

November 1, 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 – NOTICE OF VIOLATION; NRC INSPECTION REPORTS NO. 05000220/2012008 & 05000410/2012008; 05000317/2012008 & 05000318/2012008; 05000244/2012007

Dear Mr. Barron:

The purpose of this letter is to provide you with the final results of the apparent violation identified in NRC Inspection Report Nos. 05000220/2012008 & 05000410/2012008; 05000317/2012008 and 05000318/2012008; and 05000244/2012007, dated April 3, 2012.

At Constellation Energy Nuclear Group's (CENG's) request, a predecisional enforcement conference (PEC) was conducted at NRC headquarters in Rockville, MD on April 30, 2012 with you and members of the Constellation staff to discuss CENG's position on regulatory issues related to your license transfer application involving Electricite de France (EDF). A meeting summary is available under Agencywide Documents Access Management System (ADAMS) Accession No. ML12136A553.

Based on the information developed during an NRC investigation (Office of Investigations Report No. 1-2010-037) and the information that you subsequently provided during the conference, the NRC has determined that a violation of NRC requirements occurred. The violation is cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding it were discussed with you, and described in our April 3, 2012 letter (ADAMS Accession No. ML12089A097). It is our conclusion that CENG failed to provide complete and accurate information about the transfer of control of the licenses in accordance with paragraph 50.9(a) of Title 10 of the *Code of Federal Regulations* (10 CFR) when it amended the Operating Agreement but did not inform the NRC.

On April 8, 2009, Constellation provided supplemental license transfer application information to the NRC stating, "In order to implement the planned changes, CEG [Constellation Energy Group, Inc.] and EDF may amend the form of operating agreement for CENG. The amendments will affect provisions relating to cash distributions from CENG and other minor matters, but will not involve any changes to the governance provisions in Article VII or any other provisions that are material to NRC's pending review of the license transfer application." However, between April 2009 and September 21, 2009, Constellation made changes to the provisions in Article VII of the Operating Agreement and failed to provide these changes to the NRC.

On October 8, 2009, the NRC sent Constellation the draft safety evaluation (SE) containing the proposed conditions for the license transfers for review to ensure accuracy. The SE and the draft transfer conditions referenced the staff's evaluation of unanimous consent issues listed in Article VII of the Operating Agreement provided in the January 2009 application and supplemented in April 2009. Constellation provided an electronic file that same day containing its comments on the draft SE, but failed to inform the NRC that the unanimous consent provisions in Article VII of the Operating Agreement referenced in the draft SE had changed. Had the NRC staff known that changes would be made, it would have requested and evaluated them in preparing the license transfer Order and accompanying safety evaluation.

This issue was viewed as potentially significant because it impacted the NRC's ability to perform its regulatory function related to foreign ownership, control, or domination matters in the license transfer review. Escalated enforcement was initially considered for this violation, in accordance with the Enforcement Policy. However, after a detailed review of all available information, the NRC determined that this violation is best characterized at Severity Level IV based on the determination that there were no actual safety consequences and that the potential safety consequences were minimal because there was not enough evidence to support a conclusion that there would be foreign control over safety decisions. Although this violation meets the NRC Enforcement Policy criteria to disposition it as a non-cited violation, the NRC is issuing the enclosed Notice because of the issues discussed above.

In addition, as discussed in our letter of April 3, 2012, CENG's failure to properly coordinate and communicate information about the license transfers also resulted in the staff's identification of concerns in the areas of decommissioning financial assurance and financial qualifications. During the April 30, 2012 PEC, you stated that the issue of decommissioning financial assurance was the result of a miscommunication with the staff. You stated that the commercial arrangement between the parents of CENG (Constellation and EDF) was established for Constellation to provide EDF a contractual indemnification and that CENG would continue to meet its decommissioning requirements. Regarding financial qualifications, you stated during the PEC that at the time of the January 2009 application and April 2009 supplement Constellation and CENG did not know of any timing issues surrounding closing process steps, and that when CENG became aware of the delay you immediately notified the NRC staff.

