

UNITED STATES OF AMERICA
 NUCLEAR REGULATORY COMMISSION

NRC-2009-0192

In the Matter of)	Docket No. 50-244
)	
EDF DEVELOPMENT, INC.)	Renewed License No. DPR-18
)	
CONSTELLATION ENERGY NUCLEAR GROUP, LLC)	
)	
R.E. GINNA NUCLEAR POWER PLANT, LLC)	
)	
(R.E. Ginna Nuclear Power Plant))	

ORDER SUPERSEDING ORDER OF OCTOBER 9, 2009, APPROVING APPLICATION
 REGARDING PROPOSED CORPORATE RESTRUCTURING

I.

R.E. Ginna Nuclear Power Plant, LLC (Ginna, LLC or the licensee) is the holder of Renewed Facility Operating License No. DPR-18 which authorizes the possession, use, and operation of the R.E. Ginna Nuclear Power Plant (Ginna). The facility is located at the licensee's site in Ontario, New York. The operating license authorizes the licensee to possess, use, and operate Ginna.

II.

By letter dated January 22, 2009, as supplemented on February 26, April 8, June 25, July 27, October 15, October 19, October 25 (two letters), October 26, and October 28, 2009 (together, the Application), Constellation Energy Nuclear Group, LLC (CENG), on behalf of the licensee and EDF Development, Inc. (EDF Development) (together, the applicants), requested that the Nuclear Regulatory Commission (NRC, the Commission), pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) 50.80, consent to the indirect license transfers that would be effected by the indirect transfer of control of CENG's ownership and operating interests in Ginna. The actions being sought are a result of certain proposed corporate

restructuring actions in connection with a planned investment by EDF Development whereby it would acquire a 49.99% ownership interest in CENG from Constellation Energy Group, Inc. (CEG), the current 100% owner of CENG. EDF Development is a U.S. corporation organized under the laws of the State of Delaware and a wholly-owned subsidiary of E.D.F. International S.A., a public limited company organized under the laws of France, which is in turn a wholly-owned subsidiary of Électricité de France S.A., a French limited company.

Following the closing of the transfer of ownership interests in CENG to EDF Development, EDF Development will hold a 49.99% ownership interest in CENG; CEG will hold a 50.01% ownership interest in CENG through two new intermediate parent companies, Constellation Nuclear, LLC and CE Nuclear, LLC, formed for non-operational purposes. In addition, Constellation Nuclear Power Plants, Inc., which is currently an intermediate holding company between CENG and Ginna, LLC and Nine Mile Point Nuclear Station, LLC, will convert to a Delaware limited liability company by operation of law and become Constellation Nuclear Power Plants, LLC, and will exist as an intermediate holding company between CENG and Ginna, LLC, Nine Mile Point Nuclear Station, LLC, and Calvert Cliffs Nuclear Power Plant, LLC by merger. No physical changes to the facilities or operational changes are being proposed in the application.

Approval of the transfer of the license is requested by the applicants pursuant to 10 CFR 50.80. Notice of the request for approval and opportunity for a hearing was published in the *Federal Register* on May 6, 2009 (74 FR 21013). No hearing requests or petitions to intervene were received. The NRC received comments from a member of the public in Seattle, Washington, in an e-mail dated May 22, 2009. The comments did not provide any information additional to that in the application, nor did they provide any information contradictory to that provided in the Application.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred,

directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the application and other information before the Commission, and relying upon the representations and agreements contained in the application, the NRC staff has determined that the proposed indirect license transfer of control of the subject license held by the licensee to the extent such will result from the proposed corporate restructuring actions and the planned investment by EDF Development whereby it will acquire a 49.99% ownership interest in CENG, to the extent affected by the proposed transaction as described in the application, is otherwise consistent with applicable provisions of law, regulations, and Orders issued by the NRC, pursuant thereto, subject to the conditions set forth below. The NRC staff has further found that the application for the proposed license amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations set forth in 10 CFR Chapter I; the facility will operate in conformity with the Application, the provisions of the Act, and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendment can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendment will not be inimical to the common defense and security or to the health and safety of the public; and the issuance of the proposed amendments will be in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied.

On October 9, 2009, the Commission issued, "Order Approving Application Regarding Proposed Corporate Restructuring and Approving Conforming Amendments."

By letter dated October 19, 2009, CENG explained that its January 22, 2009, application for the license transfers had anticipated nearly concurrent completion of the proposed internal corporate restructuring of the CEG subsidiaries and the proposed EDF acquisition of 44.99% of

CENG. After it filed its January application, CENG learned that the restructuring activities for the CEG subsidiaries will be completed at least 8 days prior to closing the transaction involving EDF. In letters dated October 25 (two letters), 26, and 28, 2009, CENG provided revised financial arrangements that will apply during the period between the completion of the internal restructuring activities and the acquisition of 44.99% of CENG by EDF and a revised operating agreement that will apply after the EDF closing.

The NRC concluded that modifications were needed to the cover letter, the October 9, 2009, Order, and the safety evaluations in light of the new information provided in CENG's letters of October 19 through 28, 2009. This Order contains those modifications and supersedes the Order issued October 9, 2009.

The findings set forth above are supported by a modified NRC safety evaluation (SE) dated the same day as this Order.

III.

