REVISED SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION

DIRECT AND INDIRECT TRANSFERS OF CONTROL OF RENEWED FACILITY OPERATING LICENSES DUE TO THE PROPOSED CORPORATE RESTRUCTURING

CALVERT CLIFFS NUCLEAR POWER PLANT, UNIT NOS. 1 AND 2;

CALVERT CLIFFS INDEPENDENT SPENT FUEL STORAGE INSTALLATION,

NINE MILE POINT NUCLEAR STATION, UNIT NOS. 1 AND 2; AND

R.E. GINNA NUCLEAR POWER PLANT

DOCKET NOS. 50-317, 50-318, 72-8, 50-220, 50-410, AND 50-244

1.0 INTRODUCTION

By 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), July 27 (ML092150712), October 15 (ML092920168), October 19 (ML092990101), October 25 (ML093000127 and ML093000141), October 26 (ML093000506), and October 28 (collectively, "the application"), Constellation Energy Nuclear Group, LLC (CENG or the applicant) (on behalf of Calvert Cliffs Nuclear Plant, Inc., Nine Mile Point Nuclear Station, LLC, and R.E. Ginna Nuclear Power Plant, LLC) and EDF Development, Inc. (EDF Development) requested that the Nuclear Regulatory Commission (NRC), pursuant to Section 184 of the Atomic Energy Act of 1954, as amended, Title 10 of the *Code of Federal Regulations* (10 CFR) Section 50.80, and 10 CFR 72.50, consent to the indirect license transfers that would be effected by the indirect transfer of control of CENG's ownership and operating interests in the below listed Nuclear Power Plants due to the proposed corporate restructuring action described below and a planned investment by EDF Development whereby it would acquire a 49.99% ownership interest in CENG.

The following units are considered in this safety evaluation (SE):

Calvert Cliffs Nuclear Power Plant, Unit No. 1; DPR-53
Calvert Cliffs Nuclear Power Plant, Unit No. 2; DPR-69
Nine Mile Point Nuclear Station, Unit No. 1; DPR-63
Nine Mile Point Nuclear Station, Unit No. 2; NPF-69
R.E. Ginna Nuclear Power Plant; DPR-18

CENG also requested NRC approval of the proposed conforming license amendments pursuant to 10 CFR 50.90 and 10 CFR 72.56 to reflect the transfer action and the change to the corporate form of Calvert Cliffs Nuclear Power Plant, Inc. to Calvert Cliffs Nuclear Power Plant, LLC, so that these amendments can be implemented upon the closing of the proposed transaction. In addition, Calvert Cliffs Nuclear Power Plant, Inc. seeks NRC approval for the indirect transfer of control for the Calvert Cliffs Independent Spent Fuel Storage Installation (ISFSI), Materials License No. SNM-2505.

On October 9, 2009, the NRC issued orders approving the direct and indirect transfers of licenses for the Calvert Cliffs Nuclear Power Plant (CCNPP), R.E. Ginna Nuclear Power Plant (Ginna), and Nine Mile Point (NMP) necessary to implement corporate restructuring activities involving certain subsidiaries of Constellation Energy Group, Inc, and an investment by EDF Development, Inc.

By letter dated October 19, 2009, CENG advised that in lieu of a nearly concurrent completion of the proposed corporate restructuring of the CEG subsidiaries and the proposed EDF investment, CEG will complete the restructuring activities for the CEG subsidiaries at least eight days prior to closing the transaction involving EDF.

By 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 restructuring activities and the indirect transfers resulting from the acquisition of 49.99% of CENG by EDF. The letter dated October 25, 2009, contained a revised Operating Agreement that will apply upon the completion of the transaction involving EDF.

The NRC concluded that the October 9, 2009 Order must be modified in light of the new information provided in CENG's letters of October 19 through 28, 2009. First, as a technical matter, the changes in financial arrangements provided in the supplements dated October 25 through 28 necessitate conforming changes in the Order. Second, the safety evaluation issued with the October 9 Order was based on the understanding that the restructuring and EDF investment license transfers require general actions that would be nearly concurrent. The conditions of the Order were written with that in mind, and partial implementation of the Order could lead to an ambiguous state where some of the conditions could be impossible to fulfill.

