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DOCKETED  
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OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

June 6, 2006

*Via E-Mail & FedEx No. 8235 9120 8902*

Honorable Annette L. Vietti-Cook, Secretary  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001

RE: Docket Nos. 50-250 & 50-251; 50-335 & 50-389; 50-443; and, 50-331 – In the Matter of Application of Indirect Transfers of Control of Turkey Point Nuclear Plant Units 3 & 4, St. Lucie Nuclear Plant Units 1 & 2, Seabrook Station and the Duane Arnold Energy Center.

Docket Nos. 50-317 & 50-318; 72-8; 50-220 & 50-410; and, 50-244 – In the Matter of Request for Threshold Determination of Application for Approval of 10 CFR 50.80 and 10 CFR 72.50 License Transfers Regarding Calvert Cliffs, Nine Mile Point and R.E. Ginna Nuclear Generating Stations.

Dear Secretary Vietti-Cook:

International Brotherhood of Electrical Workers (“IBEW”), Local 97, through its undersigned consultant, respectfully submit an original Petition to File Motion to Intervene and Protest Out-of-Time. Copies of this Petition have been sent to the parties listed on pages 3 and 4 of the foregoing Petition.

Respectfully Submitted,



Richard J. Koda, Principal

cc: David Falletta, President/Business Manager/Financial Secretary, IBEW, Local 97

UNITED STATES OF AMERICA  
BEFORE THE  
NUCLEAR REGULATORY COMMISSION

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IN THE MATTER OF APPLICATION FOR INDIRECT  
TRANSFERS OF CONTROL OF TURKEY POINT  
NUCLEAR PLANT UNITS 3 & 4, ST. LUCIE  
NUCLEAR PLANT UNITS 1 & 2, SEABROOK  
STATION AND THE DUANE ARNOLD ENERGY  
CENTER

Docket Nos. 50-250 & 50-251,  
50-335 & 50-389, 50-443 and  
50-331

IN THE MATTER OF REQUEST FOR THRESHOLD  
DETERMINATION OF APPLICATION FOR  
APPROVAL OF 10 CFR 50.80 AND 10 CFR 72.50  
LICENSE TRANSFERS REGARDING CALVERT  
CLIFFS, NINE MILE POINT AND R.E. GINNA  
NUCLEAR GENERATING STATIONS

Docket Nos. 50-317 & 50-318,  
72-8, 50-220 & 50-410, and  
50-244

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**PETITION TO FILE MOTION TO INTERVENE AND PROTEST OUT-OF-TIME**

International Brotherhood of Electrical Workers, Local 97 (“Local 97” or “Union”) through its undersigned consultant, respectfully requests that it be allowed to file a Motion out-of-time to intervene and protest in the proposed License Transfer request of Florida Power & Light Company (“FPL”), FPL Energy Seabrook, LLC and FPL Energy Duane Arnold, LLC for indirect transfers of control of the Turkey Point Nuclear Plant, Units 3 and 4 operating licenses (DPR-31, DPR-41) the St. Lucie Nuclear Plant, Units 1 and 2 operating licenses (DPR-67, NPF-16), the Seabrook Station operating license (NPF-86) and the Duane Arnold Energy Center operating license (DPR-49) that will occur as a result of the merger between FPL Group, Inc. and Constellation Energy Group, Inc. (“Constellation”), as well as the request for threshold determination that no indirect transfer of control of Calvert Cliffs, Nine Mile Point and R.E. Ginna nuclear generating stations requires NRC approval pursuant to 10 CFR 50.80 and 10 CFR 72.50 in connection with the proposed merger between Constellation

Energy Group, Inc. and FPL Group, Inc. consistent with §2.1325 and §2.309 of the Nuclear Regulatory Commission's ("Commission's" or "NRC's") Regulations. In support of this Motion, the Union states the following:

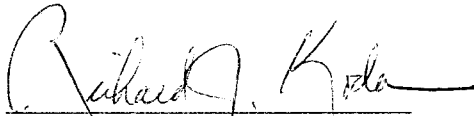
1. Local 97 represents approximately fifty-two hundred (5,200) employees, six hundred sixty (660) of whom are employed by Constellation and work at the Nine Mile Point Nuclear Station generating facilities in a variety of capacities.
2. The above referenced dockets have been established by the Commission to consider the issuance of an order under 10 CFR 50.80 and 10 CFR 72.50 to approve the transfer of the Facility Operating Licenses currently held by FPL and FPL Energy, as owners operators of the Turkey Point, St. Lucie, Seabrook and Duane Arnold nuclear generating stations. The proposed merger of the FPL Group, Inc and Constellation Energy Group, Inc. would result in the indirect transfer of control of these nuclear generating stations. Constellation Generation Group, LLC ("CGG") is requesting that the Commission make a threshold determination that there is no indirect transfer of control that requires NRC approval; and in the alternative, if necessary, the Applicants request NRC approval of any indirect transfer of control that NRC may deem to occur as a result of the proposed merger.
3. The Local 97's filing of its Motion out-of-time is due to its initial understanding that the Federal Energy Regulatory Commission ("FERC") would be the appropriate forum to address its concerns and had previously filed its concerns in that forum. While Local 97 maintains that FERC would be an appropriate forum to address the issues of concern to Local 97, Local 97 has realized that the NRC should also address the issues of safe and reliable operations of the nuclear generating stations subject to an indirect transfer of

control. Local 97 wishes to provide the NRC with important information which would allow the Commission to make a particularly informed decision.

4. Local 97 would accept and abide by the record that presently exists.
5. Local 97 believes that the operating and safety issues raised in its Motion to Intervene are important for the Commission to consider before it renders a decision in this matter.

Wherefore, for the reasons set forth in this Petition to File Motion Out-of-Time, Local 97 respectfully requests that the Commission accept the Union's Motion to Intervene and Protest.

Dated: June 6, 2006  
Ridgefield, Connecticut

By:   
Richard J. Koda, Principal

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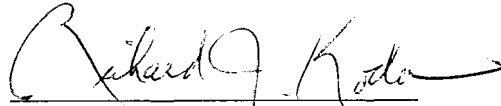
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**CERTIFICATE OF SERVICE**

This is to certify that the foregoing Petition was sent via email and Federal Express to members of the U.S. Nuclear Regulatory Commission listed on page 3 of the Petition, and that a copy of the foregoing Petition was sent via email and/or 1<sup>st</sup> Class Mail to the other parties listed on page 4 of the Petition, this 6<sup>th</sup> day of June 2006.

A handwritten signature in black ink, appearing to read "Richard J. Koda", written over a horizontal line.

Richard J. Koda

KC

KODA CONSULTING, Inc.  
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June 6, 2006

*Via E-Mail & FedEx No. 8235 9120 8902*

Honorable Annette L. Vietti-Cook, Secretary  
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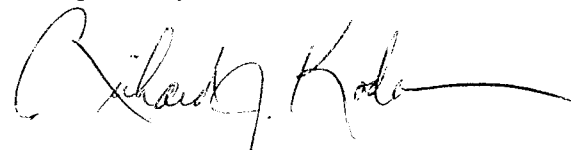
RE: Docket Nos. 50-250 & 50-251; 50-335 & 50-389; 50-443; and, 50-331 – In the Matter of Application of Indirect Transfers of Control of Turkey Point Nuclear Plant Units 3 & 4, St. Lucie Nuclear Plant Units 1 & 2, Seabrook Station and the Duane Arnold Energy Center.

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Dear Secretary Vietti-Cook:

International Brotherhood of Electrical Workers (“IBEW”), Local 97, through its undersigned consultant, respectfully submit an original Motion for Hearing and Right to Intervene and Protest. Copies of this Motion have been sent to the parties listed on pages 7 and 8 of the foregoing Motion.

