

BEFORE THE  
PUBLIC SERVICE COMMISSION  
OF MARYLAND

IN THE MATTER OF THE )  
CURRENT AND FUTURE )  
FINANCIAL CONDITION OF ) Case No. 9173  
BALTIMORE GAS AND )  
ELECTRIC COMPANY )

**DIRECT TESTIMONY OF ALAN SCHWARTZ**

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A. My name is Alan Schwartz. My business address is Yale Law School, 127 Wall  
3 Street, New Haven, CT 06520.

4 **Q. PLEASE DESCRIBE YOUR POSITION WITH YALE UNIVERSITY.**

5 A. I am Sterling Professor of Law, one of twenty-seven Sterling Professors at Yale, and  
6 I also am Professor of Management.

7 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND.**

8 A. I received a BS from Bates College and a JD from Yale Law School.

9 **Q. PLEASE DESCRIBE YOUR RELEVANT EMPLOYMENT HISTORY.**

10 A. Prior to teaching at Yale University, I practiced law in New York City with the firm  
11 Rosenman & Colin. After practice, I was Professor of Law at Indiana University  
12 Law School, Bloomington; Maurice Jones Junior Professor of Law at the University  
13 of Southern California Law Center; and Professor of Law and Social Science at the  
14 California Institute of Technology. I have been a director and board chair of Rohn  
15 Industries, a NASDAQ company, and I am currently a director of Cliffs Natural  
16 Resources, Inc., an international iron ore and coal mining company, and Furniture

1 Brands International, the largest publicly-traded US furniture company. Both  
2 companies are traded on the New York Stock Exchange.

3 **Q. WHAT ARE YOUR AREAS OF EXPERTISE?**

4 A. I teach and write in the areas of contract law, contract theory, bankruptcy,  
5 commercial law, corporate governance, corporate finance and mergers and  
6 acquisitions. I have written numerous articles and books on these subjects.<sup>1</sup> My  
7 mergers and acquisitions course, which I have been teaching for over twenty years,  
8 has a substantial corporate governance component.

9 Corporate governance issues also play a major role in the corporate finance and  
10 bankruptcy courses. I also have extensive practical corporate governance  
11 experience. I currently serve on the Governance Committees of Cliffs and Furniture  
12 Brands and I have served numerous terms on audit committees, including the  
13 current Cliffs Audit Committee. A copy of my CV is attached as Exhibit No. 1 to  
14 this testimony.

15 **Q. WHAT DOCUMENTS HAVE YOU REVIEWED IN PREPARING YOUR**  
16 **TESTIMONY?**

17 A. I have reviewed: (1) the testimony submitted by the EDF International, S.A. and  
18 Constellation Energy Group (“CEG”) witnesses in this case; (2) the deposition  
19 transcripts of EDF witness John Morris<sup>2</sup> and CEG witnesses Mayo Shattuck and  
20 Jonathan Thayer; (3) portions of the Amended and Restated Investor Agreement,

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<sup>1</sup> I have been identified, by the Institute of Scientific Information, as in the top one half of the top one percent of social scientists worldwide in total citations, and I have been named, by the HeinOnline database, as among the fifty most cited law professors of all time.

<sup>2</sup> As used in the Direct Testimony of John Morris (“Morris Test.”). Unless otherwise noted, I use “EDF” to refer to Électricité de France, S.A., and all of its subsidiaries.

1 the Second Amended and Restated Operating Agreement, the UniStar Operating  
2 Agreement and the Constellation Energy Nuclear Group (“CENG”) NRC  
3 Application for an Order Approving License Transfers and Conforming License  
4 Amendment Request (“NRC Application”), and (4) certain discovery responses  
5 produced in this proceeding.

6 **Q. WHAT IS THE SUBJECT OF YOUR TESTIMONY TODAY?**

7 A. I will testify regarding whether, in consequence of the proposed transaction between  
8 CEG and EDF, EDF will be able, directly or indirectly, to exercise any substantial  
9 influence over the policies and actions of Baltimore Gas and Electric Company  
10 (herein “BGE”), a wholly-owned subsidiary of CEG.

11 **Q. PLEASE SUMMARIZE YOUR TESTIMONY REGARDING WHETHER**  
12 **EDF WILL BE ABLE TO EXERCISE SUCH INFLUENCE.**

13 A. I will testify that EDF will have the power to exercise “any substantial influence”  
14 over BGE within the meaning of § 6-105(e)(1) of the Public Utility Companies  
15 Article of the Maryland Code. This influence will be indirect: that is, EDF may  
16 influence CEG, which owns and controls BGE.

17 The Transaction

18 **Q. STATE THE FEATURES OF THE EDF/CEG TRANSACTION THAT ARE**  
19 **RELEVANT TO YOUR OPINION.**

20 A. CEG is a holding company with multiple subsidiaries, including CENG and BGE.  
21 In September 2008, CEG began to experience severe financial difficulties, largely in

1 consequence of losses in its trading division.<sup>3</sup> The company needed a substantial  
2 injection of capital to avoid an imminent bankruptcy. CEG initially agreed to sell  
3 itself to MidAmerican Energy, but it ultimately rejected a sale in favor of the EDF  
4 transaction, which transfers a portion of CENG to EDF, rather than all of CEG to an  
5 outside entity.

6 Under the transaction, EDF will purchase 49.99% of CENG. CENG will be  
7 managed by a ten-person board of directors. Each of CEG and EDF may appoint  
8 five persons to the CENG board. CEG is to appoint the board chair. Tie votes are  
9 possible when there are ten directors. The Chair will have the power to resolve ties,  
10 but only as regards safety and reliability issues. Since the CEG directors will be  
11 responsive to CEG interests, and the EDF directors will be responsive to EDF  
12 interests, the CENG board, in effect, will have two members: the two companies.

13 As a consequence, CENG business decisions, except for matters relating to nuclear  
14 safety and reliability, will require unanimous consent: that is, the two corporate  
15 owners must agree.<sup>4</sup> EDF also will have the right to nominate one person to the  
16 CEG board. Witness John Morris, the Vice President, Strategy, of EDF  
17 Development, Inc., testified that this director will be an EDF employee rather than  
18 an independent director. Morris Test. at 13. In addition, the proposed transaction  
19 removes certain previously-imposed restrictions on EDF's acquisition of CEG  
20 common stock. Under the proposed transaction, EDF may own more than 9.9% of

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<sup>3</sup> CEG reported a \$1.4 billion loss for 2008. As of December 31, 2008, CEG had about \$5.2 billion of debt and a debt to total debt to capital ratio of 62%. See Standard & Poor's RatingsDirect (Feb. 23, 2009), Exhibit No. 2 to this testimony.

