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March 30, 2006 (9:45am)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

UNITED STATES OF AMERICA
BEFORE THE
NUCLEAR REGULATORY COMMISSION

In the Matters of

Constellation Generation Group, LLC	)	Docket Nos. 50-220-LT-2
(Calvert Cliffs Nuclear Power Plant,	)	50-410-LT-2
Units 1 and 2)	)	50-244-LT
(Nine Mile Point Nuclear Station,	)	50-317-LT
Units 1 and 2)	)	50-318-LT
(R.E. Ginna Nuclear Plant)	)	72-8-LT

NOTICE OF APPEAL

Pursuant to this Commission's procedural rules, Part 2, Subpart C of the Code of Federal Regulations, 10 C.F.R. §2.311, the Maryland Office of the People's Counsel ("MPC") hereby files this Notice of Appeal. MPC also hereby submits a Memorandum of Law in Support of its appeal, accompanying this Notice of Appeal, as required under the Commission's rules. Under 10 C.F.R. §2.311, an interlocutory order denying a petition to intervene is appealable by the petitioner within ten days of service of the Commission Order. This Commission issued an order denying MPC's original Petition to Intervene in this proceeding, which order was served upon MPC on March 17, 2006. MPC's appeal is timely.

WHEREFORE, Maryland People's Counsel respectfully requests that this Notice of Appeal be docketed, together with its brief, herein attached.

Template=SECY-021

SECY-02

Continued for signatures:

Respectfully submitted,

Patricia A. Smith
People's Counsel

Theresa V. Czarski
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(R.E. Ginna Nuclear Plant)	)	72-8-LT

MEMORANDUM OF LAW IN SUPPORT OF THE APPEAL
OF THE MARYLAND OFFICE OF THE PEOPLE'S COUNSEL

Pursuant to the Code of Federal Regulations, 10 C.F.R. §2.311, the Maryland Office of the People's Counsel ("MPC" or "Maryland People's Counsel"), by its attorneys, Patricia A. Smith, Esquire, Theresa V. Czarski, Esquire, and Catherine C. Hester, Esquire, hereby file this Memorandum of Law in Support of its Appeal, and further state:

I. Introduction

On February 22, 2006, this Commission published notices of consideration of approval of several applications for license transfers in the above-captioned dockets. 71 Fed. Reg. 9168, 9175, 9176. The applications, filed by Constellation Generation Group, LLC ("Constellation Generation") sought approval of these license transfers in anticipation of a proposed merger between Constellation Generation's parent company, Constellation Energy Group, Inc. ("Constellation Energy") and FPL Group, Inc. ("FPL").

Pursuant to the Code of Federal Regulations, Title 10, Part 2, Subpart C, concerning Hearing Requests and Petitions to Intervene, 10 C.F.R. §2.309(a), MPC filed a timely Intervention on March 8, 2006, which was docketed on March 9, 2006. By

electronic service on March 17, 2006, this Commission issued an Order denying MPC's petition to intervene for failure to proffer any proposed contentions. MPC's petition was not expressly rejected on the grounds that it did not have standing. On March 24, 2006, MPC filed timely Comments to these proceedings as permitted under Commission rules. 10 C.F.R. 2.1305.

II. Procedural History

On January 23, 2006, Constellation Generation Group, LLC (Constellation Generation) filed a request for a threshold determination or application for approval of indirect license transfers of its nuclear power plants, in connection with the proposed merger between Constellation's parent corporation, Constellation Energy Group, Inc. (Constellation Energy) and FPL Group, Inc. (FPL). Constellation Generation states in its application that Constellation Energy will remain the parent company of the licensee subsidiaries of Constellation Generation, and that there will not be any change in the direct or indirect ownership of these licensees; however, the proposed post-merger corporate structure of Constellation Energy and FPL remains uncertain and may be subject to change in the future. At a minimum, Constellation Energy's pre-merger shareholders will only have a 40% ownership of the new entity, while the pre-merger shareholders of FPL will own 60% of the outstanding stock of Constellation Energy. FPL's current Chief Executive Officer will become the CEO of the new company.

The MPC is an independent state agency that was established to represent the interests of residential consumers in utility matters. Pursuant to Maryland Public Utility Companies Code Annotated, Section 2-205(b) (2003), the People's Counsel "may appear before any federal or state agency as necessary to protect the interests of residential. . .

users of [gas, electricity or other regulated services]." In April, 1999, the Maryland General Assembly passed the Electric Customer Choice and Competition Act of 1999. Maryland Public Utility Companies Code Annotated, section 7-501, et. seq. (2003). This Act institutes competition for retail electric service beginning July 1, 2000. A substantial portion of Maryland retail customers are in the Baltimore Gas and Electric (BGE) service territory. BGE is a regulated subsidiary of Constellation Energy. Since the announcement of the proposed merger between Constellation Energy and FPL to create the nation's largest competitive energy supplier and its second-largest electric utility portfolio, MPC has filed a request with the Maryland Public Service Commission (MPSC) to investigate the impact of the proposed merger on BGE's residential consumers of electricity related to financial, service, operational and other interests. Specifically, among other things, the MPC questions the anticipated merger-related savings that Constellation Energy has projected. That docket is pending at the MPSC and a procedural schedule has been established.