Respectfully Submitted,



Richard J. Koda, Principal

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**MOTION FOR HEARING AND RIGHT TO INTERVENE AND PROTEST**

**I. Introduction**

International Brotherhood of Electrical Workers, Local 97, (“Local 97” or “Union”) through its undersigned consultant, respectfully requests a hearing and the right to intervene in the above proceeding in accordance with §2.309 and §2.1325 of the Nuclear Regulatory Commission’s (“Commission’s”) Regulations. In support of this Motion, the Union states the following:

1. Local 97 represents approximately fifty-two hundred (5,200) employees, six hundred sixty (660) of whom are employed by Constellation and work at the Nine Mile Point Nuclear Station generating facilities in a variety of capacities.



2. The above referenced dockets have been established by the Commission to consider the issuance of an order under 10 CFR 50.80 and 10 CFR 72.50 to approve the transfer of the Facility Operating Licenses currently held by FPL and FPL Energy, as owners operators of the Turkey Point, St. Lucie, Seabrook and Duane Arnold nuclear generating stations. The proposed merger of the FPL Group, Inc and Constellation Energy Group, Inc. would result in the indirect transfer of control of these nuclear generating stations. Constellation Generation Group, LLC (“CGG”) is requesting that the Commission make a threshold determination that there is no indirect transfer of control that requires Nuclear Regulatory Commission (“NRC”) approval; and in the alternative, if necessary, the Applicants request NRC approval of any indirect transfer of control that NRC may deem to occur as a result of the proposed merger.

## **II. Statement of Issues**

Local 97 has significant concerns regarding:

- a. the negative impacts the Applicants’ proposed merger will have on the employees it represents; and,
- b. safety and reliability of the Applicants’ nuclear electric generating facilities operations based on a variety of information provided by Applicants regarding their planned merger.

## **III. Motion to Intervene**

Since Local 97 represents approximately fifty-two hundred (5,200) employees, six hundred sixty (660) of whom are employed by Constellation Energy Group, Inc. (“Constellation”) and work at the Nine Mile Point Nuclear Station generating facilities in a variety of capacities, its members are directly affected by the issues which should be

considered in these dockets. In particular, the current and future operation of the Nine Mile Point Nuclear Station generating facilities will significantly affect the employment and financial well-being of the membership of Local 97. In light of the above, Local 97's intervention is necessary for it to inform this proceeding with information that would protect its unique interests as representing Constellation employees at the Nine Mile Point Nuclear Station. Participation by Local 97 in these dockets would contribute to the development of a complete record and is otherwise timely, fair and in the public interest.

#### **IV. Argument**

On or about January 20, 2006, the Applicants filed with the NRC seeking approval of an indirect transfer of control of Turkey Point, St. Lucie, Seabrook and Duane Arnold nuclear plants that would occur as a result of their parent companies' merger. The parent companies of the Applicants also filed with the Securities and Exchange Commission ("SEC") a variety of documents related to the proposed merger including, but not limited to, an "Agreement and Plan of Merger" dated December 18, 2005.

#### **Potential Negative Impact on Employees and Operations of Nuclear Facilities**

An internal staffing study performed by Constellation shows that over 250 employees at the Nine Mile Point Nuclear Station generating facilities are being targeted for elimination; that is a reduction of 22% of the present staffing levels (25% of represented labor). This action could have a significant negative impact on the Emergency Plan when an Emergency Response is required, especially during nights and weekends. From Local 97's perspective, this would have a significant and negative impact on the operation of the Nine Mile Point Nuclear Station generating facilities.

Of special note is the fact that all existing Chief Firefighter positions (8) are targeted for elimination by the end of 2006. The Chief Firefighters also maintain Emergency Medical Technician (“EMT”) status. The position of Chief Firefighter is currently designated as the “Fire Brigade Leader” with regards to responding to fire alarms, hazardous material spills, confined space rescue and medical emergencies at the Nuclear Station generating facilities. Eliminating the Fire Chief positions will have a detrimental effect on the response expertise that is currently available 24 hours/day. Constellation has indicated that these duties are being transferred to Auxiliary Operator’s who have received minimal firefighting and first aid training.