Although insufficient evidence exists to warrant further enforcement action in these areas, the problems caused by Constellation's self-acknowledged inadequate coordination and communication, were avoidable. While the NRC ultimately approved your application, CENG's untimely submittal of material information resulted in the NRC staff expending significant resources, and required the NRC to re-evaluate and modify the SE to reissue the Order based on new information. The NRC's expectation is that the actions you outlined at the PEC will improve your internal policies to avoid such situations in the future. For NRC regulated licensing activities, licensees are required to submit complete and accurate information at the time of application, and they have a responsibility to update the staff when information materially relevant to that information changes.

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken and planned to correct the violation and prevent recurrence and the date when full compliance was achieved is already adequately addressed on the docket in the information you provided at the PEC on April 30, 2012 (ADAMS Accession No. ML12136A553). Therefore, you are not required to respond to this letter unless the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to provide additional information, you should follow the instructions specified in the enclosed Notice.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, and any response, will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (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 personal privacy or proprietary information is necessary to provide an acceptable response, please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request withholding of such information, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.390(b) to support a request for withholding confidential commercial or financial information).

If you have any questions concerning this matter, please contact Christopher Regan, of my staff at 301-415-2768.

Sincerely,

**/RA/**

Ho K. Nieh, 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

Enclosure: Notice of Violation

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, and any response, will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (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 personal privacy or proprietary information is necessary to provide an acceptable response, please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request withholding of such information, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.390(b) to support a request for withholding confidential commercial or financial information).

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**ADAMS Accession No.: ML12213A182**

OFFICE	NRR/DIRS/IPAB	NRR/DIRS/IFIB	NRR/DIRS/SLS	NRR/DIRS/IFIB/BC(A)
NAME	J. Bowen	A. Simmons	T. Fredrichs	R. Turtill
DATE	08/01/12	08/01/12 (Non-concur)	09/20/12 (Non-concur)	10/18/12
OFFICE	OE	RI	OGC	NRR/DIRS/DD
NAME	J. Wray	W. Dean*	C. Scott	R. Franovich
DATE	10/18/12	10/23/12	10/25/12	10/26/12

**OFFICIAL RECORD COPY**

## NOTICE OF VIOLATION

Constellation Energy Nuclear Group, LLC     Docket Nos. 50-317/318; 50-244; 50-220/410  
Calvert Cliffs, Nine Mile Point, and Ginna     License Nos. DPR-53/69; DPR-18; DPR-63/NPF-69  
EA-12-030

10 CFR 50.9(a), states, in part, that information provided to the Commission by a licensee or information required by statute or by the Commission's regulations to be maintained by the licensee shall be complete and accurate in all material respects.

Contrary to the above, Constellation failed to provide complete and accurate information regarding changes made to its January 22, 2009 license transfer application with respect to foreign ownership, control, or domination. Specifically, between April 2009 and September 21, 2009, Constellation made changes to the governance provisions in Article VII of the Operating agreement and failed to provide these changes to the NRC. In its January 22, 2009 license transfer application Constellation stated, "The post closing CENG will be operating under the terms of a Second Amended and Restated Operating Agreement (Operating Agreement)." On April 8, 2009, Constellation provided supplemental license transfer application information to the NRC stating, "In order to implement the planned changes, CEG and EDF may amend the form of operating agreement for CENG. The amendments will affect provisions relating to cash distributions from CENG and other minor matters, but will not involve any changes to the governance provisions in Article VII [emphasis added] or any other provisions that are material to NRC's pending review of the license transfer application." This was material to the NRC, because had it been identified that changes would be made, the staff would have requested and evaluated them for compliance with foreign ownership, control, or domination requirements.

This is a Severity Level IV violation.

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken and planned to correct the violation and prevent recurrence and the date when full compliance was achieved is already adequately addressed on the docket in the information you provided at the PEC on April 30, 2012 (ADAMS Accession No. ML12136A553). However, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201 if the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to respond, clearly mark your response as a "Reply to a Notice of Violation; EA-12-030" and send it to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555-0001 with a copy to the Director, Office of Enforcement, the Regional Administrator, Region I, and a copy to the NRC Resident Inspectors at the facility that is a subject of this Notice, within 30 days of the date of this letter transmitting this Notice of Violation (Notice).

If you contest this enforcement action, submit a written statement with the basis of your denial to the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, DC 20555-0001.

If you chose to respond, your response will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. Therefore, to the extent

possible, it should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the public without redaction.

In accordance with 10 CFR 19.11, you may be required to post this Notice within two working days of receipt.

Dated this 1<sup>st</sup> Day of November 2012