III. Facts

Shortly following the implementation of full customer choice for all customer classes pursuant to the deregulation of electric generation in 1999, MPC, along with numerous other parties, entered into a "restructuring settlement" with BGE involving regulatory and competitive issues affecting the electric utility industry in Maryland.[1] Such issues concerned the quantification and recovery of costs that were allegedly stranded in connection with the transition period that will end this June; price protection measures to be instituted during the transition period; and unbundled rates for retail electric services.

[1] Baltimore Gas and Electric Company, Case No. 8794, 90 Md. PSC 197 (1999).

Unbundling of electric service rates into their component elements was a fundamental part of electric restructuring.

The restructuring settlement also addressed capping customer responsibility for Calvert Cliff's nuclear decommissioning costs. BGE agreed under the settlement, to refund to customers any balance in the nuclear decommissioning trust fund at the time of decommissioning that is in excess of $520 Million Dollars (in 1993 dollars). More specifically, customer funding at certain levels for generation-related regulatory assets and nuclear decommissioning were included in BGE's unbundled delivery service rates. Those delivery service rates included, among other things, charges for universal service, generation-related regulatory assets, and nuclear decommissioning. The settling parties in the restructuring settlement agreed that customer funding of nuclear decommissioning would be treated as follows: (a) customer contributions for nuclear decommissioning costs shall be made at a fixed annual rate of $18,661,980 until June 30, 2006; (b) the total contribution to the cost of nuclear decommissioning to be paid by customers is frozen at $520 million in 1993 dollars as established by prior Maryland Public Service Commission order; (c) calculations of customer contributions for nuclear decommissioning costs for years beginning after June 30, 2006 shall use the adjustment factor for inflation set forth in 10 C.F.R. 50.75(c)(2), as it may be amended, the actual balance of the Nuclear Decommissioning Trust Fund and a reasonable forecast of expected future after-tax earnings of the Nuclear Decommissioning Trust Fund and the inflation factor; (d) BGE shall continue to report the performance of the fund to the MPSC on an annual basis and shall provide a copy of the report to the settling parties; and (e) after June 30, 2006 any party, at any time, may petition the MPSC to initiate

proceedings to address the components necessary to determine funding level requirements, with the exception of the total amount to be funded in 1993 dollars, as specified in item (b) and the adjustment factor for inflation referenced in item (c). The settlement agreement also specified that BGE shall refund to customers any balance in the Nuclear Decommissioning Trust Fund at the time of decommissioning in excess of the $520 million in 1993 dollars, escalated per the NRC formula, at the time of decommissioning. BGE is responsible for any actual decommissioning costs in excess of $520 million in 1993 dollars, escalated per the NRC formula, and shall retain any cost savings if actual decommissioning costs are less than the $520 million in 1993 dollars, escalated per the NRC formula. If the NRC's formula for the adjustment factor for inflation is amended, the revised formula will be applied to the $520 million in 1993 dollars. According to Constellation Energy, this Commission has previously reviewed the details of this contractual arrangement in its June 30, 2000 Safety Evaluation and concluded that, given the inter-company agreements that obligate the payments, Calvert Cliffs is providing decommissioning funding assurance in the form of external sinking funds tied to a non-bypassable charge pursuant to 10 C.F.R. 50.75(e)(1)(ii)(B).[2]

According to Constellation Energy's 2005 report on Calvert Cliffs Decommissioning Reserve to the Maryland Public Service Commission, BGE recorded $18,662,000 to the decommissioning reserve representing customers' payments, $7,878,000 representing interest on internally invested funds accrued at the 9.63% rate of return earned in 2004 by BGE's utility operations, $11,344,000 representing actual earnings of the external qualified trust, and $122,000 representing actual earnings of the

[2] *See* Attachment (1) of Constellation Energy's 2006 Decommissioning Funding Status Report-Year End 2005, page 2, footnote 4.

external nonqualified trust. In total, as of December 31, 2005, the decommissioning reserve contained a balance of $479,603,000.[3] Additionally, the qualified and the nonqualified trust funds had net unrealized gains totaling $9,035,000 as of December 31, 2005, resulting in total funds available for decommissioning of $488,638,000. According to Constellation Energy's 2006 Decommissioning Funding Status Report filed with this Commission, the minimum decommissioning fund estimate as of December 31, 2005, for both units at Calvert Cliffs nuclear power plant was $643,976,000.[4] The total amount accumulated as of December 31, 2005 in the external decommissioning trust was $353,791,000 with $8,308,000 yet to be collected from BGE ratepayers.