The proposed corporate restructuring involving several of the CEG subsidiaries are considered separate license transfers, and as such, require NRC regulatory review and approval.

The supplemental information of February 26, April 8, June 25, July 27, October 15, 19, 25 and 26, 2009, to the application did not expand the scope of the application as originally noticed in the *Federal Register* or change the generic no significant hazards consideration determination.

2.0 BACKGROUND

According to the application, Constellation Energy Group, Inc. (CEG) and EDF Development announced an investment agreement on December 17, 2008, under which EDF Development would acquire a 49.99% ownership interest in CENG, which is the parent company of the owners and operators of the licensed facilities discussed herein. 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. (EDFI), a "société anonyme," organized under the laws of France.

At the completion of all restructuring activities, CEG will hold a 50.01% ownership interest in CENG and will remain the controlling parent company of the licensee subsidiaries of CENG (the CENG Companies) that are the licensed owners and operators of the CENG nuclear facilities (the Facilities). According to the application, no adverse change is proposed in the organization or alignment of the CENG Companies as a result of the proposed transaction and proposed restructuring.

As described in the application, CENG will be involved in a reorganization (through merger or other transactions) and will emerge from the planned restructuring and proposed transaction as a successor "CENG," a Maryland limited liability company, with the corporate governance structure further outlined in the application.

Constellation Nuclear Power Plants, Inc. is an intermediate parent company and the direct parent company of the licensed subsidiaries for the two CENG plants located in New York State (R.E. Ginna and Nine Mile Point Nuclear Station). Constellation Nuclear Power Plants, Inc. will convert to a Delaware limited liability company and become Constellation Nuclear Power Plants, LLC which will become an intermediate holding company for all the licensees.

In addition, according to the applicant, prior to the final acquisition of 49.99% of CENG by EDF, Calvert Cliffs Nuclear Power Plant, Inc. (CCNPP, Inc.) will become Calvert Cliffs Nuclear Power Plant, LLC (CCNPP, LLC) by Constellation Nuclear Power Plants, LLC forming a subsidiary, CCNPP, LLC, which will merge with CCNPP, Inc., with CCNPP, LLC as the surviving entity. Calvert Cliffs Nuclear Power Plant, LLC will then be a direct subsidiary of Constellation Nuclear Power Plants, LLC in the same manner as NMP and Ginna. The conversion of CCNPP, Inc. to an LLC involves direct license transfers and will require issuance of license amendments.

According to the application and supplements, the corporate restructuring of CEG subsidiaries and proposed transaction involving EDF will not affect the qualifications of CENG and its subsidiaries to own and operate their licensed facilities in accordance with the existing Licenses. The applicant also states that the corporate restructuring of CEG subsidiaries and proposed transaction involving EDF will not result in any adverse changes to their financial qualifications or decommissioning funding assurance.

3.0 REGULATORY EVALUATION

The applicants' request for the approval of the indirect transfer of the licenses for the units discussed in this SE, is made pursuant to 10 CFR 50.80, and the indirect transfer of the CCNPP ISFSI license pursuant to 10 CFR 72.50.

Section 50.80(a) of 10 CFR states:

> No license for a production or utilization facility … or any right hereunder, shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, unless the Commission shall give its consent in writing.

Section 72.50(a) of 10 CFR states:

> No license or any part included in a license issued under this part for an ISFSI or MRS [Monitored Retrievable Storage Facilities] shall be transferred, assigned, or in any manner disposed of [...] unless the Commission gives its consent in writing.

In addition, the requirements of 10 CFR 50.80(b) and (c), and 10 CFR 72.50 (b) and (c) apply. The restructuring of CCNPP, Inc. by merger is a direct transfer governed by 10 CFR 50.80. Section 50.80(b) states that an application for a license transfer shall include as much information described in 10 CFR 50.33 and 10 CFR 50.34, "with respect to the identity and technical and financial qualifications of the proposed transferee as would be required by those sections if the application were for an initial license."

