

CENGSM

a joint venture of



Constellation Energy Nuclear Group, LLC

Pre-decisional Enforcement Conference

April 30, 2012

Topics

- Executive Summary
- Compliance Requirements
- Statement of Apparent Violation and CENG Perspectives
- Causes & Corrective Actions
- Conclusion



Executive Summary

- CENG believes that the information it provided in the CENG/EDF Indirect License Transfer Application (LTA) process met or exceeded regulatory requirements and guidance, and followed LTA precedent.
 - CENG submitted complete and accurate information in all material respects.
- The Commission’s “rule of reason” for 50.9 applies – the need to submit additional information does not automatically equate to a Section 50.9 violation.
- We have incorporated lessons learned and applied them in more recent licensing actions, such as Exelon-Constellation merger indirect LTA.



Regulatory Requirements and Guidance

- **10 CFR 50.9:**
 - Information provided to the NRC by an applicant or an existing licensee must be “complete and accurate in all material respects”
 - Licensee must “notify the Commission of information identified by the applicant or licensee as having... a significant implication for public health and safety or common defense and security.”
 - Commission – a “rule of reason” will apply:
 - Statement of Considerations for 10 CFR 50.9 states that need to submit additional information “does not necessarily mean that incomplete information which would violate the rule has been submitted.” 52 Fed. Reg. 49362, 49366 (Dec. 31, 1987).



Regulatory Requirements and Guidance

- **10 CFR 50.80: LTAs** – requires applicant to describe transaction and identify technical / financial qualifications of transferee (here the CENG joint venture with EDF)
 - **10 CFR 50.33(f):** Financial Considerations
 - **10 CFR 50.38:** Foreign ownership, control, or domination (FOCD)
 - **10 CFR 50.75:** Reporting and Recordkeeping for Decommissioning Planning
- Regulatory Guidance:
 - **NUREG-1577, Rev. 1, *Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance* (Feb. 1999)**
 - For non-electric utility licensee, Financial Qualifications are based on 5-year *pro forma* income statement and financial support agreements
 - ***Standard Review Plan on Foreign Ownership, Control or Domination*, 64 FR 52355 (Sept. 28, 1999)**
 - Negation Action Plan may assign specific oversight duties to directors and officers to ensure U.S. control over actions relevant to nuclear safety and security