MPC questions the apparent shortfall of approximately $291 Million in this trust. Moreover, there is no indication that Constellation Energy or BGE have made any payments into the decommissioning trust fund that meets the minimum requirement under this Commission's rules pursuant to 10 C.F.R. 50.75(b) and (c). BGE is contractually obligated to deposit the funds into the decommissioning trust.

IV. Argument

A. Maryland People's Counsel has Standing to File a Petition to Intervene

The most fundamental concept of standing requires that a petitioner demonstrate that it has suffered or will suffer a distinct and palpable harm that constitutes injury-in-fact within the zone of interests arguably protected by the governing statute; that the injury can fairly be traced to the challenged action; and that the injury is likely to

[3] *See* attached 2005 Report on Calvert Cliffs Decommissioning Reserve filed by Constellation Energy with the Maryland Public Service Commission.
[4] 2006 Decommissioning Funding Status Report –Year End 2005, filed by Constellation Energy with this Commission.

be redressed by a favorable decision.[5] *In the Matter of Yankee Atomic Electric Company*, 43 N.R.C. 1 (1996). MPC has a direct interest in the outcome of these proceedings. 10 C.F.R. §2.309(d)(1)(iii).

MPC satisfies the first prong of this three-part test. The fiscal and operational qualifications of any newly formed entity that may become the holder and owner of these operating licenses post merger falls squarely within the "zone of interest" protected by the Atomic Energy Act. 42 USCS §2234. Constellation Generation is seeking Commission approval and consent under this governing statute. No license will be granted unless the Commission shall, ". . .after securing full information, find that the transfer is in accordance with the provisions of this Act. . ." Maryland ratepayers will be potentially and irreversibly harmed by an alarming shortfall of funds in the current external decommissioning trust funds. By requiring an immediate accounting of both the internal and external decommissioning trust funds, a fuller examination of Constellation Energy's fiscal and operational policies will be revealed.

Maryland ratepayers' liability for making up a difference of nearly $300 Million in the decommissioning trust funds is an injury that can be directly traced to Constellation Energy's contractual obligations as well as its maintenance of required minimum fund levels under this Commission's own rules. 10 C.F.R. 50.75(b) and (c). Constellation Energy's regulated affiliate, Baltimore Gas and Electric Company, collects decommissioning costs from its electric customers through its delivery service charges in accordance with a 1999 restructuring order from the Maryland Public Service Commission previously mentioned. Under the terms of this agreement, both BGE and

[5] The NRC has generally followed judicial concepts of standing in its own proceedings. *See* e.g. *U.S. Dep't of Energy*, 59 NRC 357, 363 (2004); Sacramento Mun. Util. Dist., 35 NRC 47 (1992).

Calvert Cliffs are obligated to deposit the funds into the decommissioning trust funds.[6] No approval of any license transfers should take place until the Commission has conducted a full examination of both Constellation Energy and FPL's pre-merger business practices as they relate to the ownership and operation of their nuclear facilities.

Finally, MPC's injury is likely to be redressed by a favorable decision from this Commission. Once a party demonstrates that it has standing to intervene on its own accord, that party may then raise any contention that, if proved, will afford the party relief from the injury it relies upon for standing. *Yankee Atomic Electric Company*, 43 N.R.C. 1, 6 (1996).

B. Maryland People's Counsel Has Raised a Factual Contention

A contention is a specific issue of law or fact that the third party seeks to have adjudicated; it must be substantiated by an explanation of its bases, a statement of supporting facts or expert opinion, appropriate references and citations, and sufficient information to indicate that a genuine dispute exists between the party seeking to intervene and the applicant. *National Whistleblower Center v. Nuclear Regulatory Commission*, 208 F.3d 256 (2000). MPC has demonstrated that there is a genuine dispute in the funding of the external decommissioning trust fund that Maryland ratepayers have entrusted to Constellation Energy and BGE. Without an immediate accounting order from this Commission, Maryland ratepayers are in jeopardy of having to make up a tremendous cash balance, in the hundreds of millions of dollars, if these three nuclear power plants were to be decommissioned today.

[6] *See Baltimore Gas & Electric Company, Case No. 8794*, 90 Md. PSC 197 (1999); *See* 2006 Decommissioning Funding Status Report-Year End 2005, filed by Constellation Energy with this Commission; *See* Application of Constellation Generation, page 17.

