



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

January 10, 2012

Mr. Bruce S. Montgomery, Manager – Nuclear Safety and Security  
Constellation Energy Nuclear Group, LLC  
100 Constellation Way, Suite 200C  
Baltimore, MD 21202

SUBJECT: THRESHOLD DETERMINATION REGARDING THE PROPOSED CORPORATE RESTRUCTURING INVOLVING EDF 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, AND R.E. GINNA ISFSI (TAC NOS. ME7608, ME7609, ME7610, ME7611, AND ME7612)

Dear Mr. Montgomery:

By letter dated October 5, 2011, Constellation Energy Nuclear Group, LLC, acting on behalf of EDF Inc., submitted a letter notifying the Nuclear Regulatory Commission (NRC) of a planned corporate restructuring involving EDF Inc. The NRC staff conducted a threshold determination review to determine whether the proposed corporate restructuring involving EDF Inc. would change the corporate structure in such a manner as to constitute a direct or indirect transfer of the control of the licenses held by R.E. Ginna Nuclear Power Plant, LLC, Nine Mile Point Nuclear Station, LLC, and Calvert Cliffs Nuclear Power Plant, LLC (collectively, the licensees), that would require NRC approval pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Section 50.80, "Transfer of licenses."

The NRC staff has completed its review and concludes that the proposed corporate restructuring involving EDF Inc. 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 of the licensees. Our Safety Evaluation is enclosed.

Please feel free to contact me at 301-415-1364 if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "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. 50-220, 50-244, 50-317, 50-318, 50-410, 72-8, and 72-67

Enclosure:  
Safety Evaluation

cc w/encl: Distribution via Listserv



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THRESHOLD DETERMINATION OF THE PROPOSED CORPORATE  
RESTRUCTURING INVOLVING EDF INC.,  
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,  
R.E. GINNA NUCLEAR POWER PLANT, AND,  
R.E. GINNA INDEPENDENT SPENT FUEL STORAGE INSTALLATION  
DOCKET NOS. 50-317, 50-318, 72-8, 50-220, 50-410, 50-244, AND 72-67

1.0 INTRODUCTION

By letter dated October 5, 2011 (Agencywide Documents Access and Management System Accession No. ML11285A036), Constellation Energy Nuclear Group, LLC (CENG), acting on behalf of EDF Inc., submitted a letter notifying the Nuclear Regulatory Commission (NRC) of a planned corporate restructuring involving EDF Inc. The NRC staff conducted a threshold determination review to determine whether the proposed corporate restructuring involving EDF Inc. would change the corporate structure in such a manner as to constitute a direct or indirect transfer of control of the licenses held by R.E. Ginna Nuclear Power Plant, LLC (Ginna, LLC); Nine Mile Point Nuclear Station, LLC (NMPNS, LLC); and Calvert Cliffs Nuclear Power Plant, LLC (CCNPP, LLC), that would require NRC approval pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Section 50.80, "Transfer of licenses."

EDF Inc. is a U.S. corporation organized under of the State of Delaware and is a wholly owned subsidiary of E.D.F. International SAS (EDF International), a limited company organized under the laws of France, which is, in turn, a wholly owned subsidiary of Electricité de France SA (EDF SA), a French limited company. Constellation Energy Group, Inc. (CEG), through wholly owned subsidiaries, has a 50.01-percent ownership interest and EDF Inc. has a 49.99-percent ownership interest in CENG.

EDF Trading Limited (EDF Trading) is a United Kingdom limited company and an indirect wholly owned subsidiary of EDF SA. EDF Trading currently owns EDF Trading North America Inc. (EDFTNA), a Delaware corporation, which manages a wholesale power trading and logistics operation in North America.

Enclosure

## 2.0 BACKGROUND

In an unrelated application dated May 12, 2011 (ML11138A159), Exelon Generation, LLC (Exelon Generation), acting on behalf of itself, Exelon Corporation (Exelon), and Exelon Ventures Company, LLC (Exelon Ventures), and CENG, acting on behalf of itself and its subsidiary licensees, CCNPP, LLC, NMPNS, LLC, and Ginna, LLC 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.<sup>1</sup> On June 17 (ML11173A067), August 12 (ML11234A062), October 13 (ML113050083), November 10 (ML11335A024), and November 22, 2011 (ML113260456), Exelon and CENG provided supplement 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 letter.

