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July 23, 2021

Via E-Mail

Hon. Michelle L. Phillips
Secretary to the Commission
New York State Public Service Commission
State of New York
Three Empire State Plaza
Albany, New York 12223-1350

Re: Case 21-E-0130: Joint Petition of Exelon Corporation and Exelon Generation Company, LLC for a Declaratory Ruling Disclaiming Jurisdiction Over or Abstaining Review of the Proposed Transaction or, in the Alternative, an Order Authorizing the Proposed Transaction Pursuant to Section 70 of The New York Public Service Law

EDF, Inc. SAPA Comments

Dear Secretary Phillips:

Joint Petitioners hereby submit this letter to the New York Public Service Commission (“Commission”) to provide information with respect to certain statements in the EDF Comments regarding the timing of the Put Transaction authorized by the Commission in Case 20-E-0371 in April as jointly requested by Exelon Generation and EDF and the timing of the Transfer Transaction that is currently pending before the Commission herein.¹ Specifically, EDF, Inc. (“EDF”) asserts the Commission should condition authorization of the Transfer Transaction on the Put Transaction closing first because EDF’s consent is required for certain aspects of the Transfer

¹ See NYPSC Case 21-E-0130, *supra*, “Joint Petition of Exelon Corporation and Exelon Generation Company, LLC for a Declaratory Ruling Disclaiming Jurisdiction Over or Abstaining Review of the Proposed Transaction or, in the Alternative, an Order Authorizing the Proposed Transaction Pursuant to Section 70 of The New York Public Service Law” (dated February 25, 2021) (hereinafter, “Joint Petition.” “Exelon Corp.,” individually, “Exelon Generation,” individually, “Joint Petitioners,” collectively and “Transfer Transaction, respectively); see also NYPSC Case 20-E-0371, *Joint Petition of Exelon Generation Company, LLC, EDF Inc, Constellation Energy Nuclear Group, LLC, Nine Mile Point Nuclear Station, LLC, and R.E. Ginna Nuclear Power Plant, LLC, for a Declaratory Ruling Disclaiming Jurisdiction over the Proposed Transfer or Finding the Proposed Transfer Requires No Further Review or, in the Alternative, an Order Authorizing the Proposed Transfer Pursuant in Section 70 of The New York Public Service Law, Order Approving Transfer and Making Other Findings* (issued and effective April 15, 2021) (hereinafter, “Put Order, “Put Proceeding” and “Put Transaction,” respectively).

Transaction under its joint venture agreement with Exelon Generation.² EDF's concerns are based on a hypothetical scenario that is unlikely to exist when the Commission acts on the Transfer Transaction. In addition, EDF's assertions fundamentally involve commercial contract matters that the Commission cannot resolve which, in any event, will be addressed by the Joint Petitioners in a Commission submission if it becomes necessary to do so.

First, EDF's stated consent rights, whatever they ultimately may be, could only be implicated by the Transfer Transaction if the Joint Petitioners close on it before Exelon Generation and EDF close the Put Transaction. However, that hypothetical scenario is directly contrary to the expected timing of the closing of the Put Transaction, which under any reasonable scenario will close prior to the Transfer Transaction.³ With just the last piece of the valuation process remaining, the Put Transaction is on track to close before the end of the year as compared with Joint Petitioners' request for Commission action on the Transfer Transaction by year end.⁴ Concerns with sequencing the closing of the two transactions are not only hypothetical, they are unlikely based on the facts known and are certainly within the control of EDF, Exelon Generation and Exelon Corp. If that expectation changes *and* any right of EDF as a co-owner of CENG is implicated by the Transfer Transaction, the Joint Petitioners will certainly supplement their Joint Petition.

Second, in any event, EDF's stated rights involve commercial contract matters between two private parties that are well outside any matter relevant to the Commission's review of the Transfer Transaction, and that will become moot should the Transfer Transaction occur prior to the Put Transaction. For example, if EDF remains a co-owner of CENG, there will be no need to dissolve the CENG board and there will be no need to reorganize several of the corporate entities in the CENG and ExGen chain of ownership. Regardless, as stated above, the Joint Petitioners will supplement their Joint Petition as necessary if EDF's hypothetical and unlikely scenario becomes more real. These matters, thus, do not – indeed, cannot – provide the basis for the relief EDF has sought in its Comments.⁵

Finally, while EDF's intervention raises several contractual issues that it argues would be affected by the Transfer Transaction if EDF remains a co-owner of CENG, EDF does not explain how any of those issues are relevant to the Commission's evaluation of the Joint Petition. In fact, if EDF remains a co-owner of CENG, the Commission will have a transaction involving *fewer*

² See NYPSC Case 21-E-0310, *supra*, "Comments and Request for Hearing of EDF, Inc." (dated June 8, 2021) (hereinafter, "EDF Comments") at 2-3. Exelon Generation and EDF currently own 50.01% and 49.99% of the membership interests in Constellation Energy Nuclear Group, LLC ("CENG"), the indirect owner of three of the New York nuclear units involved herein.

³ We note that throughout the pendency of a Commission decision on the Put Transaction, EDF initiated several requests with DPS staff to encourage Commission action as soon as possible. It is our understanding that EDF remains committed to closing the Put Transaction promptly.

⁴ See Joint Petition at 4.

⁵ In its Comments, EDF also has identified an incorrect standard of review for Commission action on the Joint Petition and has made erroneous statements concerning certain financial wherewithal considerations. Joint Petitioners will be submitting responsive comments in NYPSC Case 21-E-0130 on these and a limited number of other comments to provide an accurate record for Commission action on the Joint Petition.

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ownership rights to evaluate than the one pending before it now in the Joint Petition. Specifically, in EDF's hypothetical scenario, the Transfer Transaction will result in only 50.01 percent of CENG having a new ultimate upstream owner as compared to 100 percent as contemplated in the Joint Petition. Thus, EDF's hypothetical timing of the Transfer Transaction and the Put Transaction is not only an unnecessary distraction at this point in the proceeding, but it ultimately will have no adverse effect on the Commission's ultimate disposition of this case.

To reiterate, should resolution of EDF's claimed rights or any other matter affect the facts relied upon in the Joint Petition while it is pending before the Commission, Joint Petitioners commit to advise the Commission as expeditiously as possible. In the meantime, if you have any other questions, please contact me.

Respectfully submitted,

GREENBERG TRAURIG, LLP



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and Exelon Corporation*

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