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Act, 42 U.S.C. Sections 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, IT IS HEREBY ORDERED that the Application regarding the indirect license transfers related to the proposed corporate restructuring actions and the planned investment by EDF Development, as described herein, is approved, subject to the following conditions:

A. With regard to the direct and indirect transfers resulting from the restructuring of the CEG subsidiaries:

(1) The financial arrangements resulting from the corporate restructuring activities of the CEG subsidiaries are subject to the following:

(a) The Inter-Company Credit Agreements (ICA) described in the October 25, 2009, supplement to the Application shall be effective as of the date of the direct and indirect transfers (whichever occurs first) resulting from

the restructuring of CEG subsidiaries and shall be consistent with the representations contained in the Application. CENG and Ginna, LLC shall take no action to cause CEG, or their successors and assigns, to void, cancel or materially modify the ICA as submitted without the prior written consent of the NRC staff. CENG shall inform the Director of the Office of Nuclear Reactor Regulation, in writing, no later than 10 days after any funds are provided to CENG or any of the licensees by CEG or EDF Development under any Support Agreement.

- (b) The Master Demand Notes described in the October 26, 2009, supplement to the Application shall be effective as of the date of the direct and indirect transfers (whichever occurs first) resulting from the restructuring of CEG subsidiaries and shall be consistent with the representations contained in the Application. CENG and Ginna, LLC, shall take no action to cause CEG, or their successors and assigns, to void, cancel or materially modify the Master Demand Notes without the prior written consent of the NRC staff.

B. With regard to the indirect transfers resulting from the acquisition of 44.99% of CENG by EDF Development (EDF Closing):

- (1) The ownership and governance arrangements in effect as of the date of the indirect transfers to EDF Development are subject to the following:
 - (a) The Operating Agreement included with the supplement dated October 25, 2009, may not be modified in any material respect concerning decisionmaking authority over "safety issues" as defined therein without the prior written consent of the Director, Office of Nuclear Reactor Regulation.

- (b) At least half the members of CENG's Board of Directors must be U.S. citizens.
 - (c) The Chief Executive Officer (CEO), Chief Nuclear Officer (CNO) and Chairman of the Board of Directors of CENG must be U.S. citizens. These individuals shall have the responsibility and exclusive authority to ensure and shall ensure that the business and activities of CENG with respect to the Calvert Cliffs, Unit Nos. 1 and 2, Calvert Cliffs ISFSI, Nine Mile Point, Unit Nos. 1 and 2, and R.E. Ginna licenses are at all times conducted in a manner consistent with the public health and safety and common defense and security of the United States.
 - (d) CENG will establish a Nuclear Advisory Committee (NAC) composed of U.S. citizens who are not officers, directors, or employees of CENG, CEG or EDF Development. The NAC will report to and provide transparency to the NRC and other U.S. governmental agencies regarding foreign ownership and control of nuclear operations.
 - (e) CENG shall cause to be transmitted to the Director, Office of Nuclear Reactor Regulation, within 30 days of knowledge of a filing with the U.S. Securities and Exchange Commission, any Schedules 13D or 13G filed pursuant to the Securities and Exchange Act of 1934 that disclose beneficial ownership of any registered classes of CEG stock.
- (2) The financial arrangements applicable to the indirect transfers resulting from the EDF Closing are subject to the following:
- (a) The working capital and cash pooling arrangements described in Article IV of the Operating Agreement included with the October 25, 2009 supplement to the Application, shall be effective as of the date of the

indirect transfers to EDF Development and shall be consistent with the representations contained in the Application. CENG and Ginna, LLC shall take no action to cause CEG and/or EDF Development, or their successors and assigns, to void, cancel or materially modify the working capital and cash pooling arrangements in the Operating Agreement without the prior written consent of the NRC staff.

- (b) The Support Agreements described in the February 26, 2009 supplement to the Application shall be effective as of the date of the indirect transfers to EDF Development; shall supersede the Inter-Company Credit Agreements provided by CEG, Inc.; and shall be consistent with the representations contained in the Application. CENG and Ginna, LLC shall take no action to cause CEG and/or EDF Development, or their successors and assigns, to void, cancel or materially modify the Support Agreements as submitted without the prior written consent of the NRC staff. CENG shall inform the Director of the Office of Nuclear Reactor Regulation, in writing, no later than 10 days after any funds are provided to CENG or any of the licensees by CEG or EDF Development under any Support Agreement.
- (c) The Master Demand Notes described in the October 28, 2009 supplement to the Application, shall be effective as of the date of the indirect transfers to EDF Development; shall supersede the Master Demand Notes provided by CEG, Inc.; and shall be consistent with the representations contained in the Application. CENG and Ginna, LLC, shall take no action to cause CEG and/or EDF Development, or their successors and assigns, to void, cancel or materially modify the Master

Demand Notes without the prior written consent of the NRC staff.

IT IS FURTHER ORDERED that CENG shall inform the Director of the Office of Nuclear Reactor Regulation, in writing, of the date of closing of the transfer of EDF Development's ownership and operating interests in CENG at least 1 business day before the closing. Should the transfer of the license not be completed within 1 year of this Order's date of issuance, this Order shall become null and void, provided, however, that upon written application and for good cause shown, such date may be extended by order.

This Order supersedes the Order issued on October 9, 2009, and is effective upon issuance.

For further details with respect to this Order, see the initial application dated January 22, 2009 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML090290101), as supplemented by letters dated February 26 (ML090630426), April 8 (ML091000665), June 25 (ML091811094), and July 27, 2009 (ML092150712), October 15 (ML092920168), October 19 (ML0929990101), October 25 (ML093000127 and ML093000141), October 26 (ML093000506), and October 28, 2009 (ML092150712), and the SE (ML093010003) with the same date as this Order, which are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike, Room O-1 F21 (First Floor), Rockville, Maryland, and accessible electronically from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1-800-397-4209 or 301-415-4737, or by e-mail at pdr.resource@nrc.gov.

Dated at Rockville, Maryland, this 30th day of October 2009.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Eric J. Leeds, Director
Office of Nuclear Reactor Regulation