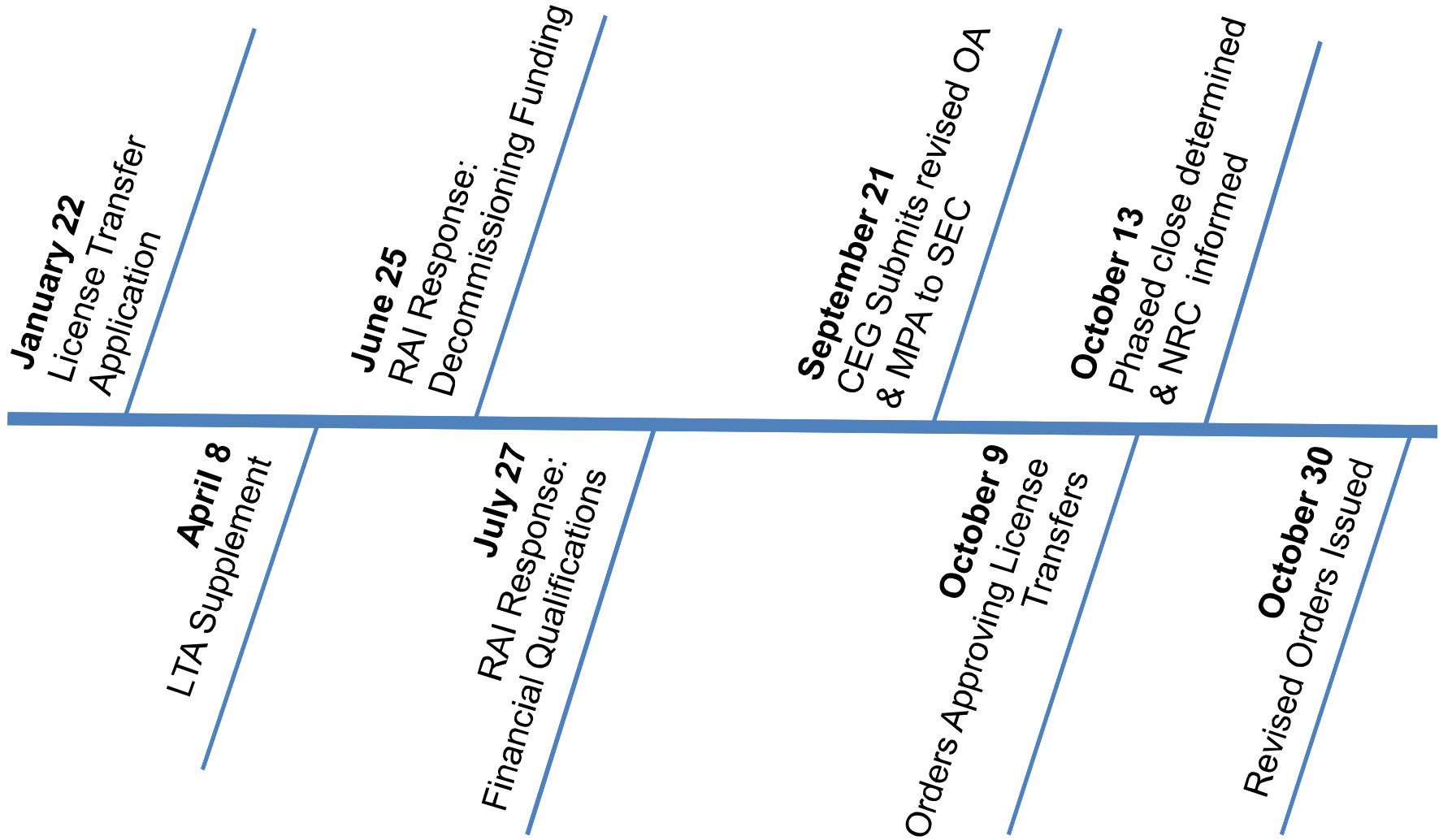


Apparent Violation and Specifics

- **Apparent Violation:** “...CENG failure to inform the NRC that the financial arrangements related to its application for the transfer of control of the licenses ... had changed and that the **schedule for the transfer included an intermediate hold period that was not reflected in the transfer application** that was submitted to the NRC...”
- Specifically:
“... Constellation failed to provide complete and accurate information about the transfer of control . . . when it **amended the Operating Agreement and Master Put Agreement and, on September 21, 2009, submitted these documents to the [SEC] and Maryland [PSC] but did not inform the NRC.** The submittal to the [the PSC] 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. [These changes] **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. “
- Additional detail/clarification was provided by Staff on 4/23 and 4/24 in teleconferences



2009 LTA Licensing Timeline



Timing Issue

The schedule for the transfer included an intermediate hold period that was not reflected in the transfer application:

- At time of LTA and April 2009 supplement, Constellation and CENG did not know of any timing issue surrounding closing process steps
- When 8-day delay between steps was determined by Constellation to be needed for tax purposes and relayed to CENG on Oct. 13, 2009, CENG took immediate action
 - Immediately notified NRC Staff
 - Analyzed current and future conditions for compliance with the Oct. 9th Orders and accompanying SER
 - CENG believed closing could take place consistent with conditions of Oct. 9 Orders
- Staff informed CENG that Orders and SE needed to be modified to address impact of 8-day intermediate hold period.
- CENG believes no 50.9 violation occurred, as it informed NRC immediately upon learning of the timing issue.



Submission of Operating Agreement and Master Put Agreement Revisions

Amended Operating Agreement and Master Put Agreement were submitted to SEC and Maryland, but CENG did not inform the NRC.

- CENG recognizes that many different documents could be relevant to Staff's review of LTA and that the licensee must use its judgment to determine which documents or parts of documents to submit.
- CENG provided an internet link in its LTA to provide NRC access to all transaction documents (including MPA and OA updates) filed with SEC.
- CENG informed Staff that changes would be made to the OA, but that the changes would not be to key governance provisions in Article VII or other material matters.
- CENG relied on continuous and frequent communication with NRC through Project Manager, RAIs, and conference calls to identify information needs between Jan. 22, 2009 LTA and Oct. 9, 2009 Orders.
- CENG would have promptly provided hard copies of any document revisions had Staff indicate that they were interested in reviewing.
- CENG does not believe this conduct constitutes a violation of 10 CFR 50.9



OA Article VII Revisions

Changes to Article VII of the Operating Agreement regarding governance, including 5 new “special matters” to Article VII (j) would extend EDF’s control over the flow of power from Constellation’s nuclear plants.

- April 8 submission identified that there would be changes to the operating agreement, but no changes to Art VII provisions considered material.
- The Operating Agreement modifications to Art VII *protected CENG revenues and reduced risks* associated with modifying PPAs and related items
 - Modifications had nothing to do with EDF’s control over the flow of power from the plants.
- Modifications did not affect in any way decision-making authority over safety, security and reliability or U.S. Chairman’s casting vote authority over *any matter* (including all “special matters”) affecting safety, security, reliability, or that in view of U.S. laws or regulations requires or makes it reasonably necessary to assure U.S. control (plus a number of other areas over which the casting vote authority applies).
- Consistent with October 30 Order



Changes to the Master Put Agreement

Changes to the Master Put Agreement altered financial arrangements for the transactions.

