

May 1, 2006

The Honorable William B. Magnarelli  
New York State Assembly  
Legislative Office Building  
Albany, NY 12248

Dear Mr. Magnarelli:

On behalf of the Nuclear Regulatory Commission (NRC), I am responding to your letter dated April 3, 2006, to Mr. Ernest Wilson of the NRC's Region I Office in King of Prussia, Pennsylvania, in which you express concerns about the proposed merger between Constellation Energy Group, Inc. (CEG, Inc.), and FPL Group, Inc., and its potential impact on the Nine Mile Point Nuclear Station, Unit Nos. 1 and 2 (Nine Mile Point).

According to the application filed on January 23, 2006, by Constellation Generation Group, LLC (CGG LLC), on behalf of Nine Mile Point Nuclear Station, LLC (NMP LLC), and its other facility licensees, FPL Group will become a wholly owned subsidiary of CEG, Inc. After the merger, NMP LLC will continue to own and operate the facilities and hold the licenses to the same extent now held. In addition, no physical changes to the facility or operational changes were proposed in the application.

The provisions of Section 184 of the Atomic Energy Act of 1954, as amended (AEA), and the NRC's regulations at Section 50.80 of Part 50 of Title 10 of the *Code of Federal Regulations* (10 CFR 50.80), stipulate that no transfer can occur unless the NRC gives its consent in writing. These provisions apply to both direct and indirect license transfers. Direct transfers are generally those that involve transfer of ownership or operating authority of the plant itself from one entity to another – for example, the sale of a plant. Indirect transfers generally involve transfers of ownership in the licensee's parent organization rather than the facility – for example, a merger or the formation of a new parent holding company above a licensee. In the case of the facility operating licenses for Nine Mile Point and its other nuclear facilities, CEG, Inc., has requested the indirect transfer of these licenses. In its review, the NRC will assess the technical qualification, financial qualification, and insurance of the company and licensees.

In your letter, you state that you have been informed that CEG, Inc., does not plan to file notice of the merger with the New York State Public Service Commission (PSC). In this regard, the NRC has found that the PSC is currently considering a petition, pursuant to Public Service Law, Sections 70 and 89-h, from CEG, Inc., and FPL Group, Inc., for approval of the transfer of ownership interests, through their merger, in Nine Mile Point, located in Scriba, New York, and in the R.E. Ginna Nuclear Power Plant, located in Wayne County, New York (Case No. PSC-11-06-00014-P). A notice was published in the *New York State Register* on March 15, 2006, that provided for a 45-day comment period, which was scheduled to expire on April 29, 2006. On April 27, 2006, we contacted your office regarding the near-term expiration of this comment period.

In your letter, you also raise concerns about the staffing levels and expertise of employees at Nine Mile Point. You stated that the licensee's 2006 Nine Mile Point Business Plan shows an

intent to reduce the staff to 932 employees. However, you indicated that a 2002 external staffing study had determined that the "best benchmark" level would be 1184 employees. Therefore, you assert that the NRC and PSC should investigate this discrepancy. In addition, you state that you were informed that Local 97 of the International Brotherhood of Electrical Workers Union was not asked for its input on the appropriate staffing level and that bargaining union member positions are targeted for elimination. Because of this, you expressed concern about worker expertise and the quality standards for contractor personnel.

The NRC is aware of the results of the staffing study that CGG LLC had conducted for each of its nuclear facilities. Although there are regulatory requirements associated with the number of plant staff in certain areas, for example, licensed operators and security officers, NRC does not have requirements regarding the minimum staffing level for all staff positions at a plant. Under the NRC's reactor oversight process, performance issues, which result from a licensee's inability to ensure that personnel, equipment, programs, procedures and other resources are available and adequate to assure nuclear safety, are routinely assessed. When performance issues are identified, the licensee is required by the NRC to implement corrective actions.

Thank you for your interest in these issues of importance to nuclear power plant safety. I hope you find the information in this letter useful.

Sincerely,

*/RA/*

Richard J. Laufer, Chief  
Plant Licensing Branch I-1  
Division of Operating Reactor Licensing  
Office of Nuclear Reactor Regulation

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