V. Conclusion

Therefore, MPC has standing to intervene and that its Petition to Intervene should have been granted. MPC has raised at least one contention pertaining to the fiscal interests of Maryland ratepayers that are directly affected by Constellation Generation's application related to the proposed merger of its parent company and FPL. MPC respectfully requests that this Commission deny any transfers of license control, direct or indirect, pending an investigation of the various trust fund funding levels within Constellation Energy's control. Alternatively, if this Commission finds that there is a transfer of control of the licenses for these nuclear power plant facilities as a result of the merger, MPC respectfully requests that this Commission condition any approval of the license transfers on Constellation Generation's commitment to preserve the status quo of its operations of these three nuclear plants and to order Constellation Energy to immediately file an acceptable plan with this Commission to address the shortfall in the funding of the internal and external decommissioning trust funds through each operating company or entity that might take control after the merger is consummated. MPC would also ask that a full accounting of the decommissioning trust funds be performed now to account for any discrepancies caused by Constellation Energy or its subsidiaries, and that this also be made a condition of this Commission's approval of any license transfers.

Continued for signatures:

Respectfully submitted,

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Catherine C. Hester
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Constellation Energy
Generation Group

February 8, 2006

U. S. Nuclear Regulatory Commission
Washington, DC 20555

ATTENTION: Document Control Desk

SUBJECT: **Calvert Cliffs Nuclear Power Plant**
Unit Nos. 1 & 2; Docket Nos. 50-317 & 50-318
Nine Mile Point Nuclear Station
Unit Nos. 1 & 2; Docket Nos. 50-220 & 50-410
R.E. Ginna Nuclear Power Plant
Docket No. 50-244

Annual Report: Status of Decommissioning Funding per 10 CFR 50.75(f)(1)

Pursuant to the requirements of 10 CFR 50.75(f)(1), this letter forwards the 2006 report on the status of decommissioning funding for Calvert Cliffs Nuclear Power Plant, the R.E. Ginna Nuclear Power Plant, and the Nine Mile Point Nuclear Station, which are owned by the Constellation Generation Group, LLC. The requirements for submitting such an annual report by March 31, 2006 are:

1) The current license expiration date for Nine Mile Point Nuclear Station, Unit 1, is within the next five years of the date of this letter; and,

2) The five nuclear units operated by the three licensees that are subsidiaries of Constellation Generation Group, LLC, are involved in a pending merger.

The information required by 10 CFR 50.75(f)(1) is provided in Attachment (1). Please note the required information applicable to Nine Mile Point Station Unit 2 includes summary statements provided by the remaining 18% co-owner, Long Island Power Authority. Constellation Generation Group, LLC, has not independently verified information provided by this co-owner.

A001

Should you have questions regarding the information in this submittal, please contact Mr. M. D. Flaherty at (410) 897-5087 or Mark.Flaherty@constellation.com.

Very truly yours,

John M. Heffley
Chief Nuclear Officer

JHM/EMT/jmp

Attachment: (1) 2006 Decommissioning Funding Status Report Year End 2005

cc: P. D. Milano, NRC
T.G. Colburn, NRC
S. J. Collins, NRC
Resident Inspector, NRC (Ginna)
Resident Inspector, NRC (Calvert Cliffs)
Resident Inspector, NRC (NMPNS)
R. I. McLean, Maryland DNR
J. P. Spath, NYSERDA
P. Eddy, NYS Dept. of Public Services

ATTACHMENT (1)

2006 DECOMMISSIONING FUNDING STATUS REPORT

YEAR END 2005

Calvert Cliffs Nuclear Power Plant
(Docket Nos. 50-317 & 50-318)

Nine Mile Point Nuclear Station
(Docket Nos. 50-220 & 50-410)

R. E. Ginna Nuclear Power Plant
(Docket No. 50-244)

Constellation Generation Group, LLC
February 8, 2006

ATTACHMENT (1)

2006 DECOMMISSIONING FUNDING STATUS REPORT

YEAR END 2005

Calvert Cliffs Nuclear Power Plant
Unit Nos. 1 & 2
Docket Nos. 50-317 & 50-318

Table 1 – Calvert Cliffs Nuclear Power Plant

	Information Required by 10 CFR 50.75(f)(1)	Unit 1 ($000's)	Unit 2 ($000's)	Total ($000's)
1	The minimum decommissioning fund estimate [2] as of December 31, 2005, pursuant to 10 CFR 50.75(b) and (c)	$321,988[1]	$321,988[1]	$643,976[1]
2	The amount accumulated as of December 31, 2005 in the external decommissioning trust pursuant to 10 CFR 50.75(b) and (c)	$155,117	$198,674	$353,791
3	Schedule of the annual amounts remaining to be collected [3]	$3,443	$4,865	$8,308
4	Assumptions used regarding escalation in decommissioning cost, rates of earnings on decommissioning funds, and rates of other factors used in funding projections			
	Annual decommissioning cost escalation	6%		
	Annual after-tax rate of earnings on decommissioning funds	7%		
	Frequency of contribution to the decommissioning trust	Quarterly		
5	Any contracts upon which Constellation is relying pursuant to 10 CFR 50.75(e)(1)(ii)(B)	Yes[4]		
6	Any modifications to Constellation's current method of providing financial assurance since the last submitted report	None		
7	Any material changes to trust agreements	Yes [5]		