<sup>4</sup> Article 13.4 of the CENG operating agreement provides for arbitration if the parties cannot agree. Arbitration will be very much a last resort because business people prefer to make their own decisions. As an example, the parties would be unlikely to permit an arbitrator to create a budget for CENG. Hence, the unanimity requirement is real. Exhibit No. 3 contains an excerpt from the CENG operating agreement.

1 CEG's common stock after July 2012, or at any time in the event of an attempted  
2 takeover of CEG.

3 Regarding the deal's purposes, witnesses for both EDF and CEG note that EDF is  
4 the largest owner/operator of nuclear power plants in the world. Direct Testimony  
5 of Michael J. Wallace ("Wallace Test.") at 9-10; Morris Test. at 3. EDF and CEG  
6 hope to build new nuclear power plants in the United States. Deposition of EDF, by  
7 and through John Morris ("Morris Dep.") at 30-31, 36-37 (Mar. 31, 2009).<sup>5</sup> Thus,  
8 Mr. Morris testified that EDF (and two other firms, acting jointly) originally  
9 attempted to buy all of CEG partly because "we were not convinced that  
10 MidAmerican had any commitment to the development of new nuclear in the  
11 U.S.A." *Id.* at 30. Mayo Shattuck, the Chairman of the Board, President and CEO  
12 of Constellation, stated that Mr. Morris's testimony was consistent with Mr.  
13 Shattuck's understanding of the basis for EDF's offer to purchase CEG. Deposition  
14 of Mayo A. Shattuck III ("Shattuck Dep.") at 157-58 (Apr. 3, 2009).<sup>6</sup>

15 The first of the new nuclear plants CEG and EDF may seek to build is Calvert Cliffs  
16 Unit No. 3, which will be constructed and operated by a concern called UniStar  
17 Nuclear Energy, LLC ("UniStar"). UniStar is a joint venture that is 50% owned by  
18 EDF and 50% by CENG. Calvert Cliffs No. 3 will be located at the site of the  
19 existing Calvert Cliffs nuclear plants. The UniStar Board also is evenly divided  
20 between CEG and EDF. (Shattuck Dep. at 110-111; Morris Dep. at 97). The

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<sup>5</sup> An excerpt from the transcript of Mr. Morris's deposition is Exhibit No. 4 to this testimony.

<sup>6</sup> An excerpt from the transcript of Mr. Shattuck's deposition is Exhibit No. 5 to this testimony. Similarly, EDF's February 27, 2009 brief to the Commission on this case also recited: "[F]rom EDF's perspective, the sole purpose of the Transaction is to advance EDF's nuclear development strategy by enabling EDF to significantly increase its existing presence in the United States energy market with Constellation, a long-standing partner. If Constellation's deal with MidAmerican had not been terminated, or if the current Transaction is somehow thwarted, this investment would be endangered."

1 Calvert Cliffs Project “will be one of the largest economic and industrial  
2 developments projects in Maryland’s history.” Morris Test. at 15. CEG also wants  
3 to expand its nuclear footprint, but a major CEG purpose in making the EDF deal is  
4 to obtain needed funds. Mr. Morris thus testified that this transaction “provides  
5 significant liquidity benefits to Constellation”; it provides “liquidity support to  
6 strengthen and stabilize Constellation’s finances.” Morris Test. at 2, 15.<sup>7</sup> Mr.  
7 Wallace, CEG’s Vice Chair (and also Chairman of UniStar), also testified that the  
8 transaction is structured to address Constellation Energy’s liquidity needs. Wallace  
9 Test. at 10.<sup>8</sup>

10 Consistent with these statements, (a) EDF purchased CEG preferred stock for \$1  
11 billion, to be credited toward the purchase price of CENG stock; (b) EDF is to pay a  
12 purchase price of \$4.5 billion; (c) EDF provided \$600 million in short-term, back up  
13 liquidity to CEG; and (d) CEG will have the right to “put” – *i.e.*, to sell – up to \$2  
14 billion of non-nuclear generating plants to EDF.<sup>9</sup>

Issues Under the Statute and the EDF/CEG Testimony

**Q. IDENTIFY THE STATUTORY ISSUES THAT GOVERN THIS MATTER.**

A. This proceeding is governed by § 6-105(e)(1) of the Public Utility Companies  
Article of the Maryland Code, which authorizes the Public Service Commission

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<sup>7</sup> John Morris also testified in his deposition (Morris Dep. at 52) that “Constellation was clearly in a difficult financial position and we understood that we needed to provide some form of liquidity support... in order to close this transaction....”

<sup>8</sup> [BEGIN CONFIDENTIAL]

[END CONFIDENTIAL]

<sup>9</sup> [BEGIN CONFIDENTIAL]

[CONFIDENTIAL]

[END

1 (herein the “PSC” or “Commission”) to establish conditions to protect the public  
2 when a Maryland gas and electric company is affected in consequence of a  
3 transaction that permits an entity to “acquire, directly or indirectly, the power to  
4 exercise any substantial influence over the policies and actions of” the gas and  
5 electric company. This section requires the Commission to apply three concepts: (a)  
6 “influence”; (b) “any”; and (c) “direct or indirect.” Regarding these,  
7 (a) “influence”: Influence refers to a power to affect a company’s actions that is less  
8 than the power reflected in control.<sup>10</sup> An entity that has “control” over a company  
9 necessarily has the power to “influence” what that company does. An entity that  
10 has only the power to influence a company does not have the power to control that  
11 company. As an example, companies today commonly consult with important  
12 minority shareholders. Consultation furthers the related corporate purposes of  
13 learning shareholder views and forestalling possible shareholder disaffection.  
14 “Substantial” means “influence” that is not insignificant. A minority shareholder  
15 “substantial[ly] influences” a company if her views play a meaningful role in the  
16 company’s ultimate action. The shareholder’s influence, in this example, comes  
17 from her position as a partial owner and from the firm’s decision to take her views  
18 seriously prior to acting.  
19 (b) “any”: Section 6-105(e)(1) modifies the phrase “substantial influence” by the  
20 word “any.” This word cannot cancel out the “substantial” requirement. Rather, the  
21 word “any” serves two functions. First, it makes clear that “substantial influence”

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<sup>10</sup> Section 2.2(a)(v) of the Amended and Restated Investor Agreement regulates EDF’s ability to exercise “control or influence” over CEG. This section thus evidences the parties’ understanding that “control” and “influence” are different concepts. The Amended and Restated Investor Agreement is Exhibit No. 7 to this testimony.