Section 50.80(c) states that "the Commission will approve an application for the transfer of a license, if the Commission determines: (1) that the proposed transferee is qualified to be the holder of the license; and (2) that transfer of the license is otherwise consistent with applicable provisions of law, regulations, and Orders issued by the Commission pursuant thereto." Section 72.50 (b) and (c) state the same requirements regarding a license for an ISFSI. For indirect license transfers, where the licensee remains the same, the NRC staff must find that the proposed transaction, i.e., the proposed reorganization of CENG, will not affect the qualifications of the holders of the licenses.

Finally, the requirements of 10 CFR 50.40(b), "Common Standards," apply with regard to the technical and financial qualifications of the applicant. The NRC staff used the guidance in Standard Review Plan (SRP) NUREG-0800, Section 13.1.1, "Management and Technical Support Organization;" and Sections 13.1.2 - 13.1.3, "Operating Organizations," to evaluate the applicants' submittal.

4.0 Financial Qualifications

10 CFR 50.33(f) provides that each application shall state:

> Except for an electric utility applicant for a license to operate a utilization facility of the type described in 10 CFR 50.21(b) or 50.22, information sufficient to demonstrate to the Commission the financial qualification[s] of the applicant to carry out, in accordance with the regulations in this chapter, the activities for which the permit or license is sought.

10 CFR 50.2 states, in part, that an electric utility is:

> [A]ny entity that generates or distributes electricity and which recovers the cost of this electricity, either directly or indirectly, through rates established by the entity itself or by a separate regulatory authority.

The NRC staff finds that the licensees (i.e., Calvert Cliffs Nuclear Power Plant, Inc., Nine Mile Point Nuclear Station, LLC, and R.E. Ginna Nuclear Power Plant, LLC) of the following nuclear power plants, other than co-owners not involved in the proposed merger, do not qualify as electric utilities under the definition at 10 CFR 50.2:

Calvert Cliffs Nuclear Power Plant, Unit No. 1
Calvert Cliffs Nuclear Power Plant, Unit No. 2
Nine Mile Point Nuclear Station, Unit No. 1
Nine Mile Point Nuclear Station, Unit No. 2
R.E. Ginna Nuclear Power Plant

In accordance with 10 CFR 50.33(f), a non-utility applicant must provide information sufficient to demonstrate its financial qualifications to carry out the activities for which the license is being sought. The information must show that the applicant possesses, or has reasonable assurance of obtaining, the funds necessary to cover estimated operating costs for the period of the license. In making this showing, the applicant must submit estimated total annual operating costs for the first 5 years of facility operations and indicate the source of funds to cover these costs. For license (direct or indirect) transfers, the relevant 5-year period is that immediately following the proposed license transfer. For indirect license transfers, the information submitted must demonstrate that the corporate restructuring and indirect transfers will not affect the technical and financial qualifications of the licensees.

Also, 10 CFR 50.33(k)(1) requires that the licensees for the above named units must provide information as described in 10 CFR 50.75 demonstrating that there will be no effect on the licensees' provision of reasonable assurance that funds will be available to decommission the above named units. The applicant's proposal for decommission funding assurance is discussed in Section 5.0 of this SE.

The NRC staff evaluated whether the financial qualifications of the licensees would be affected by the proposed transfers in a manner that is consistent with the guidance provided in NUREG-1577, Rev. 1, "Standard Review Plan (SRP) on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance," dated March 1999. The NRC staff reviewed the applicant's financial projections for reasonableness of estimated operating costs, reasonableness of financial projections and underlying assumptions, and sensitivity of plant revenue projections.

The staff reviewed the supplemental financial information submitted on October 25, 2009, October 26, 2009 and October 28, 2009 to determine if the applicant possesses or has reasonable assurance of obtaining the funds necessary to cover estimated operating costs for the period of the license.

4.1 Indirect Transfers of Licenses Necessary to Implement Corporate Restructuring Activities Involving Certain Subsidiaries of Constellation Energy Group, Inc.

4.1.1 Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2

Calvert Cliffs Nuclear Power Plant, Inc. (CCNPP, Inc.) is the 100.0% owner and licensed operator of the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2 (CCNPP 1 and 2). CCNPP, Inc. also maintains an ISFSI on the site of the CCNPP 1 and 2. CCNPP, Inc. is a wholly owned subsidiary of CENG.