## 3.0 EVALUATION

The NRC staff reviewed CENG's letter submitted on behalf of EDF Inc. in order to make a threshold determination that the proposed corporate restructuring involving EDF Inc. would not involve a direct or indirect control of licenses held by the CENG subsidiary licensees that would require approval pursuant to 10 CFR 50.80. The regulation at 10 CFR 50.80 states:

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

As stated in the letter dated October 5, 2011, the issuance of a minority shareholding interest in EDF Inc. to EDF Trading will be submitted for approval to the EDF Inc., EDF International and EDF Trading boards of directors. Such stock issuance is planned as part of a legal entity restructuring between EDF Inc., EDF International, EDF Trading, and EDFTNA, all direct or indirect wholly owned subsidiaries of EDF SA. Specifically, through a share exchange agreement, EDF Inc. will acquire 100 percent of the outstanding stock of EDFTNA, solely in exchange for newly issued voting common stock shares of EDF Inc. According to the letter, if the restructuring is approved by their respective boards of directors, EDF Trading and EDF International will collectively own 100 percent of EDF Inc. in proportion to the relative fair market value of EDFTNA and EDF Inc. immediately before the proposed restructuring. Therefore, EDF International will continue to be the majority shareholder of EDF Inc., and EDF Trading would become a minority shareholder of EDF Inc. It is also anticipated that EDFTNA will convert from a Delaware corporation to a Delaware limited liability company (LLC) and will change its name

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<sup>1</sup> 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.

to EDF Trading Holdings LLC.<sup>2</sup> Both EDF, Inc. and EDF Trading will remain as wholly owned indirect subsidiaries of EDF SA.

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 issuance of a license to such a 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 corporate restructuring, EDF Inc. will continue to have a 49.99-percent ownership interest in CENG and the restructuring does not result in a transfer of control of the licenses held by the subsidiaries of CENG. Also, EDF Inc. states that the restructuring does not change the existing CENG Negation Action Plan or implicate any of the other conditions as described and approved in connection with the NRC's October 30, 2009, Orders approving EDF Inc.'s investment in CENG.<sup>3</sup> In addition, the existing Support Agreement provided by EDF International to the licensees for the CENG nuclear plants will remain in place and there will be no material change to the Support Agreement provided by EDF International to the CENG licensees.

#### 4.0 CONCLUSION

The NRC staff conducted a threshold review of the facts and information as set forth in the October 5, 2011, letter, and has considered how the proposed corporate restructuring involving EDF Inc. will be implemented as described in the letter. The NRC staff concludes that the proposed corporate restructuring involving EDF Inc. does not change the corporate structure in such a manner that it will constitute a direct or indirect transfer of control of the Ginna, LLC, NMPNS, LLC and CCNPP, LLC licenses and, thus, EDF Inc. 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 aforementioned licenses. The conclusions within this threshold

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<sup>2</sup> Attachment 2(b) – Pre-and Post-Restructuring Simplified Organizational Charts from the October 5, 2011, letter.

<sup>3</sup> Order Superseding the October 9, 2009, Order Approving the Transfer of Renewed Facility Operating License Nos. DPR-53 and DPR-69 for the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, and Materials License No. SNM-2505 for the Calvert Cliffs Independent Spent Fuel Storage Installation, and Conforming Amendments (ML093000631); Order Superseding the October 9, 2009, Order Approving the Transfer of Renewed Facility Operating License Nos. DPR-63 and NPF-69 for the Nine Mile Point Nuclear Station, Unit Nos. 1 and 2 (ML093000635); Order Superseding the October 9, 2009, Order Approving the Transfer of Renewed Facility Operating License No. DPR-18 for the R.E. Ginna Nuclear Power Plant (ML093000633).

determination 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.

Principal Contributors: Michael Dusaniwskyj  
Jo Ann Simpson

Date: January 10, 2012

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Sincerely,  
/ra/

Douglas V. Pickett, Senior Project Manager  
Plant Licensing Branch I-1  
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