1 refers to “policies and actions,” not to low-level, day-to-day activities. Second, the  
2 word “any” means that all forms of “substantial influence” should be considered as  
3 within the statute, not only influence resulting from stock ownership or board  
4 membership.

5 (c) “directly or indirectly”: An entity exercises “direct” influence over a company if  
6 it participates effectively in company affairs. The minority shareholder in the  
7 illustration above thus exercised direct influence over the company that seriously  
8 considered her views prior to taking action. An entity exercises “indirect” influence  
9 if it acts through a third party. As an example, suppose that Company A owns  
10 Company B. Company C has the power to influence the actions that Company A  
11 takes in regard to Company B. Therefore, Company C has the power to influence  
12 Company B “indirectly.”

13 To summarize, an entity may exercise “any substantial influence” over a Maryland  
14 gas and electric company through the entity’s *de jure* control over the company<sup>11</sup> or  
15 if the entity can cause the gas and electric company or a firm that controls the gas  
16 and electric company to consider seriously the entity’s views regarding company  
17 policies and actions. The entity’s influence need not extend to everything that the  
18 Maryland gas and electric company does, but must extend over some significant  
19 company policies and actions.

20 **Q. IS THE TESTIMONY SUBMITTED ON BEHALF OF THE EDF/CEG**  
21 **TRANSACTION FULLY RESPONSIVE TO THE ISSUES THE PSC MUST**  
22 **RESOLVE IN THIS PROCEEDING?**

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<sup>11</sup> *De jure* control refers to power that the law confers. For example, an entity would exercise *de jure* control over a company if the entity could appoint a majority of the company’s board of directors.

1 A. No. The companies' witnesses only consider *de jure* influence, and thus fail to  
2 consider the many ways that one entity can influence another short of voting  
3 control. As indicated above, if Company A legally controls Company B, it  
4 necessarily follows that Company A can exercise "substantial influence" over  
5 Company B. It does not follow, however, that Company A cannot exercise "any  
6 substantial influence" over Company B if Company A lacks legal control. The  
7 testimony submitted on behalf of the transaction here asserts that EDF cannot  
8 exercise any substantial influence over BGE because EDF does not legally control  
9 either CENG or CEG. Thus, this testimony does not consider the various ways that  
10 EDF can exercise influence short of its having legal control.

11 As an example, CEG witness Dean Mark Sargent argues that EDF cannot exercise  
12 any substantial influence over BGE, but this is because Dean Sargent equates  
13 "substantial influence" with "control as it is understood in corporate and securities  
14 law." He thus explains that control "in that legal context [this] includes exercising  
15 power over the activities of a corporation and the interests of shareholders *through*  
16 *the ownership of sufficient voting interest.*" Direct Testimony of Mark A. Sargent at  
17 4 (emphasis added). In consequence, his testimony reviews "the transaction in  
18 question in light of the analogy between the corporate and securities law concept of  
19 control and the term 'substantial influence[]'..." *Id.* at 5. This "analogy" is partial:  
20 voting control constitutes substantial influence, but the lack of voting control does  
21 not imply the lack of substantial influence.

22 Other witnesses in favor of the transaction testified to the same effect. EDF Witness  
23 Morris thus argued that EDF cannot exercise any substantial influence over BGE

1           because EDF cannot appoint any members to the BGE board (Morris Test. at 14,  
2           20), and has no ownership interest in BGE (*id.* at 18).<sup>12</sup> Witness Wallace, Vice  
3           Chairman of CEG, testified that EDF cannot exert substantial influence over BGE,  
4           again because EDF will not own any part of BGE (Wallace Test. at 7, 13) and will  
5           hold a minority interest in CEG. Charles Berardesco, Senior Vice President and  
6           General Counsel of CEG, claimed that EDF cannot exert substantial influence over  
7           BGE because “EDF will have no direct ownership interest in BGE. Nor does any  
8           agreement create any other opportunity for EDF [to] have the power to exercise  
9           substantial influence over the policies and actions of BGE.” Direct Testimony of  
10          Charles A. Berardesco at 18.<sup>13</sup>

11          To summarize, the witnesses who testified in behalf of the EDF/CEG transaction  
12          equated the statutory phrase “any substantial influence” with the control that stems  
13          from ownership. It followed, for these witnesses, that since EDF will not have this  
14          form of control over BGE, EDF cannot exercise any substantial influence over  
15          BGE. These witnesses thus did not ask whether EDF could affect BGE within the  
16          second meaning of § 6-105(e)(1), that of indirectly influencing BGE (*i.e.*, through  
17          CEG) to implement policies or to take actions.

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<sup>12</sup> Morris’s deposition testimony is inconsistent on the control issue. At one point, he defines influence as “[t]he ability to persuade” (Morris Dep. at 118), which is correct, but he shortly thereafter argues that EDF cannot exercise substantial influence over CEG because EDF has “less than 8 percent of the voting capability” (*Id.* at 121). An eight percent shareholder has opportunities to persuade, and may succeed in some of them. In this case, EDF has means of exerting “substantial influence” in addition to share ownership.

<sup>13</sup> Kenneth W. DeFontes, Jr., BGE’s President and CEO, testified that EDF will not exercise substantial influence over BGE because “Constellation does not direct the day-to-day operational decisions at BGE.” Prepared Direct Testimony of Kenneth W. DeFontes, Jr. (“DeFontes Test.”) at 7. Also, CENG does not manage BGE. *Id.* at 8. This testimony is not responsive to the question whether CEG may exercise “any substantial influence” over BGE, and it overlooks CEG’s ability to influence BGE through its control of the BGE board, and by other means.

The Corporate Context

1  
2 **Q. FOR THE PURPOSES OF THIS PROCEEDING, EXPLAIN HOW A**  
3 **HOLDING COMPANY SUCH AS CEG OPERATES.**

4 A. Firms operate with divisions or wholly-owned subsidiaries when the divisions or  
5 subs cannot easily raise capital on the market. To see why, consider an entity that  
6 makes widgets and another entity that makes blidgets. If the capital market could  
7 not easily evaluate the risks of lending to these entities, it may be efficient to  
8 combine the two entities, either as divisions or subsidiaries, in a single firm. The  
9 combined firm's managers<sup>14</sup> may have greater access to information about widgets  
10 and blidgets, or a greater ability to evaluate such information, than banks have.  
11 Thus, the managers can make more efficient capital allocation decisions than the  
12 market can.