According to the applicant, there will be no change in the financial qualifications of CCNPP, Inc., as a result of the indirect transfer of licenses necessary to implement corporate restructuring of CEG subsidiaries. CCNPP, Inc.'s revenue is provided from a power purchase agreement with a subsidiary of CE Commodities Group, Inc, which extends through December 2009. The revenues under this power purchase agreement are not affected by changes in the market price of energy.

The following is an abbreviated version of the projected income statement submitted as part of the application.

TABLE 1
(ABBREVIATED) PROJECTED INCOME STATEMENT
CALVERT CLIFFS NUCLEAR POWER PLANT, INC.
(UNIT NOS. 1 AND 2)
$million

	2009	**2010**	**2011**	**2012**	**2013**
Total Revenue:	**[**				**]**
Total Oper. Exp.:	**[**				**]**
Oper. Income:	**[**				**]**
Less: Exps. & Tax:	**[**				**]**
Net Income:	**[**				**]**

Staff review indicates that the supporting data supplied in the application as the basis for this summary projected income statement appear to be reasonable. The staff finds that CCNPP, Inc.'s Projected Income Statement at a 100.0% ownership level shows that CCNPP, Inc.'s anticipated revenues from sales of energy and capacity from the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, will exceed CCNPP 1 and 2's anticipated expenses during the 5-year period summarized in the projections.

In the October 26, 2009 submittal, the licensee reaffirmed that there were no changes to the operating and maintenance cost estimates from the January 22, 2009 application. In addition, the applicant submitted copies of inter-company credit agreements to the NRC on October 25, 2009 (ADAMS Accession No. ML093000127 and ML093000141). The credit agreement for CCNPP 1 and 2 provides approximately $105 million in financial support, which is sufficient to cover a 6-month outage scenario for CCNPP 1 and 2.

In the October 26, 2009 submittal, the applicant also referenced the establishment of an initial cash pool balance of $225M funded by capital contributions. The applicant stated that CENG operates a cash pooling arrangement for the benefit of the licensees addressed in the application, including CCNPP 1 and 2.

Accordingly, based on the above, the NRC staff finds that CCNPP, Inc. has reasonable assurance of obtaining the funds necessary to cover estimated operating costs for the period of the license, including a 6-month outage, and thus will continue to be financially qualified to hold the license, notwithstanding the proposed license transfers related to corporate restructuring of CEG's subsidiaries.

4.1.2 <u>Calvert Cliffs Independent Spent Fuel Storage Installation</u>

The requirements of 10 CFR 72.50 state:

> No license or any part included in a license issued under this part for an ISFSI or MRS [Monitored Retrievable Storage Facilities] shall be transferred, assigned, or in any manner disposed of [...] unless the Commission gives its consent in writing.

Further, 10 CFR 72.50(b) states:

> An application for transfer of a license must include as much of the information described in §§ 72.22 and 72.28 with respect to the identity and the technical and financial qualifications of the proposed transferee as would be required by those sections if the application were for an initial license.

The NRC staff notes that the cost of casks used to store spent nuclear fuel in the Calvert Cliffs ISFSI are included as part of the nuclear fuel batch cost and are recorded as expenses in TABLE 1 above. Operating costs resulting from loading spent nuclear fuel into casks for storage in the Calvert Cliffs ISFSI are included in the projections for Operations and Maintenance (O&M), which are included in the "Total Oper. Exp." of TABLE 1 above.

In the October 26, 2009 submittal, the licensee confirmed that there were no changes to the operating and maintenance cost estimates (including the Calvert Cliffs ISFSI) from the January 22, 2009 application.

Accordingly, the NRC staff finds that CCNPP, Inc. has reasonable assurance of obtaining the funds necessary to cover estimated operating costs for the period of the license, and thus will continue to be financially qualified to hold the Calvert Cliffs ISFSI license held notwithstanding the proposed license transfers related to corporate restructuring of CEG's subsidiaries

4.1.3. Nine Mile Point Nuclear Station, Unit Nos. 1 and 2

Nine Mile Point Nuclear Station, LLC, (NMPNS) is the 100.0% owner and licensed operator of Nine Mile Point, Unit No. 1 (NMP 1). NMPNS is the 82.0% owner and licensed operator of Nine Mile Point, Unit No. 2, and Long Island Power Authority owns the remaining 18% of Nine Mile Point, Unit No. 2 (NMP 2). NMPNS is a wholly-owned indirect subsidiary of CENG.