- Staff clarification 4/24: Section 6.27 of MPA specified that Constellation would be contractually responsible in event NRC found decommissioning funding shortfall. This could have negatively affected a potential Constellation guarantee to the NDTFs and was therefore relevant to Staff's review. Revision also resulted in discussions around Ginna, requiring increased financial support amount.
 - This was a commercial arrangement between the parents of CENG (Constellation and EDF), where Constellation provided EDF a contractual indemnification; it had nothing to do with CENG being able to meet its decommissioning requirements.
 - CENG had not submitted an NDTF plan that contained a parental guarantee provision.
 - Ginna support amounts were increased only due to market outlook – not changes in MPA.
- Staff clarification 4/23: PPAs (not mentioned in Apr. 3 choice letter) affected CENG's pro-forma statements and should have been provided to NRC.
 - PPAs with CEG and EDF power marketing affiliates for sales of uncommitted power at market rates did not affect *pro forma* income statements in LTA. Only market view would have affected projections.
 - Various PPAs were noted in submitted *pro forma* statements and had never before been requested by Staff



FOCD and Financial Assurance

Evaluation Requirements

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The revisions to the documents 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.

- 10 CFR 50.38: Foreign ownership, control, or domination (FOCD)
- 10 CFR 50.75: Reporting and Recordkeeping for Decommissioning Planning
- Regulatory Guidance:
 - NUREG-1577, Rev. 1, *Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance* (Feb. 1999)
 - For non-electric utility licensee, Financial Qualifications are based on 5-year *pro forma* income statement
 - Basic requirement was satisfied by *pro formas*
 - Burden is on NRC to “request . . . additional or more detailed information respecting [an entity’s] financial arrangements and status of funds if the Commission considers this information appropriate.” See 10 CFR 50.33(f)(5); and *North Atlantic Energy Service Corp. (Seabrook)*, CLI-99-6, 49 NRC 201 (1999).



FOCD and Financial Assurance Evaluation Requirements, cont'd.

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– *Regulatory Guidance, cont'd.*

- *Standard Review Plan on Foreign Ownership, Control or Domination*, 64 FR 52355 (Sept. 28, 1999)
 - Negation Action Plan may assign specific oversight duties to directors and officers to ensure U.S. control over actions relevant to nuclear safety and security
 - Chairman's broad casting vote authority and paramount authority of certain officers over safety, security and reliability were not affected at all by OA revision.
 - Modifications protected CENG.
 - Consistent with October 9th and 30th Orders



Information Compliance Summary

- Information submitted in CENG/EDF LTA met or exceeded regulatory requirements and guidance
 - Fully described substantive transaction steps
 - Provided internet link to transaction agreements available in SEC filings (including updates)
 - Submitted *pro forma* income statements to demonstrate financial qualifications which satisfied basic FQ requirement
 - Submitted draft form of CENG Operating Agreement containing key governance provisions that implement Negation Action Plan (NAP) to address FOCD, which did not change
 - Modeled on AmerGen precedent but with greater negation measures
 - U.S. Chairman has casting vote (goes measurably beyond AmerGen)
 - Paramount authority of certain U.S. officers over safety, security, reliability
 - Nuclear Advisory Committee (new – developed by Constellation)
- Many documents could be potentially relevant to Staff's review of LTA
- CENG relied on continuous communication with NRC, RAIs, conference calls to identify needs between Jan. 22, 2009 LTA submission and Oct. 9, 2009 Orders
- Revisions to OA and MPA were not material to Decommissioning Funding Assurance or FOCD, but were available through the internet link provided if desired
- CENG would have immediately provided hard copies of revised documents if it had known that staff desired hard copies of revisions submitted.
- CENG does not believe failure to submit revised documents with non-material changes constitutes a violation of 10 CFR 50.9



Causes and Corrective Actions



Causes and Corrective Actions

- **Timing Issue (8-day closing sequence):**

Causes:

- Inadequate internal communication within Constellation and between Constellation and CENG
- Based on reg. guidance and precedent, LTA focused on detailed steps of the transaction versus timing between or among the various steps

Corrective Actions:

- Immediately informed and worked with Staff
- Issued Condition Report
- Applied lessons learned to subsequent transfer (Exelon-CEG merger)
- Shared information with others in industry

- **Documents Issue:**

Causes:

- CENG relied upon LTA review precedent , RAI process, and communications to meet Staff's expectations

Corrective Actions:

- Ensure Staff's info requests met in October 2009 within one business day
- Issued Condition Report
- Briefed CENG Board of Directors on NRC expectations
- Applied lessons learned to subsequent transfer (Exelon-CEG merger)
- Shared information with others in industry
- Conditions, including need for prior approval of any changes affecting decision making over safety, included in current CENG Operating Agreement