13 A centrally important task of our sample firm's managers, then, is to allocate capital  
14 between the widget and blidget entities. For example, if the widget sub has a  
15 promising new project but the blidget sub does not, the firm's managers will  
16 allocate relatively more capital to the widget sub. Alternatively, if the blidget sub  
17 has a funding need while the widget division does not, the managers will allocate  
18 relatively more capital to the blidget division. The firm thus operates what is called  
19 an "internal capital market." Firms operate with multiple divisions or several subs  
20 when this internal capital market is more efficient at allocating capital than the  
21 external capital market. The managers' goal, when allocating capital, is not to  
22 maximize the profit of each sub as if it were an independent entity. Rather, the

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<sup>14</sup> The word "managers" in this testimony refers both to corporate officers and a company's board of directors.

1 managers' goal is to maximize the company's long-term profits by putting capital  
2 where the capital is most productive or is more seriously needed. Mr. Shattuck's  
3 testimony regarding how CEG allocates capital is consistent with this standard view  
4 of the capital allocation process. He stated (Shattuck Dep. at 99-100):

5           “The process of capital allocation is one of the most  
6           important things we do during the course of every year  
7           from a budgetary standpoint. Each division has to present  
8           its plans. Those plans have to be scrubbed and scrutinized.  
9           The net result of which is the company makes decisions in  
10          a – and particularly I make the decisions as to how the  
11          capital is going to be allocated. And it is, at the end of the  
12          day, a scarce resource and it's important.”  
13

14 A firm cannot conveniently operate an internal capital market when its subs are  
15 partly publicly-owned. This is because the firm would have a fiduciary duty toward  
16 all of the shareholders, including the public ones. Hence, these managers could be  
17 subject to a lawsuit if they allocated capital away from partly-owned sub A toward  
18 another sub in such fashion as possibly to restrict the growth of sub A but to  
19 maximize the profits of the firm as a whole. Internal capital markets thus work well  
20 when they are internal.

21 Similarly, a centralized firm's managers sometimes may better understand how to  
22 set terms of trade between two entities than the market can. For example, if blidgets  
23 are an input in the production of widgets, the “center” may better know how to  
24 structure a blidget/widget procurement contract than the managers of independent  
25 blidget and widget companies. When this knowledge condition holds, it facilitates  
26 trade between the firm's blidget and widget subs. Again, the terms of trade will be  
27 set to maximize the firm's profits rather than the profits of each sub independently.

1 To summarize, holding companies exist when capital allocation or trading decisions  
2 are better made internally than on the market. A holding company's managers will  
3 make internal allocation or trade decisions to maximize the profits of the firm as a  
4 whole, rather than the profits of particular wholly-owned subs. As a consequence,  
5 some subs may receive more capital or better terms of trade than others.

6 There is a dark side to the operation of multi-divisional firms or holding companies,  
7 however. The managers of divisions or subs attempt to influence the capital  
8 allocation and trade divisions of the center in their favor. This is because division  
9 and sub managers are recognized (if not rewarded) on the basis of how their units  
10 do, and their units will do better, usually, if they can acquire capital on favorable  
11 terms or make favorable intra-company contracts. Thus, there sometimes is a  
12 conflict between the managers of subordinate units, who wish to maximize the  
13 profits of those units, and the managers at the center, who wish to maximize the  
14 profits of the whole firm. Competition among subsidiary firms or divisions for  
15 resources is so pervasive that it has a well-known description. Multi-subsidary or  
16 division firms face "influence costs": that is, the centrifugal force of divisions or  
17 subs may be such as to reduce the profitability of the firm as a whole.

18 **Q. STATE HOW THIS ANALYSIS APPLIES IN THE CEG/CENG CONTEXT.**

19 A. CEG operates many subsidiaries, including BGE. Under the planned transaction,  
20 CEG will own 50.01% of CENG, but this division will have no public shareholders.  
21 From the perspective of CEG shareholders, CEG ideally will allocate capital among  
22 the companies it owns and controls so as to maximize CEG's overall profit, not the  
23 profits of any of the subsidiary companies CEG operates. Further, each of the

1 subsidiaries likely will compete with the others for capital and for favorable internal  
2 contracts.

3 CENG likely will compete effectively relative to other parts of the CEG enterprise  
4 for capital and deals. This is because, unlike the other CEG subs, half of CENG's  
5 board will be composed of "outsiders": the EDF nominees. EDF also will own  
6 49.99% of CENG. Further, EDF will apparently be the largest shareholder in CEG,  
7 owning up to 9.9% of CEG stock, and EDF will have a director on the CEG board.  
8 This director will be an EDF employee, and thus he will be well positioned to, and  
9 have the incentive to, urge EDF's interests when CEG is making decisions. As a  
10 general matter, companies take seriously the views and preferences of their largest  
11 shareholders and their Board members. CEG will be particularly responsive to the  
12 views and preferences of EDF because EDF is not only a large shareholder with a  
13 directorship; as is explained in more detail below, EDF also is a partner in a joint  
14 venture whose success is very important to CEG.

15 To summarize my testimony to here, EDF could indirectly influence BGE if EDF  
16 could influence CEG to take, or not take, certain actions that affect BGE. It would  
17 be sufficient for EDF to exercise influence, not regarding every BGE action, but for  
18 important actions. EDF possesses the power to exercise substantial influence over  
19 CEG decisions that could affect BGE and other CEG subsidiaries through multiple  
20 channels: (a) EDF's almost 50% interest in CENG and its contractual rights under  
21 the related operating agreement; (b) EDF's 50% joint venture interest in UniStar and  
22 its contractual rights under the related operating agreement; (c) EDF's almost 10%  
23 interest in CEG; (d) EDF's ability, after July 2012 or in response to an attempted

1 takeover of CEG, to increase its already substantial stake in CEG; (e) EDF’s access,  
2 through its CEG director, to private information regarding every major CEG  
3 decision, and EDF’s ability to provide input regarding those decisions; (f) the  
4 natural responsiveness of a company such as CEG to the views and preferences of a  
5 partner in a major joint venture whose cooperation and whose expertise are  
6 necessary to the venture’s success; and (g) the technical and financial wherewithal  
7 that EDF possesses to further the parties’ goal of constructing and owning new  
8 nuclear units.<sup>15</sup>