According to the applicant, there will be no change in the financial qualifications of NMPNS, as a result of the proposed transaction. The Projected Income Statement includes the projected revenue that is expected from the sale of (approximately) 90% of the facility's total output under the Power Purchase Agreements. Other output is sold at market prices. The Power Purchase Agreement for NMP 1 terminates in August 2009, and the projections then include sales of 100% from NMP 1 at market prices. According to the application, the Power Purchase Agreement for NMP 2 terminates in November 2011, and a revenue sharing agreement (RSA) becomes effective for 10 years.

The following is an abbreviated version of the projected income statement submitted as part of the application.

TABLE 2
(ABBREVIATED) PROJECTED INCOME STATEMENT
NINE MILE POINT NUCLEAR STATION, LLC
(UNIT NOS. 1 AND 2)
(100.0% of UNIT 1)
(82.0% of UNIT 2)
$million

	2009	2010	2011	2012	2013
Total Revenue:	**[**				**]**
Total Oper. Exp.:	**[**				**]**
Oper. Income:	**[**				**]**
Less: Exps. & Tax:	**[**				**]**
Net Income:	**[**				**]**

Staff review indicates that the supporting data supplied in the application as the basis for this summary Projected Income Statement appear to be reasonable. The staff finds that NMPNS's Projected Income Statement at the stated ownership level shows that NMPNS's anticipated revenues from sales of energy and capacity from NMP 1 and 2, will exceed NMP 1 and 2's anticipated expenses during the 5-year period by the projections.

In the October 26, 2009 submittal, the licensee reaffirmed that there were no changes to the operating and maintenance cost estimates from the January 22, 2009 application. The staff finds that NMP 1 and 2's anticipated revenues from sales of energy and capacity from the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, will exceed NMP 1 and 2's anticipated expenses during the 5-year period summarized in the projections.

In addition, the applicant submitted copies of inter-company credit agreements to the NRC on October 25, 2009 (ADAMS Accession No. ML093000127 and ML093000141). The credit agreement for NMP 1 and 2 provides approximately $120 million in financial support, which is sufficient to cover a 6-month outage scenario the plant.

In the October 26, 2009 submittal, the applicant also referenced the establishment of an initial cash pool balance of $225M funded by capital contributions. The applicant stated that CENG operates a cash pooling arrangement for the benefit of the licensees addressed in the application, including NMP 1 and 2.

Accordingly, based on the above, the NRC staff finds that NMP 1 and 2 has reasonable assurance of obtaining the funds necessary to cover estimated operating costs for the period of the license, including a 6-month outage, and thus will continue to be financially qualified to hold the license, notwithstanding the proposed license transfers related to corporate restructuring of CEG's subsidiaries.

4.1.4. R.E. Ginna Nuclear Power Plant

R.E. Ginna Nuclear Power Plant, LLC (R.E. Ginna, LLC) is the 100.0% owner and licensed operator of the R.E. Ginna Nuclear Power Plant (Ginna).

According to the applicant, there will be no change in the financial qualifications of R.E. Ginna, LLC, as a result of the proposed transaction. The Projected Income Statement includes the projected revenue that is expected under the power purchase agreement with Rochester Gas & Electric, which will terminate on July 1, 2014.

The following is an abbreviated version of the Projected Income Statement submitted as part of the application.

TABLE 3
(ABBREVIATED) PROJECTED INCOME STATEMENT
R. E. GINNA NUCLEAR POWER PLANT, LLC
$million

	2009	2010	2011	2012	2013
Total Revenue:	**[**				**]**
Total Oper. Exp.:	**[**				**]**
Oper. Income:	**[**				**]**
Less: Exps. & Tax:	**[**				**]**
Net Income:	**[**				**]**

The application indicates that Ginna has a negative net income for the period of 2009-2013. In addition, the 5-year cashflow projections included in the application show a negative cashflow for 2009, 2011, and 2012. Based solely on the Projected Income Statement above, and cashflow statements included in the application, the NRC staff would be unable to find that R.E. Ginna, LLC has reasonable assurance of obtaining the funds necessary to cover estimated operating costs for the period of the license.