ATTACHMENT (1)

2006 DECOMMISSIONING FUNDING STATUS REPORT

YEAR END 2005

Table 1 Notes – Calvert Cliffs Nuclear Power Plant

1 These values represent decommissioning costs anticipated to be incurred in removing the Calvert Cliffs units safely from service and reducing residual radioactivity to levels that permit release of the property for unrestricted use and termination of the license. The cost of dismantling non-radioactive systems and structures is not included in this estimate, nor is the cost of managing and storing spent fuel on the site until transfer to the U. S. Department of Energy.

2 Values based on application of the generic minimum funding calculation specified in 10 CFR 50.75(c)(1), as adjusted in accordance with paragraph 50.75(c)(2) and Revision 11 of NUREG-307.

3 Actual amounts being deposited into the trust were approved by the Maryland Public Service Commission in 1999 and the Internal Revenue Service in 2002. These collections will continue until June 2006 per a Settlement Agreement that included the Maryland Public Service Commission and Baltimore Gas and Electric Company (BGE). The amounts shown are the expected contributions through June 30, 2006.

4 Calvert Cliffs regulated affiliate, BGE, collects decommissioning costs from its electric customers for Calvert Cliffs through its delivery service charges in accordance with a restructuring order from the Maryland Public Service Commission. BGE transfers these funds to Calvert Cliffs pursuant to a Decommissioning Funds Collection Agent Agreement. Under the terms of this Agreement, Calvert Cliffs is obligated to deposit the funds into the decommissioning trusts. The NRC has previously reviewed the details of this contractual arrangement in its June 30, 2000 Safety Evaluation and concluded that, given the intercompany agreements that obligate the payments, Calvert Cliffs is providing decommissioning funding assurance in the form of external sinking funds tied to a non-bypassable charge pursuant to 10 CFR 50.75(e)(1)(ii)(B).

5 Since originally filed with the Commission in 1990, the trust agreement has been amended and restated. Those changes, as reflected in the trust agreement, are not material. Mellon Bank, N.A, was appointed Successor Trustee under the Trust Agreement, effective October 2005. The Trust Agreement complies with the requirements set forth in Section III, item (3), of NRC Order 7590-01-P; "Order Approving Transfer of License and Conforming Amendment" dated May 28, 2004. A copy of the restated trust agreement is available upon request.

ATTACHMENT (1)

2006 DECOMMISSIONING FUNDING STATUS REPORT

YEAR END 2005

Nine Mile Point Nuclear Station
Unit Nos. 1 & 2
Docket Nos. 50-220 & 50-410

Table 2 – Nine Mile Point Nuclear Station [1]
(Constellation Energy Group Ownership Interest)

	Information Required by 10 CFR 50.75(f)(1)	Unit 1 ($000's)	Unit 2 ($000's)	Total ($000's)
1	The minimum decommissioning fund estimate [3] as of December 31, 2005, pursuant to 10 CFR 50.75(b) and (c)	$431,492 [2]	$395,907 [2]	$827,399 [2]
2	The amount accumulated as of December 31, 2005 in the external decommissioning trust pursuant to 10 CFR 50.75(b) and (c)	$318,106	$201,217	$519,323
3	Schedule of the annual amounts remaining to be collected	None	None	None
4	Assumptions used regarding escalation in decommissioning cost, rates of earnings on decommissioning funds, and rates of other factors used in funding projections			
	Annual decommissioning cost escalation	6%		
	Annual after-tax rate of earnings on decommissioning funds	7%	7%	7%
	Frequency of contribution to the decommissioning trust[4]	N/A		
5	Any contracts upon which Constellation is relying pursuant to 10 CFR 50.75(e)(1)(iii)(B)	None		
6	Any modifications to Constellation's current method of providing financial assurance since the last submitted report	None [4]		
7	Any material changes to trust agreements	None [5]		

Table 2 Notes - Nine Mile Point Nuclear Station
(Constellation Energy Group Ownership Interest)

1 On November 7, 2001, Constellation completed the acquisition of 100% of Nine Mile Point Unit 1 (NMP-1) and 82% of Nine Mile Point Unit 2 (NMP-2). The NMP-1 amounts provided in this table represent the 100% Constellation share of decommissioning responsibilities. The NMP-2 amounts provided in this table represent the 82% Constellation share of decommissioning responsibilities. Table 3 contains information regarding the remaining 18% share assumed by the Long Island Power Authority.

