IN THE MATTER OF THE CURRENT AND	*	BEFORE THE
FUTURE FINANCIAL CONDITION OF	*	PUBLIC SERVICE COMMISSION
BALTIMORE GAS AND ELECTRIC COMPANY	*	OF MARYLAND
	*	CASE NO. 9173

INITIAL BRIEF OF THE NUCLEAR INFORMATION AND RESOURCE SERVICE, BEYOND NUCLEAR, PUBLIC CITIZEN, THE MARYLAND PUBLIC INTEREST RESEARCH GROUP, AND MARYLAND ACORN

COME NOW the Petitioners, Nuclear Information and Resource Service ("NIRS"), Beyond Nuclear, Public Citizen, Maryland Public Interest Research Group ("Maryland PIRG"), and Maryland Association of Communities Organizing for Reform Now ("Maryland ACORN") by undersigned counsel, and submit the following brief in support of further proceedings in this matter based on the "substantial influence" the proposed transaction would have on BGE and CEG.

It strains credulity to believe, as Constellation Energy witnesses seem to argue, that a company like EdF would invest $4.5 billion in Constellation--nearly equal to the amount Constellation Energy directors had agreed to sell the entire company (including BG&E) to MidAmerican Energy just a few weeks before the EdF deal materialized--and not expect to have considerable influence over the company and its direction. This is convincingly demonstrated by Maryland Energy Administration witness, Alan Schwartz.

The EdF/Constellation deal clearly was structured as an effort to circumvent federal regulations prohibiting foreign ownership, control or domination of a nuclear reactor project, not to limit the level of EdF influence over Constellation generally. While the foreign involvement in nuclear reactors issue is beyond the scope of this proceeding, Joint Intervenors are addressing this issue in federal proceedings. But the level of influence of EdF over Constellation, and by extension BG&E, merits investigation by the Maryland PSC.

Alan Schwartz' public testimony at pages 22-23 points out that the high cost of the proposed Calvert Cliffs-3 reactor could result in Constellation Energy Group (CEG) having to contributed substantial capital toward its construction, and that these capital requirements could deprive other CEG subsidiaries (such as BGE) of necessary capital. Schwartz notes that

Constellation executive Mayo Shattuck said Calvert Cliffs-3 could cost almost $10 billion and that this estimate may itself be too low.

We point the Commission to the testimony of last summer from Joint Intervenors' witness David Schlissel in the CPCN proceeding for the proposed Calvert Cliffs-3 reactor, Case No. 9127, Doc. 39. In his direct testimony, Mr. Schlissel cited a U.S. Department of Energy study of 75 existing nuclear reactors in the U.S., which found that the average cost overrun for these reactors was 207%. In addition, Mr. Schlissel testified that the same type Areva reactor proposed for Calvert Cliffs is under construction in Finland, and in less than four years of construction already has experienced cost overruns of 50%.

Thus, not only could the $10 billion estimate be too low given financing and related costs, but it is reasonable to assume and plan for substantial cost overruns if this proposed reactor moves forward to construction stage.

Mr. Shattuck's testimony acknowledges that 80% of the cost of the project is based on the obtaining of federal loan guarantees, and that Constellation is likely to have to come up with half of the other 20%. Mr. Shattuck's testimony acknowledges that could be a $1 billion capital requirement from Constellation, which he states Constellation can handle without detriment to BG&E. However, if there were substantial cost overruns, the situation could be quite different.

Additional federal loan guarantees are not likely to be forthcoming to cover cost overruns on nuclear projects. Instead, cost overruns could require substantial capital diversions from all of Constellation's subsidiaries. For example, if the Calvert Cliffs-3 project were to experience the same type of cost overrun as the current project in Finland—about 50%, the scenario would look quite different. A $10 billion project would become $15 billion. Assuming federal loan guarantees covered $8 billion, then Constellation would have to come up with half the remainder, or $3 ½ billion, not $1 billion.

If the project were to experience simply the average cost overrun of the first generation of U.S. reactors—207%--a $10 billion project would become more than $20 billion, with Constellation liable for more than $6 billion in additional capital, assuming the 50/50 split between Constellation and EdF.

Such cost escalations surely would have an effect on the capital needs, and perhaps even operational budgets, of BG&E. And because such cost escalations are eminently foreseeable, it is incumbent upon the Maryland PSC to examine their implications on BG&E at this time.

Finally, we note that EdF's operational record raises other questions that the Maryland PSC may wish to consider as part of its examination of EdF's potential influence on BG&E. These include recent revelations in Europe about possible anti-competitive practices by EdF in the European Union[1] and the indictment of two senior EdF officials by a French court for spying on the environmental group Greenpeace France. Given recent controversy in Maryland over government spying of citizen activists, such revelations deserve attention in further proceedings.

WHEREFORE, the Petitioners Nuclear Information and Resource Service, Beyond Nuclear, Public Citizen, Maryland Public Interest Research Group, and Maryland ACORN request, pursuant to Public Utilities Company Article § 6-105, that the Public Service Commission assert jurisdiction and engage in further proceedings to determine whether or not to approve the proposed EdF/Constellation transaction, based on the "substantial influence" the transaction entails for the policies and actions of BGE.

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[1] *EDF in Antitrust Spotlight*. World Nuclear News. March 12, 2009. http://www.world-nuclearnews.org/C_EdF_in_antitrust_spotlight_1203091.html?jmid=1201; *EU raids offices of French energy company EDF*. http://www.google.com/hostednews/afp/article/ALeqM5hPn3BsgZ0bq6kuCAxl5Gma1AbsxA