While the parent companies of the Applicants allege that staffing reductions proposed by Constellation Energy are unrelated to the proposed merger and that staffing study activities were planned in late 2004 and began in earnest in January 2005, the fact remains that it was early in 2005 that the parent companies of the Applicants began their informal discussions of industry consolidation and potential merger. These early discussions could not help but affect the Constellation’s internal staffing study. In addition, Constellation Energy received a Nine Mile Point Staffing Benchmarking Analysis Report and Appendices from an independent consultant in August 2002 which showed what the consultant believed to be the Best Benchmark staffing for the Nine Mile Point facilities.<sup>1</sup> The present total staffing level at the Nine Mile Point Nuclear Station is below the Best Benchmark staffing set in that independent Navigant Report.

Local 97 believes that continued reductions in staff at the Nine Mile Point Nuclear Station will sacrifice the safe and reliable operation of the Nine Mile Point facilities and as such is relevant to the Applicants’ request in the subject dockets. The NRC regulates the

operation of nuclear power plants and is concerned with the safety interests of the American public. The safe and reliable operation of the nuclear plants involved in the proposed merger would be threatened if the job eliminations proposed by the Constellation, based on its internal study which substantially diverges from the independent study of Navigant referenced above, are allowed to come to fruition through the proposed merger.

The operations at the Applicants nuclear facilities would undoubtedly be affected by the proposed merger and transfer of indirect control. While the parent companies of the Applicants expect that certain operation efficiencies will result from the transaction, there is the potential for excessive reductions in expenditures which may increase the Applicants' bottom line at the expense of the safe and reliable operation of its nuclear facilities. Such actions would likely negatively impact operating safety, grid reliability and/or Company employees. An example of such actions is illustrated by Constellation's changing the required performance frequency involving Preventative Maintenance, Surveillance Testing, Corrective Maintenance, and Elective Maintenance programs to a longer duration and/or moved to a "run to fail" status. This action is to be implemented to reduce the current man-hours it takes to perform these functions, but Local 97 believes that it would have a negative effect on the reliability of the plant equipment at the nuclear generating stations. Job eliminations and cut-backs would put added pressure on the remaining workers and would have a detrimental effect on their morale by excessively disrupting their family lives with increased overtime mandates and vacation schedule changes.

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<sup>1</sup> Nine Mile Point Staffing Benchmarking Analysis Report and Apendices A-D, Navigant Consulting, Inc. August 14, 2002.

## **Conclusion**

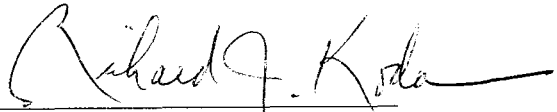
The Local 97 believes that a hearing and thorough investigation in these dockets is appropriate because approval of license transfers without investigating the reasonable and appropriate levels of operating labor at the affected plants subjects both employees and the general public to excessive risk.

Since the Union and its members would be an integral part of the transfer and directly affected by such transfer, the Union submits that granting its request to participate as an intervenor in this proceeding would add to the development of a complete record, would be fair and would be in the public interest. No other party could adequately represent the interests of NYPA's nuclear workers, or inform the proceeding on matters relevant to those workers and the effect that the proposed transfer would have on them.

If the Union's Motion for a Hearing and Intervenor Status in this proceeding is granted, the Union understands that it would be bound by the Commission's Rules of Practice and Regulations contained in Title 10 of the Code of Federal Regulations.

Wherefore, for the reasons set forth in this Motion For Hearing And Right To Intervene, the Union respectfully requests that a hearing be established and that the Union be afforded the right to intervene in this proceeding in order to protect its interests and those of its members.

Dated: June 6, 2006  
Ridgefield, Connecticut

By:   
Richard J. Koda, Principal

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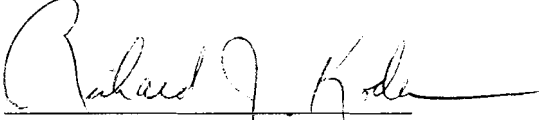
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**CERTIFICATE OF SERVICE**

This is to certify that the foregoing Motion was sent via Federal Express to members of the U.S. Nuclear Regulatory Commission listed on page 7 of the Motion, and that a copy of the foregoing Motion was sent via 1<sup>st</sup> Class Mail to the other parties listed on page 8 of the Motion, this 6<sup>th</sup> day of June 2006.

  
Richard J. Koda