2 These values represent the decommissioning costs, relative to the Constellation Energy Group interests, as anticipated to be incurred in removing the Nine Mile Point units safely from service and reducing residual radioactivity to levels that permit release of the property for unrestricted use and termination of the license. The cost of dismantling non-radioactive systems and structures is not included in this estimate, nor is the cost of managing and storing spent fuel on the site until transfer to the U.S. Department of Energy.

3 Values based on application of the generic minimum funding calculation specified in 10 CFR 50.75(c)(1), as adjusted in accordance with paragraph 50.75(c)(2) and Revision 11 of NUREG-1307.

4 At completion of the Nine Mile Point acquisition by Constellation, the selling parties transferred all of their decommissioning trust assets into the respective master decommissioning trusts for each of NMP-1 and NMP-2. A parental guarantee for additional funds was provided pursuant to 10 CFR 50.75(e)(1)(iii)(B), which, when combined with the transferred decommissioning trust funds for NMP-1 and NMP-2, met the total amounts required for NMP-1 and NMP-2, respectively, pursuant to 10 CFR 50.75(b) and (c). Additional contributions to the decommissioning trust fund are not required at this time.

5 As described above, the decommissioning trust assets were transferred into the "Nine Mile Point Nuclear Station, LLC Master Decommissioning Trust Agreement for Nine Mile Point Nuclear Station Unit One and Unit Two" ("Trust Agreement") and a parental guarantee was provided. The trustee of the Trust Agreement is Mellon Bank, N.A. The Trust Agreement also contains each of the decommissioning trust conditions required by the June 22, 2001, NRC Order (as amended) to provide reasonable assurance of decommissioning funding for unregulated non-electric utilities, including investment standards and limitations, disbursement limitations, and NRC notice requirements.

ATTACHMENT (1)

2006 DECOMMISSIONING FUNDING STATUS REPORT

YEAR END 2005

Nine Mile Point Nuclear Station
Unit Nos. 1 & 2
Docket Nos. 50-220 & 50-410

Table 3 – Nine Mile Point Nuclear Station [1]
(Long Island Power Authority 18% NMP-2 Ownership Interest)

Note: All information in this table was provided by the NMP-2 minority owner, Long Island Power Authority. Constellation Energy has not independently verified or assessed the information provided by this co-owner.

	Information Required by 10 CFR 50.75(f)(1)	Unit 1 ($000's)	Unit 2 ($000's)	Total ($000's)
1	The minimum decommissioning fund estimate[3] as of December 31, 2005, pursuant to 10 CFR 50.75 (b) and (c)	N/A	$86,906 [2]	$86,906 [2]
2	The amount accumulated as of December 31, 2005 in the external decommissioning trust pursuant to 10 CFR 50.75 (b) and (c)	N/A	$48,723	$48,723
3	Schedule of the annual amounts remaining to be collected	N/A	$2,202 (2006-2026)	$2,202 (2006-2026)
4	Assumptions used regarding escalation in decommissioning cost, rates of earnings on decommissioning funds, and rates of other factors used in funding projections			
	Annual decommissioning cost escalation	N/A	3.0%	3.0%
	Annual after-tax rate of earnings on decommissioning funds	N/A	6.0%	6.0%
	Frequency of contribution to the decommissioning trust	Annually		
5	Any contracts upon which Long Island Power Authority is relying pursuant to 10 CFR 50.75 (e)(1)(iii)(B)	None		
6	Any modifications to the Long Island Power Authority's current method of providing financial assurance since the last submitted report	None		
7	Any material changes to trust agreements	None		

Table 3 Notes – Nine Mile Point Nuclear Station
(Long Island Power Authority 18% NMP-2 Ownership Interest)

1 On November 7, 2001, Constellation Energy Group completed the acquisition of 100% of Nine Mile Point, Unit 1 (NMP-1) and 82% of Nine Mile Point Unit 2 (NMP-2). The NMP-2 amounts provided in this table represent the remaining 18% Long Island Power Authority share of decommissioning responsibilities. Constellation has not independently verified this information as provided by the co-owner.

2 These values represent the decommissioning costs, relative to the Long Island Power Authority interests, as anticipated to be incurred in removing NMP-2 safely from service and reducing residual radioactivity to levels that permit release of the property for unrestricted use and termination of the license. The cost of dismantling non-radioactive systems and structures is not included in this estimate, nor is the cost of managing and storing spent fuel on the site until transfer to the U.S. Department of Energy. Constellation has not independently verified this information as provided by the co-owner.

3 Values based on application of the generic minimum funding calculation specified in 10 CFR 50.75(c)(1), as adjusted in accordance with paragraph 50.75(c)(2) and Revision 11 of NUREG-1307.