Applying the statute

9  
10 **Q. PLEASE BEGIN TO APPLY THIS ANALYSIS TO THE TASK THE PSC**  
11 **MUST PERFORM UNDER § 6-105(E)(1).**

12 A. It is helpful to begin with § 2.2(a)(v) of the Amended and Restated Investor  
13 Agreement between CEG and EDF, under which EDF agrees not to “otherwise act,  
14 alone or in concert with others, to seek or offer to control or influence, in any  
15 manner, the management, board of directors or policies of Constellation, except as  
16 otherwise contemplated by the terms of this Agreement or the agreements governing  
17 the UniStar Joint Venture or the Nuclear Joint Venture....”. This section supports  
18 two conclusions: First, EDF has the power to “influence [CEG] in any manner.” A  
19 standard principle of contract interpretation is to attribute meaning to each of the  
20 terms in an agreement. Were EDF to lack the power to influence CEG, § 2.2(a)(v)  
21 would be meaningless. Second, EDF retains the power to influence CEG insofar as  
22 is necessary for the parties to implement “the terms of this Agreement or the

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<sup>15</sup> It is worth noting that a joint venture partner is positioned to exert influence over his counter-party, though neither party to the venture owns stock in the other.

1 agreements governing the UniStar Joint Venture or the Nuclear Joint Venture.” The  
2 remainder of this testimony will focus specifically on how EDF may influence CEG  
3 and therefore BGE.

4 **Q. STATE THE CONCEPT OF “INFLUENCE” THAT THE PSC SHOULD**  
5 **APPLY.**

6 A. The Maryland statute does not define influence. Decision makers fill such  
7 “definitional gaps” by applying the standard meaning of the statute’s words in light  
8 of the statute’s purpose and the context in which it is to be applied. This testimony  
9 has already discussed the corporate context. Standard meanings are found in  
10 standard dictionaries. Thus, the American Heritage Dictionary (4th ed., at 899)  
11 defines “influence” as the “[p]ower to sway or affect based on prestige, wealth,  
12 ability, or position.” This definition fits the role that EDF can play regarding CEG  
13 and thus, by extension, BGE.

14 **Q. PLEASE BEGIN TO APPLY THIS DEFINITION.**

15 A. EDF has the “prestige” to influence CEG. EDF is the largest nuclear plant operator  
16 in the world, and operates 58 nuclear plants. EDF is 85%-owned by the  
17 Government of France. Moreover, it is much more prominent in the nuclear field  
18 than CEG. Consistent with this view, Mr. Shattuck, in his deposition,  
19 acknowledged EDF’s importance and the need to pay attention to its views,  
20 referring to EDF as “both an incredibly important strategic partner and a very  
21 important financial partner in all of this.” Shattuck Dep. at 129. He also referred to  
22 EDF’s “combination of ... experience and . . . their financial wherewithal.” *Id.* at  
23 116.

1 **Q. PLEASE ADDRESS THE “WEALTH” COMPONENT OF INFLUENCE.**

2 A. EDF has enormous financial resources. Its 2008 overall sales totaled €64.3 billion,  
3 or roughly \$90 billion.<sup>16</sup> EDF is proposing to pay a price that could turn out to be as  
4 high as \$7 billion for a one-half interest in CEG’s existing nuclear assets and certain  
5 CEG non-nuclear generating units. In contrast, the MidAmerican bid was less than  
6 \$5 billion for the entire company.

7 **Q. WILL EDF POSSESS THE REQUISITE “ABILITY” TO INFLUENCE BGE?**

8 A. Yes. Initially, EDF has the contractual right, under the Amended and Restated  
9 Investor Agreement § 2.2(a)(v), to seek to control or to influence certain of the  
10 actions taken by the CEG Board, which will in turn give EDF the ability to  
11 influence BGE. Exhibit No. 7 to this Testimony. Further, the more expert partner  
12 in a joint venture commonly can exercise influence over its less expert partner in  
13 areas where expertise is relevant. EDF has more expertise than CEG in the design  
14 and construction of the nuclear reactors to be built by UniStar.

15 **Q. THE FOURTH ELEMENT OF THE DEFINITION OF INFLUENCE HOLDS**  
16 **THAT A PARTY CAN INFLUENCE ANOTHER THROUGH THE PARTY’S**  
17 **“POSITION.” CAN EDF EXERT INFLUENCE THROUGH ITS POSITION**  
18 **IN THE PROPOSED TRANSACTION?**

19 A. Yes. A major portion of my remaining testimony will consider how EDF’s position  
20 will permit it to exert “any substantial influence” over BGE. I will begin with  
21 EDF’s ability to influence CEG.

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<sup>16</sup> [http://press.edf.com/fichiers/fckeditor/File/press/cp\\_2009/cp\\_090212\\_va.pdf](http://press.edf.com/fichiers/fckeditor/File/press/cp_2009/cp_090212_va.pdf). This report is Exhibit No. 8 to this testimony.

1 It is helpful first to consider EDF's "position" as a holder of equity interests in the  
2 relevant corporate entities. As indicated above, EDF may own up to 9.9% of CEG.  
3 This will make it apparently the largest CEG shareholder. It will be the only  
4 shareholder with the right to nominate a director. The possession of a directorship  
5 will permit EDF to obtain private information about CEG plans, and give EDF the  
6 opportunity to influence those plans before they are implemented.

7 In addition, the 9.9% common stock ownership restriction expires in July 2012,  
8 pursuant to Sections 2.2 and 4.2 of the Amended and Restated Investor Agreement.

9 I am informed that, at around this time, the parties expect to have received all NRC  
10 approvals, and to begin construction of Calvert Cliffs 3.<sup>17</sup> Thus, after July 2012,  
11 there will be no contractual barrier to EDF increasing the influence it has over CEG,  
12 and thus over BGE, by purchasing more CEG stock, or by purchasing the company  
13 itself.<sup>18</sup> EDF, that is, may have substantial *de jure* influence over CEG during much  
14 of the period when Calvert Cliffs 3 is to be built. Further, that the stock ownership  
15 restriction expires in July 2012 will permit EDF to exert substantial influence during  
16 the period between 2009 and mid-2012. CEG has an incentive to be responsive to  
17 the preferences of a joint venture partner, who is its largest shareholder and who

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<sup>17</sup> An EDF December 2008 "Investor Day" presentation document shows EDF's expectation that the NRC will issue Design Certification approval for the EPR reactor and a commercial operating license for Calvert Cliffs No. 3 in the 2012 time frame. Exhibit No. 9 to this testimony contains an excerpt from the EDF Investor Day presentations. Mayo Shattuck, who is CEO of CEG, testified that it would take "three to five years" to complete the NRC process. Shattuck Dep. at 11.

