

Risky for ratepayers

Constellation's proposed deal enriches company but secures no benefits for customers

By Martin O'Malley

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This week the Maryland Public Service Commission began a public hearing into Constellation Energy's proposed \$4.5 billion sale of half its nuclear assets to a huge French company, EDF. As currently proposed, the deal appears to be a good one for Constellation's CEO and his shareholders but presents enormous risks and no real benefits for more than 1.1 million ratepayers who depend on BGE to provide a vital service at reasonable rates.

The PSC and the state have taken an active role in this proceeding not only because it is the right thing to do, but also because we have a legal obligation to do so. If not, we would abdicate our responsibility to protect the interests of BGE customers from Constellation - the same company that brought BGE to the verge of bankruptcy almost one year ago due to speculative trading practices and a massive \$1.8 billion accounting error, while simultaneously bestowing an \$87 million golden parachute on its CEO, according to a 2009 [SEC](#) filing.

The French utility giant has been found to have the potential to exercise substantial influence over BGE; therefore, state law requires a broader public interest proceeding to ensure there are "benefits and no harm" as a result of the transaction.

The state's position is that under the right circumstances, a new nuclear unit at Calvert Cliffs could very well be a good thing - but only if ratepayers are protected. Constellation and the French are currently insisting on free access to BGE's cash (your bill payments) in order to assist in the financing of an extraordinarily expensive new nuclear unit, whose true cost they have repeatedly refused to disclose. And there is no guarantee that their access to BGE cash couldn't be used for other, unspecified investments.

BGE has served as the cash cow for Constellation's other corporate endeavors long enough: This practice must stop.

I believe we must be vigilant in ensuring that there is "no harm" to BGE if this transaction were approved. And "harm" to a public utility comes down to two things: higher rates and/or decreased services for ratepayers. This is why the state is seeking to "ring-fence" BGE - to establish legal and financial barriers between BGE and Constellation's other riskier, speculative activities.

But the law also requires benefits for ratepayers in any transaction like the one proposed. As the deal stands now, there are none. Constellation says they will put more money into a company-controlled charity, build a new visitor center at their nuclear site, and postpone requesting by a few months additional rate hikes that aren't expected anyway. Those are good things, but they don't address the specific legal requirement that the transaction must provide benefits to BGE ratepayers.

Constellation management has been spending lots of money (some of it yours as a ratepayer) in the last few months trying to convince the public that I, the state government and the PSC are trying to obstruct the creation of a new nuclear unit in [Calvert County](#) - that we are somehow opposed to the jobs a new unit might create, the tax revenue it might create, and the carbon-free energy it might create. But approval of this transaction does not ensure or obligate Constellation to build a new nuclear unit at all. EDF's Vice President John Morris testified that "neither EDF or Constellation have decided on whether we should build a new power plant at Calvert Cliffs" and that there are a "thousand factors" they must consider before making such a commitment.

And even if a new plant is built, Constellation and the French propose that any power generated will be sold on the grid to the highest bidder, even if that means the electricity goes to Virginia, Delaware or Pennsylvania. In essence, you help them finance the new unit, and they get to sell the power at as high a price as they can get in an energy market already tilted in favor of energy companies.

The uncertain potential benefits of a new nuclear unit, to which neither Constellation nor EDF has made any commitment, is not the standard by which the law requires this transaction to be judged. The deal does not require Constellation to fund even one dollar of the potential Calvert Cliffs expansion, but the proceeds can be used for other corporate activities, such as executive compensation and bonuses.

The Constellation-EDF transaction, as proposed, is fatally flawed because it exposes BGE customers to potential harm while offering no meaningful benefits. Constellation and EDF cannot avoid their responsibility to address those legal standards, whether at the PSC, the negotiating table or in a court of law.

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