ATTACHMENT (1)

2006 DECOMMISSIONING FUNDING STATUS REPORT

YEAR END 2005

R. E. Ginna Nuclear Power Plant
Unit No. 1
Docket No. 50-244

Table 4 – R. E. Ginna Nuclear Power Plant [1]

	Information Required by 10 CFR 50.75(f)(1)	Total ($000's)
1	The minimum decommissioning fund estimate [3] as of December 31, 2005, pursuant to 10 CFR 50.75 (b) and (c)	$298,005 [2]
2	The amount accumulated as of December 31, 2005 in the external decommissioning trust pursuant to 10 CFR 50.75 (b) and (c)	$222,542
3	Schedule of the annual amounts remaining to be collected	None[4]
4	Assumptions used regarding escalation in decommissioning cost, rates of earnings on decommissioning funds, and rates of other factors used in funding projections	
	Annual decommissioning cost escalation	6%
	Annual after-tax rate of earnings on decommissioning funds	7%
	Frequency of contribution to the decommissioning trust	N/A
5	Any contracts upon which Constellation is relying pursuant to 10 CFR 50.75 (e)(1)(ii)(B)	None
6	Any modifications to Constellation's current method of providing financial assurance since the last submitted report	None [4]
7	Any material changes to trust agreements	None [5]

Table 4 Notes – R. E. Ginna Nuclear Power Plant

1. On June 10, 2004, Constellation completed acquisition of 100% of the R. E. Ginna plant and associated assets. The amounts provided in this table represent that 100% Constellation share of decommissioning responsibilities.

2. Values based on application of the generic minimum funding calculation specified in 10 CFR 50.75(c)(1), as adjusted in accordance with paragraph 50.75(c)(2) and Revision 11 of NUREG-1307.

3. These values represent decommissioning costs anticipated to be incurred in removing the Ginna unit safely from service and reducing residual radioactivity to levels that permit release of the property for unrestricted use and termination of the license. The cost of dismantling non-radioactive systems and structures is not included in this estimate, nor is the cost of managing and storing spent fuel on the site until transfer to the U. S. Department of Energy.

4. At completion of the Ginna acquisition by Constellation, the selling party transferred the decommissioning trust assets into a master decommissioning trust. A parental guarantee for additional funds was not required because the assets exceed the amounts required pursuant to 10 CFR 50.75(b) and (c). Additional contributions to the decommissioning trust fund are not required at this time.

5. The trustee of the Trust Agreement is Mellon Bank, N.A. The Trust Agreement complies with the requirements set forth in Section III, item (3), of NRC Order 7590-01-P; "Order Approving Transfer of License and Conforming Amendment" dated May 28, 2004.

3-1-06 CM # 10c

100329

111 Market Place
Suite 200
Baltimore, Maryland 21202

Constellation Energy

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February 3, 2006

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PUBLIC SERVICE COMM
OF MARYLAND

Mr. O. Ray Bourland
Executive Secretary
Public Service Commission of Maryland
William Donald Schaefer Tower
6 St. Paul Street, 16th Floor
Baltimore, Maryland 21202

Re: 2005 Report on Calvert Cliffs Decommissioning Reserve

Dear Mr. Bourland:

In Order No. 66415 from Case No. 7588, the Public Service Commission directed Baltimore Gas and Electric Company (BGE) to file annually a financial report which provides a summary of customers' payments into the Calvert Cliffs decommissioning reserve during the year, the amount of earnings credited to the reserve during the year, and the year-end balance in the decommissioning reserve.

With respect to the triennial reporting requirements, the Commission issued a Restructuring Order (Case No. 8794/8804 Order No. 75757) on November 10, 1999 which caps BGE customer responsibility for nuclear decommissioning costs for Calvert Cliffs at $520 million in 1993 dollars adjusted in accordance with paragraph 22 of the Stipulation and Settlement Agreement. Also, BGE transferred, at book value, its nuclear generating assets and its nuclear decommissioning trust fund to Calvert Cliffs Nuclear Power Plant, Inc. (CCNPPI) on July 1, 2000 as a result of the deregulation of the Company's electric generation.

As indicated in my letter dated February 4, 2005, CCNPPI had accrued a reserve balance of $441,597,000 as of December 31, 2004. Effective January 1, 2003, for financial reporting purposes CCNPPI began to record the decommissioning liability in accordance with the provisions of FASB Statement No. 143 – Accounting for Asset Retirement Obligations. While our accounting records and balances are now maintained in accordance with the provisions of FASB Statement No. 143, we have continued to maintain the decommissioning reserve activity in a memorandum manner for purposes of reporting to the Public Service Commission. The activity in the memorandum records during 2005 was as follows. The Company recorded $18,662,000 to the decommissioning reserve representing customers' payments, $7,878,000 representing interest on internally invested funds accrued at the 9.63% rate of return earned in 2004 by BGE's utility operations, $11,344,000 representing actual earnings of the external qualified trust, and $122,000 representing actual earnings of the external nonqualified trust. Thus, as of December 31, 2005, the decommissioning reserve contains a balance of $479,603,000. Additionally, the qualified and the nonqualified trust funds had net unrealized gains totaling $9,035,000 at December 31, 2005, resulting in funds available for decommissioning of $488,638,000. Schedule 1 attached presents the decommissioning reserve activity for 2005.