Conclusion

- CENG believes that information it submitted met or exceeded regulatory requirements and existing guidance, and was consistent with past precedent in successful LTAs
- If apparent violations are nonetheless found, CENG requests that credit to mitigate enforcement severity be considered
 - Self-identification and immediate NRC notification of timing issue
 - CENG recognizes that it did not meet current Staff's expectations for LTA reviews re: docketing information of potential relevance
 - Prompt/effective corrective action taken for all issues raised

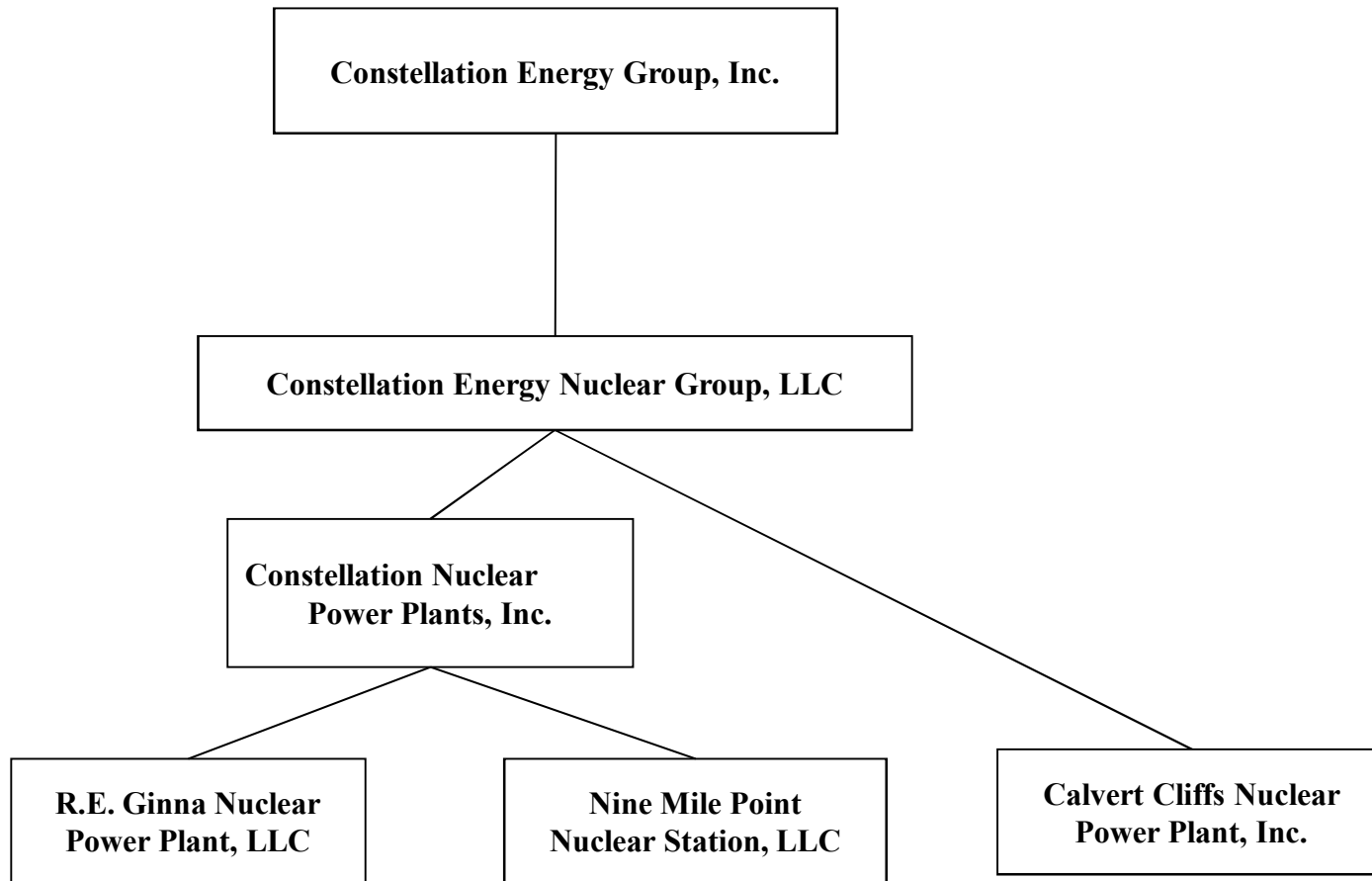


Addendum

Pre- and Post-Transaction Organizational Charts



PRE-TRANSACTION SIMPLIFIED ORGANIZATIONAL CHART



POST-TRANSACTION ORGANIZATIONAL CHART

