



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

April 3, 2012

EA-12-030

Mr. Henry B. Barron
President and Chief Executive Officer
Constellation Energy Nuclear Group, LLC
100 Constellation Way, Suite 200c
Baltimore, MD 21202

SUBJECT: NINE MILE POINT NUCLEAR STATION, R. E. GINNA NUCLEAR POWER PLANT AND CALVERT CLIFFS NUCLEAR POWER PLANTS - NRC INVESTIGATION REPORT NO. 1-2010-037 AND NRC INSPECTION REPORTS NO. 05000220/2012008 & 05000410/2012008; 05000317/2012008 & 05000318/2012008; 05000244/2012007

Dear Mr. Barron:

This letter refers to an investigation by the U.S. Nuclear Regulatory Commission's (NRC) Office of Investigations (OI) that was conducted at Constellation Energy Nuclear Group, LLC's (CENG) corporate offices related to the transfer of the licenses for the plants at the Nine Mile Point Nuclear Station, the R. E. Ginna Nuclear Power Plant, and the Calvert Cliffs Nuclear Power Plants. The investigation was initiated on June 1, 2010, after Constellation informed the staff that the license transfers could not be completed as described in the license transfer order issued by the NRC on October 9, 2009.

The purpose of the OI investigation was to determine whether CENG willfully failed to provide complete and accurate information to the NRC about the timing and financial arrangements involved in the license transfers associated with a corporate restructuring of Constellation with Electricite de France (EDF). This investigation examined activities conducted under your licenses as they relate to compliance with the Commission's rules and regulations and with the conditions in your licenses.

You were informed of the results of that investigation by letter dated January 27, 2012, under Agencywide Documents Access and Management System (ADAMS) (Accession No. ML120300361). Although the investigation determined that CENG did not act willfully, the failure of CENG to provide complete and accurate information regarding the license transfer is an apparent violation that is being considered for escalated enforcement action in accordance with the NRC Enforcement Policy. The current Enforcement Policy is included on the NRC's Web site at <http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html>

The apparent violation involves a CENG failure to inform the NRC that the financial arrangements related to its application for the transfer of control of the licenses for Ginna, Nine Mile Point and Calvert Cliffs had changed and that the schedule for the transfer included an intermediate hold period that was not reflected in the transfer application submitted to the NRC in January 2009, and updated in April 2009. Specifically, Constellation failed to provide complete and accurate information about the transfer of control of the licenses in accordance with Title 10 of the *Code of Federal Regulations* (10 CFR) 50.9 when it amended the Operating

Agreement and Master Put Agreement and, on September 21, 2009, submitted these documents to the Securities and Exchange Commission (SEC) and the Maryland Public Service Commission (PSC) but did not inform the NRC. The submittal to Maryland and the SEC contained numerous changes to Article VII of the Operating Agreement regarding governance, including 5 new "special matters" to Article VII (j) that would extend EDF's control over the flow of power from Constellation's nuclear plants. The changes to the Master Put Agreement also altered financial arrangements for the transactions that were under review by the NRC. Changes to the Operating Agreement and Master Put Agreement required an evaluation of foreign ownership, control and domination to ensure compliance with 10 CFR 50.38, and an evaluation of financial assurance to ensure compliance with 10 CFR 50.75. As such, the information was material to the NRC and needed to be supplied to the NRC prior to the NRC making a final determination on the license transfer. This apparent violation is being administratively tracked as inspection items 05000220/2012008 -01 & 05000410/2012008-01 at Nine Mile Point; as 05000317/2012008-01 & 05000318/2012008-01 at Calvert Cliffs; and as 05000244/2012007-01 at Ginna. The circumstances surrounding this apparent violation, and the significance of the issue, were discussed with members of your staff via teleconference by Christopher Regan on April 2, 2012.

Before the NRC makes its enforcement decision, we are providing you an opportunity to (1) respond in writing to the apparent violation addressed in this letter within 30 days of the date of this letter or (2) request a Pre-decisional Enforcement Conference (PEC). If a PEC is held, it will be open for public observation and the NRC will issue a press release to announce the time and date of the conference. If you decide to participate in a PEC, please contact Anneliese Simmons at 301-415-2791 within 10 days of the date of this letter. A PEC should be held within 30 days of the date of this letter.

If you choose to provide a written response, it should be clearly marked as a "Response to An Apparent Violation in Inspection Report Nos. 05000220/2012008 & 05000410/2012008; 05000317/2012008 & 05000318/2012008; 05000244/2012007; EA-12-030" and should include: (1) the reason for the apparent violation, or, if contested, the basis for disputing the apparent violation; (2) the corrective steps that have been taken and the results achieved; (3) the corrective steps that will be taken; and (4) the date when full compliance will be achieved. Your response may reference or include previously docketed correspondence, if the correspondence adequately addresses the required response. If an adequate response is not received within the time specified or an extension of time has not been granted by the NRC, the NRC will proceed with its enforcement decision.

If you choose to request a PEC, the conference will afford you the opportunity to provide your perspective on these matters and any other information that you believe the NRC should take into consideration before making an enforcement decision. The decision to hold a pre-decisional enforcement conference does not mean that the NRC has determined that a violation has occurred or that enforcement action will be taken. This conference would be conducted to obtain information to assist the NRC in making an enforcement decision. The topics discussed during the conference may include the following: information to determine whether a violation occurred, information to determine the significance of a violation, information related to the identification of a violation, and information related to any corrective actions taken or planned to be taken. In presenting your corrective actions, you should be aware that the promptness and comprehensiveness of your actions will be considered in assessing any civil penalty for the apparent violation.

In addition, please be advised that the number and characterization of apparent violations described in this letter may change as a result of further NRC review. You will be advised by separate correspondence of the results of our deliberations on this matter.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter and your response, if you choose to provide one, will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's ADAMS, accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction.

If you have any questions concerning this matter, please contact Anneliese Simmons of my staff.

Sincerely,



Frederick D. Brown, Director
Division of Inspection & Regional Support
Office of Nuclear Reactor Regulation

Docket Nos. 50-317/318
50-244
50-220/410

License Nos. DPR-53/69
DPR-63/NPF-69
DPR-18

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ADAMS Accession No: ML12089A097

OFFICE	NRR/DIRS /IFIB	NRR/DIRS	NRR/DIRS/ IFIB/BC	NRR/DORL	OE	NRR/DIRS
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