nuclear Reactor Regulation

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cc w/encl: 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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