The NRC staff has previously made only one finding of reasonable assurance of financial qualifications for a plant with a negative income statement as part of an indirect license transfer. The finding, summarized in the April 11, 2008, safety evaluation for an indirect transfer related to a restructuring of Entergy Corporation (ADAMS Accession No. ML080920596), addressed a negative income statement for Vermont Yankee Nuclear Power Station (VY). The NRC staff found VY financially qualified, based in part on additional financial assurance provided by support agreements put in place by Entergy Corporation, the parent company of VY, and access to a line of credit.

In the October 26, 2009 submittal, the licensee reaffirmed that there were no changes to the operating and maintenance cost estimates from the January 22, 2009 application.

In addition, the applicant submitted copies of inter-company credit agreements to the NRC on October 25, 2009 (ADAMS Accession No. ML093000127 and ML093000141). The credit agreement provides **[ ]** million in financial support for Ginna, which is sufficient to cover a 6-month outage scenario for Ginna, plus an additional **[ ]** in additional assurance.

In the October 26, 2009 submittal, the applicant also referenced the establishment of an initial cash pool balance of $225M funded by capital contributions. The applicant stated that CENG operates a cash pooling arrangement for the benefit of the licensees addressed in the application, including Ginna.

On October 25, 2009 the licensee provided updated drafts of master demand notes describing loan arrangements for each plant, as well as updated net income statements. For Ginna, the master demand note stated that CENG agrees to make available and lend to R.E. Ginna, LLC a total principal amount of at least **[ ]** if so requested by R.E. Ginna, LLC. **[ ]** is sufficient to cover the largest annual projected negative cash flow amount for Ginna, as submitted in the 5-year projected income statement included in the January 22, 2009 applicant and updated in the October 25, 2009 letter. The master demand notes, in the amount of **[ ]**, will remain in place prior to and following the proposed EDF acquisition of a 49.99% interest in CENG.

Therefore, the NRC staff finds that financial assurance provided in cash pooling arrangements, the inter-company credit agreements submitted on October 25, 2009, and the master demand notes submitted on October 25, 2009, would result in sufficient revenue funds to cover anticipated maintenance and operation expenses for Ginna.

Accordingly, based on the above, the NRC staff finds that R.E. Ginna, LLC has reasonable assurance of obtaining the funds necessary to cover estimated operating costs for the period of the license, including a 6-month outage, and thus will continue to be financially qualified to hold the license, notwithstanding the proposed license transfers related to corporate restructuring of CEG's subsidiaries.

4.1.5 Constellation Energy Nuclear Group Companies

On October 25th, the applicant submitted intercompany company credit agreements in the amount of **[ ]**. The respective amounts of funding available under the intercompany credit agreements are **[ ]** for CCNPP 1 and 2, **[ ]** for NMP 1 and 2, and **[ ]**for Ginna. The respective amounts of these agreements will be sufficient to fund the estimated approved and fixed operating and maintenance expenses at each site for a period of time of at least 6 months. On October 28th, the applicant submitted additional financial information which confirmed that there had been no change to the estimated six month fixed operating and maintenance expenses at each site, which were originally submitted on January 22, 2009. At the time of the final transfer related to EDF's acquisition of 49.99% of CEG, these intercompany credit agreements will be replaced by the support agreements submitted on February 26, 2009.

On October 26, 2009, the applicant also referenced the establishment of an initial cash pool balance of $225M funded by capital contributions. The applicant stated that CENG operates a cash pooling arrangement for the benefit of the licensees.

On October 25, 2009 the licensee provided updated drafts of master demand notes describing loan arrangements for each plant, as well as updated net income statements. For Ginna, the master demand note stated that CENG agrees to make available and lend to R.E. Ginna, LLC a total principal amount of at least **[ ]** which is sufficient to cover the largest annual projected negative cash flow amount for Ginna, as submitted in the 5-year projected income statement included in the January 22, 2009 applicant and updated in the October 25, 2009 letter. The master demand notes will remain in place prior to and following the proposed EDF acquisition of a 49.99% interest in CENG.