<sup>18</sup> EDF has shown its willingness to take over CEG in order to protect EDF's investment in UniStar and its interest in developing new nuclear power plants in the US, [BEGIN CONFIDENTIAL]

[END  
CONFIDENTIAL]

Thus, EDF responded to the MidAmerican-attempted takeover by forming a coalition to purchase all of CEG. (Morris Dep. at 29-32).

1       shortly will possess the power to increase its ownership position up to and beyond  
2       the point of *de jure* control.

3       EDF also will own 49.99% of CENG. Section 2.2(a)(v) of the parties' investor  
4       agreement authorizes EDF to attempt to "control or influence" CEG with respect to  
5       matters concerning CENG. Turning to this subsidiary, the Second Amended and  
6       Restated Operating Agreement provides that EDF and CEG will each have five of  
7       the ten seats on the CENG board. Numerous matters fundamental to CENG must be  
8       approved by unanimous consent of the CENG board, except as matters relate to  
9       nuclear safety, security or reliability. Section 7.2(j) thus lists some 25 separate  
10      matters that require unanimous board approval. CEG, in the NRC Application,  
11      characterizes these as "fundamental business decisions and actions."<sup>19</sup> The NRC  
12      Application states that "[u]nder Section 7.2(j) of the Operating Agreement, certain  
13      fundamental business decisions and actions (*e.g.*, related to the annual budget, entry  
14      into contracts or settlement of claims above specified amounts) require unanimous  
15      approval of the CENG Board of Directors." *Id.* The importance of CENG to CEG's  
16      success, together with these unanimity requirements, should make CEG sensitive to  
17      EDF's preferences regarding how CENG is operated and, relatedly, how CEG  
18      manages its other subs insofar as that management may affect CENG.

19      Continuing with EDF's position as a holder of equity interest, it and CEG are joint  
20      owners of the UniStar Joint Venture. **[BEGIN CONFIDENTIAL]**

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<sup>19</sup> NRC Application at 8 n.12. Exhibit No. 10 to this testimony contains an excerpt from the NRC Application.

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**[END CONFIDENTIAL]**

To summarize, EDF holds equity interests in CEG, CENG and UniStar. These interests give EDF a directorial presence in CEG and board co-membership in CENG and UniStar. By virtue of these equity positions and directorships, EDF will possess the information and the opportunities to persuade that constitute influence, and it also will possess the financial incentive to make that influence real.

Another “positional ground” from which EDF will be able to exercise influence over CEG stems from EDF’s position as a joint venturer with CEG in the nuclear power business. The participants in a fifty/fifty joint venture necessarily are able to influence each other. Parties enter into a joint venture because they have complementary skills and overlapping areas of self-interest. This testimony has referred to the influence that skill can create. The existence of overlapping areas of self-interest does not mean that the two firms will always agree. However, each partner’s ability to agree to the other partner’s preferred outcome, or to withhold agreement and insist on its own view, is a source of influence over the other firm. Each firm can use the other firm’s prior commitment to the joint venture as a lever for extracting concessions from the other firm.

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<sup>20</sup> Exhibit No. 11 to this testimony contains an excerpt from the UniStar Operating Agreement.

<sup>21</sup> **[BEGIN CONFIDENTIAL]**

**[END CONFIDENTIAL]**

1 **Q. HOW DOES FOCUSING ON THE JOINT VENTURE ASPECT RELATE TO**  
2 **THE PROPOSED EDF/CEG TRANSACTION?**

3 A. The proposed CENG nuclear joint venture will require CEG and EDF to make many  
4 joint decisions on matters about which disagreement is possible. The parties may  
5 disagree, for example, **[BEGIN CONFIDENTIAL]**

6 **[END CONFIDENTIAL]** about how to  
7 allocate CEG corporate costs to the joint venture. As regards UniStar, CEG and  
8 EDF may disagree, to take another example, about how to finance a new nuclear  
9 plant. The extent of the influence a party could exert on its counter-party regarding  
10 such matters depends on the importance of the joint venture to each and on the  
11 governance process that the parties establish. Regarding significance, the greater a  
12 firm's investment in, or commitment to, a joint venture, the more it will have to  
13 attend to the views of its partners in the venture. Here, the scale of CEG's proposed  
14 commitment to the nuclear joint venture will require it to attend seriously to any  
15 preference expressed by EDF. According to EDF's calculations, the value of CEG's  
16 nuclear assets, which the companies now propose to own jointly, is \$8.6 billion.  
17 This is nearly equivalent to the value of all of CEG's other businesses combined.  
18 *See* Dec. 2, 2008 Letter from D. Camus to CEG Board of Directors (valuing 50%  
19 interest in nuclear generating assets at \$4.3 billion, BGE at \$4.2 billion, non-nuclear  
20 generating assets at \$5.7 billion, global supply and commodities group at \$300  
21 million, and 50% interest in UniStar at \$300 million).<sup>22</sup> If the proposed nuclear  
22 joint venture were to own all of CEG's existing nuclear plants, CEG's success as a

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<sup>22</sup> The relevant portion of Mr. Camus's letter is Exhibit No. 12 to this testimony.

1 company would largely depend on the venture’s success. Thus, the stake that CEG  
2 has in the venture will position EDF to exercise substantial influence over CEG.  
3 Finally, as explained above, the parties created a governance process regarding their  
4 venture that requires unanimous consent to many important issues. This governance  
5 process also permits each party to exercise substantial influence over the other.<sup>23</sup>

Examples of EDF influence regarding CEG

7 **Q. CAN YOU PROVIDE SOME EXAMPLES REGARDING HOW EDF**  
8 **WOULD WANT TO INFLUENCE CEG DECISIONS?**

9 A. Yes. EDF has a substantial stake in building the Calvert Cliffs 3 plant. EDF has a  
10 roughly \$400 million equity stake in CEG and another \$525 million invested in  
11 UniStar. As said, EDF plans to spend \$4.5 billion for the CENG share interest  
12 acquisition and to take on an additional \$700 million in negative hedge value. EDF  
13 thus is likely to use its influence to cause CEG, its 50% joint venture partner in  
14 UniStar, to agree to own and finance a major stake in Calvert Cliffs No. 3.<sup>24</sup>

15 **Q. EXPLAIN WHY EDF’S INTEREST IN GETTING CALVERT CLIFFS 3**  
16 **BUILT COULD AFFECT CEG.**

17 A. Mr. Shattuck and Mr. Thayer testified that the financing of a part interest in a new  
18 nuclear unit was a significant undertaking for CEG. Mr. Shattuck testified that the  
19 cost of the new plant might be almost \$10 billion, but he did not provide an estimate  
20 for the expected total construction cost of Calvert Cliffs No. 3. Shattuck also

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<sup>23</sup> Mr. Shattuck testified to this effect, pointing out that the EDF-CENG ownership arrangement is “a partnership[,]” and that to “the extent that there might be some disagreement about cash distribution, my assumption is that we would work it out through negotiations.” Shattuck Dep. at 200.