Pursuant to Nuclear Regulatory Commission (NRC) regulations that all of the funds to decommission Calvert Cliffs be accumulated in an external trust by the end of the plant's service life, CCNPPI made payments totaling $17,213,000 into the external qualified trust, $419,000 into the external nonqualified trust, and $1,030,000 to the internal reserve in 2005. The sum of these payments is $18,662,000, which is in accordance with our agreement with the Public Service Commission to deposit this sum each year through June 2006.

Consistent with the Commission's Order in Case No. 7588, effective January 1, 2005, we began to compute interest at a 9.63% rate on the internally funded portion of the decommissioning reserve. For 2005, application of the 9.63% rate of return to the gross internal reserve balance results in earnings of $10,490,000. However, associated with the internal reserve is a deferred tax asset to account for the fact that the Company does not realize a current tax savings from contributions to the internal reserve. (Unlike contributions to the qualified external trust, contributions to the internal reserve are not tax deductible in the year of funding.) As indicated in my letter dated February 5, 2003, it is our belief that imputed earnings on the internal reserve are more appropriately calculated based on the net of the internal reserve balance and the deferred tax asset balance. When the Commission established the annual cost of service for decommissioning of $20.6 million in 1995, a cash return of $1,503,000 was recognized on the deferred tax asset, so any imputed earnings on the deferred tax asset must be reduced by that $1,503,000. Since the imputed earnings on the deferred asset were $4,115,000 in 2005 using the 9.63% rate of return, the earnings attributed to the deferred tax asset for 2005 are $2,612,000 ($4,115,000 less $1,503,000). Therefore, the net earnings attributed to the internal reserve for 2005 are $7,878,000 ($10,490,000 less $2,612,000). The externally funded portion of the decommissioning reserve continues to be credited with the actual after-tax earnings and unrealized gains and losses on the assets maintained in the external decommissioning trust funds.

In accordance with paragraph 22 of the Stipulation and Settlement Agreement, a copy of this report is being provided to the settling parties.

Very truly yours,

Vincent P. O' Grady
Executive Director- General Accounting Services
Constellation Generation Group

cc: Settling parties in 8794/8804

Schedule 1

Calvert Cliffs Nuclear Power Plant, Inc.
Nuclear Decommissioning Reserve
For the Twelve Months Ended December 31, 2005

	Nuclear Decommissioning Reserve (Thousands of Dollars)			
	Qualified	Nonqualified	Internal	Total
	$	$	$	$
Reserve Balance at 12/31/04	326,305	5,896	109,396	441,597
Customers' Payments	17,213	419	1,030	18,662
Earnings on Gross Reserve	11,344	122	10,490	21,956
Earnings on Deferred Tax Asset			(2,612)	(2,612)
Net Earnings	11,344	122	7,878	19,344
Reserve Balance at 12/31/05	354,862	6,437	118,304	479,603
Net Unrealized Gains for the year ended 12/31/05	8,671	364		9,035
Funds Available for Decommissioning at 12/31/0	363,533	6,801	118,304	488,638

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of March, 2006, a copy of the foregoing Notice of Appeal and Memorandum of Law in Support of the Appeal of the Maryland Office of the People's Counsel, was served by electronic mail, to hearingdocket@nrc.gov, and also mailed, first class, postage prepaid, to Jay M. Gutierrez, Morgan, Lewis & Bockius, LLP, 1111 Pennsylvania Avenue, Washington, D.C. 20004; General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001; and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 C.F.R. 2.302 and 2.305.

Catherine C. Hester
Assistant People's Counsel

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March 27, 2006

Ms. Annette L. Vietti-Cook
Secretary of the Commission
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
Attention: Rulemakings and Adjudications Staff

Re: Notice of Appeal and Brief of the Maryland Office of People's Counsel

Dear Ms. Vietti-Cook:

Please accept for filing enclosed herein an original and two conformed copies of a Notice of Appeal and Memorandum of Law in Support of the Appeal of the Maryland Office of the People's Counsel. These documents were also filed by electronic mail on this date to hearingdocket.nrc.gov.

Thank you kindly for your assistance.

Very truly yours,

Catherine C. Hester
Assistant People's Counsel

CCH:mcm
Enclosures