4.1.6. Conclusion of Financial Qualifications Related to Indirect Transfers of Licenses Necessary to Implement Corporate Restructuring Activities Involving Certain Subsidiaries of Constellation Energy Group, Inc.

In view of the foregoing, the NRC staff concludes that the projected income statements, the updated Operating Agreement, the intercompany credit agreements, and master demand notes submitted by the applicant provide sufficient financial assurance to demonstrate reasonable assurance that direct sources of funding are available to cover operating and maintenance costs for each site, as needed. In consideration of all the foregoing, the NRC staff finds that the financial qualifications of the licensees for the subject units and ISFSI will not be adversely affected by the proposed license transfers related to corporate restructuring of CEG's subsidiaries.

To ensure that CENG and the licensees will continue to have an adequate source of funds, the NRC staff notes that the support agreements referenced in the applications should be subject to the following conditions of the Order approving the proposed license transfers related to the CEG restructuring, essentially as follows:

> (a) The Inter-Company Credit Agreements (ICA) described in the October 25, 2009, supplement to the Application (up to $305 million) 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 ten 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.

4.2 Indirect Transfers of Licenses Related to The Proposed EDF Acquisition of a 49.99% Interest in CENG

4.2.1 Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2

On February 26, 2009, the applicant submitted two support agreements to the NRC (ADAMS Accession No. ML090290102). These support agreements provide approximately $290 million in financial support from CEG and EDF, which is sufficient to cover a 6-month outage scenario for the five plants addressed in the application.

The applicant also referenced working capital funding arrangements outlined in Article IV of the CENG Operation Agreement (Attachment 3 of the application). The applicant stated that the CENG Operating Agreement provides working capital support to advance any needed and approved daily or weekly funds to the operating subsidiaries to allow these subsidiaries to fund their short-term obligations.

Therefore, the NRC staff finds that funds provided in Article IV of the Operating Agreement, the two support agreements submitted on February 26, 2009, for $290 million, and the master demand notes submitted on October 25, 2009, would result in sufficient revenue funds to cover anticipated maintenance and operation expenses for CCNPP 1 and 2.

Accordingly, based on the above, the NRC staff finds that CCNPP, Inc. has reasonable assurance of obtaining the funds necessary to cover estimated operating costs for the period of the license, including a 6-month outage, and thus will continue to be financially qualified to hold the license, subsequent to the indirect license transfer related to the proposed acquisition of 49.99% of CENG by EDF.

4.2.2 Calvert Cliffs Independent Spent Fuel Storage Installation

The NRC staff notes that the cost of casks used to store spent nuclear fuel in the Calvert Cliffs ISFSI are included as part of the nuclear fuel batch cost and are recorded as expenses in TABLE 1 above. Operating costs resulting from loading spent nuclear fuel into casks for storage in the Calvert Cliffs ISFSI are included in the projections for Operations and Maintenance (O&M), which are included in the “Total Oper. Exp.” of TABLE 1 above.

In the October 26, 2009 submittal, the licensee confirmed that there were no changes to the operating and maintenance cost estimates (including the Calvert Cliffs ISFSI) from the January 22, 2009 application.

Accordingly, the NRC staff finds that CCNPP, Inc. has reasonable assurance of obtaining the funds necessary to cover estimated operating costs for the period of the license, and thus will continue to be financially qualified to hold the license, subsequent to indirect license transfer related to the proposed acquisition of 49.99% of CENG by EDF.

4.2.3 Nine Mile Point Nuclear Station, Unit Nos. 1 and 2

On February 26, 2009, the applicant submitted two support agreements to the NRC (ADAMS Accession No. ML090290102). These support agreements provide approximately $290 million in financial support from CEG and EDF, which is sufficient to cover a 6-month outage scenario for the five plants addressed in the application.

The applicant also referenced working capital funding arrangements outlined in Article IV of the CENG Operation Agreement (Attachment 3 of the application). The applicant stated that the CENG Operating Agreement provides working capital support to advance any needed and approved daily or weekly funds to the operating subsidiaries to allow these subsidiaries to fund their short-term obligations.