<sup>24</sup> Mr. Shattuck testified that CEG has not committed to own and finance an interest in the new unit.

**[BEGIN CONFIDENTIAL]**

**[END CONFIDENTIAL]** Deposition of Jonathan W. Thayer (“Thayer Dep.”) at 107 (Apr. 8, 2009), Exhibit No. 13 to this testimony.

1 acknowledged that his “overnight cost estimate” did not include the costs of  
2 financing a new unit, and he was imprecise regarding cost escalation factors. Some  
3 evidence also suggests that the \$10 billion figure is low. PPL corporation is  
4 attempting to construct a sister unit to Calvert Cliffs Unit 3 called the Bell Bend  
5 unit. On the Bell Bend website, PPL states: “[i]t is anticipated that the plant would  
6 cost as much as \$15 billion, including escalation, financing costs, initial nuclear  
7 fuel, contingencies and reserves.”<sup>25</sup> To the extent that CEG has a 50% ownership  
8 interest in the new unit, and a 50% financing responsibility, it would be responsible  
9 for half of the costs that may not be included in Mr. Shattuck’s \$10 billion estimate.  
10 UniStar may obtain federal loan guarantees, but these, Mr. Shattuck testified, would  
11 at most only cover 80% of the financing of the projected new unit construction  
12 costs. Shattuck Dep. at 163-64. CEG thus may have to contribute substantial  
13 capital toward the construction of Calvert Cliffs 3. As indicated below, fulfilling  
14 the Calvert Cliffs 3 capital requirements could deprive CEG’s other subsidiaries of  
15 capital.

16 **Q. CAN YOU GIVE OTHER EXAMPLES OF INFLUENCE?**

17 A. Yes. Many costs that a holding company incurs are joint. Thus, how costs are  
18 allocated among subsidiaries is a matter of the management’s discretion. As an  
19 example, CEG CFO Thayer testified that EDF is reviewing a “hundred or so  
20 millions” of dollars worth of costs CEG wants to allocate to CENG under the  
21 proposed CENG budget.<sup>26</sup> Because EDF has veto power over the CENG budget,  
22 EDF can object to these proposed cost allocations. To the extent the parties agree

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<sup>25</sup> <http://www.bellbend.com/faqs.htm>. This statement is Exhibit No. 14 to this testimony.

<sup>26</sup> Thayer Dep. at 173-74.

1 on a reallocation (and reduction) of costs to CENG, CEG will likely have to pay for  
2 these costs from other sources of CEG revenue, which could include BGE.  
3 Alternatively, or in addition, CEG could attempt to shift some or all of these costs  
4 onto BGE, subject to rate regulation.

5 **Q. PLEASE RELATE THIS ANALYSIS TO HOW EDF COULD INFLUENCE**  
6 **BGE.**

7 A. EDF will have the power to influence BGE “indirectly” through its influence over  
8 CEG. It is helpful in further explicating this conclusion to begin with the linkages  
9 between CEG and BGE. Certain BGE matters come to the CEG Board, which  
10 reviews and provides oversight of BGE budgets, its plans for refinancing long and  
11 short-term debt, and business strategies. Exhibit No. 15 to this testimony. BGE’s  
12 overall budget is not voted on by the CEG board (Shattuck Dep. at 132-33), but the  
13 board must approve individual BGE capital expenditures in excess of \$50 million.  
14 In addition, BGE is a wholly owned subsidiary whose board CEG controls. Three  
15 of the six members of the BGE board, including Mr. Shattuck, are CEG executives,  
16 and a fourth is a member of the CEG Board. The BGE CEO, Mr. DeFontes, is also  
17 a CEG Senior Vice President. DeFontes Test. at 1. The BGE CFO, Mr. Hadlock,  
18 serves under Mr. Thayer, the CFO of CEG. Thayer Dep. at 146-47.<sup>27</sup> Mr. Thayer  
19 testified that, prior to Mr. Hadlock’s appointment in October 2008, the BGE CFO  
20 position was held by the CFO of CEG. Thayer Dep. at 261. Mr. Shattuck testified  
21 that when BGE management puts forth a budget, his input and some oversight are

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<sup>27</sup> The same types of linkages exist between CENG and CEG. Mr. Shattuck explained that Mr. Brew Barron, the CEO and Chief Nuclear Officer of CENG, is also a CEG Executive Vice President. Shattuck Dep. at 190.

1 exercised from the perspective of CEG itself: “I’m responsible for the whole thing.”  
2 Shattuck Dep. at 188.<sup>28</sup>

3 In addition, the CEG and BGE credit ratings are linked. In his deposition, Mr.  
4 Thayer discussed a report from Standard & Poor’s explaining that it would not  
5 provide a credit rating for BGE at a level higher than the rating accorded its  
6 corporate parent, CEG. Thayer Dep. at 110. Mr. Thayer explained that S&P did not  
7 view BGE as “bankruptcy-remote or ring-fenced.” *Id.* at 110-11.

8 **Q. PLEASE GIVE AN EXAMPLE OF HOW CEG, AT THE POSSIBLE**  
9 **URGING OF EDF, COULD USE ITS CONTROL OVER BGE TO BENEFIT**  
10 **THE NUCLEAR VENTURE.**

11 A. The UniStar nuclear joint venture may prove quite costly and a substantial portion  
12 of the venture will have to be funded internally by the partners, CEG and EDF.  
13 CEG thus may have to allocate some surplus capital from its other subs to the  
14 Calvert Cliffs 3 project. The BGE subsidiary itself, however, has capital needs that  
15 are beyond its ability to finance internally. **[BEGIN CONFIDENTIAL]**

16  
17 **[END CONFIDENTIAL]** Exhibit No. 16 to this testimony. Mr. Shattuck  
18 testified that planned BGE capital needs are “actually greater than its own cash  
19 generation.” Hence, these capital needs must be financed. Shattuck Dep. at 102.

20 The BGE and CENG subs thus themselves will require external financing for their

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<sup>28</sup> Mr. Shattuck made a similar comment when addressing CEG’s plan to transfer CENG’s interest in UniStar to another CEG subsidiary. He testified that CENG’s interest will be moved into “presumably another entity,” (*id.* at 146), while observing that “I don’t know what the importance of that would be. The ownership interest in UniStar is owned by the company, generally speaking. So as to where it resides within subsidiaries is in my opinion a legal matter and often a tax issue. That’s why I’m unresponsive.” *Id.* at 149.

1 projects. The internally-generated surpluses that would have to be devoted to the  
2 nuclear venture must come from CEG's other subs. Since CEG recently required a  
3 substantial infusion of capital to survive, that those other subs can generate the  
4 requisite cash is a matter for explanation. In the absence of such an explanation,  
5 there is a possibility that EDF will attempt to influence CEG to restrict BGE  
6 borrowing in order to free up borrowing space for the nuclear venture. CEG also  
7 may slight BGE's capital needs in other ways so that it can allocate any BGE  
8 surplus toward CENG and UniStar.<sup>29</sup>

9 **Q. ARE THERE ANY OTHER WAYS EDF CAN SEEK TO INFLUENCE OR**  
10 **CONTROL CEG PURSUANT TO SECTION 2.2?**

11 A. Yes. Section 2.2 applies to the "EDFI Group." The EDFI Group is defined to  
12 include Électricité de France International and "its subsidiaries and controlled  
13 affiliates."<sup>30</sup> Section 2.2 does not refer to Électricité de France, S.A., the parent of  
14 EDFI. Électricité de France, S.A., however, is directly involved in the subject  
15 transaction, and as stated in the NRC Application (at 3), "Électricité de France S.A.  
16 (EDF S.A.) has provided CEG a \$600 million interim backstop liquidity facility."  
17 "EDF SA is the largest utility in France" (*id.* at 5) and "the French State will hold at  
18 least 70% of the capital and voting rights of EDF SA" (*id.*). It appears that nothing  
19 prevents Électricité de France, S.A. from seeking to control or influence in any way  
20 the management or policies of CEG, with the exception of the conditioned and  
21 temporary restriction on ownership of CEG common stock.

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<sup>29</sup> [BEGIN CONFIDENTIAL]

[CONFIDENTIAL] Exhibit C to the Operating Agreement (Exhibit No. 17 to this testimony).

<sup>30</sup> See Section 1.2(d) of the investor agreement.

[END

1 **Q. IS THERE ANYTHING ELSE THAT YOU WISH TO SAY ABOUT**  
2 **SECTION 2.2(A)(V) OF THE INVESTOR AGREEMENT?**

3 A. Yes. The only parties to the Amended and Restated Investor Agreement are EDFI  
4 and CEG. BGE's ratepayers are not third party beneficiaries of this contract. Thus,  
5 only CEG can enforce Section 2.2(a)(v). CEG apparently has little interest in  
6 enforcing this section. To see why, realize that CEG and EDF regard themselves as  
7 partners; they share an economic interest in having the CENG and UniStar nuclear  
8 ventures succeed.<sup>31</sup> Suppose, for example, that EDF proposes to CEG that BGE  
9 seek to terminate its demand-side management program in order to foster a market  
10 for CENG and UniStar generation. Suppose further that CEG believed that this  
11 request violated Section 2.2.<sup>32</sup> CEG then has two choices: (i) accept and act on the  
12 EDF proposal, or (ii), to the extent CEG believed the EDF proposal violates the  
13 Agreement, reject the proposal and sue EDF under Section 2.2(a)(v) for seeking to  
14 interfere in the management of CEG and BGE. That CEG would make choice (ii) is  
15 very difficult to believe. And because CEG is free to ignore any EDF actions that  
16 violate Section 2.2, the provision affords BGE ratepayers little practical protection.

17 **Q. WHY SHOULD THE COMMISSION BE CONCERNED NOW ABOUT**  
18 **EDF'S ABILITY TO EXERCISE SUBSTANTIAL INFLUENCE OVER BGE**  
19 **WHEN THE POTENTIAL ADVERSE EFFECTS THAT YOU HAVE**

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<sup>31</sup> Mr. Shattuck testified: "EDF is a, both an incredibly important strategic partner and a very important financial partner in all of this." (Shattuck Dep. at 129). Further, "...we don't expect there to be wild disagreements about everything. To the extent that there might be some disagreement about cash distribution, my assumption is we would work it out through negotiations." *Id.* at 200.

<sup>32</sup> As discussed above, the Section 2.2(a)(v) exception is so broad that such a request probably would not violate the agreement.

1 **IDENTIFIED MIGHT NEVER MATERIALIZE OR ONLY MATERIALIZE**  
2 **AT SOME TIME IN THE FUTURE?**

3 A. There are two reasons why it may be better for the PSC to review the transaction  
4 and, if appropriate, implement protective measures regarding BGE now. First, some  
5 actions that may disadvantage BGE could be difficult to detect or to evaluate. Intra-  
6 company transactions are an example. Second, business decisions sometimes have  
7 to be made quickly while regulatory action takes time. For example, when the  
8 details regarding Calvert Cliffs 3 ownership and construction are settled, the joint  
9 venture will then need to commit to financing arrangements and to lock in vendor  
10 contracts. Lenders are reluctant to keep financing commitments active for a long  
11 period and possible vendors may want certain deals in a competitive environment.  
12 Thus, if the PSC fails to act now, it may later face the difficult choice either of  
13 letting the parties take possibly irreversible actions that could disadvantage BGE, or  
14 of holding up, and thus possibly killing, the new nuclear venture. It would be better  
15 for the PSC to take whatever protective measures it deems helpful now.

16 Summary

17 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

18 A. EDF will be able to exercise indirect but substantial influence over BGE actions and  
19 policies. EDF has numerous channels through which it may exercise direct  
20 influence over CEG. This influence could affect CEG cost allocations, dividend  
21 distributions, capital expenditures and allocation decisions, marketing deals, and  
22 financing arrangements. The actions that CEG takes regarding these matters could  
23 affect BGE to its possible detriment. Thus, this transaction falls within the statutory

1       protections afforded by Section 6-105(e)(1). It would be prudent for the PSC to  
2       review the proposed transaction between CEG and EDF so that it can determine  
3       whether permitting EDF to acquire the ability to exercise substantial influence over  
4       BGE is in the public interest. In such a proceeding, the PSC may wish to consider  
5       whether ring fencing measures would be sufficient to mitigate any potential risks or  
6       adverse effects related to EDF's influence.