Therefore, the NRC staff finds that funds provided in Article IV of the Operating Agreement, the two support agreements submitted on February 26, 2009, for $290 million, and the master demand notes submitted on October 25, 2009, would result in sufficient revenue funds to cover anticipated maintenance and operation expenses for NMP 1 and 2.

Accordingly, based on the above, the NRC staff finds that NMPNS has reasonable assurance of obtaining the funds necessary to cover estimated operating costs for the period of the license, including a 6-month outage, and thus will continue to be financially qualified to hold the license, subsequent to the indirect license transfer related to the proposed acquisition of 49.99% of CENG by EDF.

4.2.4 R.E. Ginna Nuclear Power Plant

On February 26, 2009, the applicant submitted two support agreements to the NRC (ADAMS Accession No. ML090290102). These support agreements provide approximately $290 million in financial support from CEG and EDF, which is sufficient to cover a 6-month outage scenario for the five plants addressed in the application.

The applicant also referenced working capital funding arrangements outlined in Article IV of the CENG Operation Agreement (Attachment 3 of the application). The applicant stated that the CENG Operating Agreement provides working capital support to advance any needed and approved daily or weekly funds to the operating subsidiaries to allow these subsidiaries to fund their short-term obligations.

On October 25, 2009 the licensee provided updated drafts of master demand notes describing loan arrangements for each plant, as well as updated net income statements. For Ginna, the master demand note stated that CENG agrees to make available and lend to R.E. Ginna, LLC a total principal amount of at least **[ ]** if so requested by R.E. Ginna, LLC. **[ ]** is sufficient to cover the largest annual projected negative cash flow amount for Ginna, as submitted in the 5-year projected income statement included in the January 22, 2009 applicant and updated in the October 25, 2009 letter. The master demand notes, in the amount of **[ ]**, will remain in place prior to and following the proposed EDF acquisition of a 49.99% interest in CENG

Therefore, the NRC staff finds that funds provided in Article IV of the Operating Agreement, the two support agreements submitted on February 26, 2009, for $290 million, and the master demand notes submitted on October 25, 2009, would result in sufficient revenue funds to cover anticipated maintenance and operation expenses for Ginna.

Accordingly, based on the above, the NRC staff finds that R.E. Ginna, LLC has reasonable assurance of obtaining the funds necessary to cover estimated operating costs for the period of the license, including a 6-month outage, and thus will continue to be financially qualified to hold the license, subsequent to the indirect license transfer related to the proposed acquisition of 49.99% of CENG by EDF.

4.2.5 <u>Constellation Energy Nuclear Group Companies</u>

According to the application, CEG and EDF Development will also provide CENG with appropriate working capital funding arrangements to meet anticipated or unanticipated financial requirements. Article IV of the CENG Operating Agreement provides provisions for additional capital contributions and capital advances or loans from CEG and EDF Development, if needed. The applicant states that these agreements will enable CENG to provide working capital support to advance any needed and approved daily or weekly funds to the operating subsidiaries to allow these subsidiaries to fund their short-term obligations.

On February 26, 2009, the applicant submitted two support agreements in the amount of $290 million. The respective amounts of funding available under the support agreements will be sufficient to fund the estimated approved and fixed operating and maintenance expenses at each site for a period of time of at least 6 months. Further, the applicant states that the support agreements will be available to be drawn upon if the aggregate and approved financial requirements of the CENG Companies exceed the short-term funding capacity provided by existing working capital funding arrangements, and thus will provide additional assurance of the financial qualifications of CENG and the CENG Companies.

On October 25, 2009 the licensee provided updated drafts of master demand notes describing loan arrangements for each plant. For Ginna, the master demand note stated that CENG agrees to make available and lend to R.E. Ginna, LLC a total principal amount of at least **[ ]** if so requested by R.E. Ginna, LLC. **[ ]** is sufficient to cover the largest annual projected negative cash flow amount for Ginna, as submitted in the 5-year projected income statement included in the January 22, 2009 applicant and updated in the October 25, 2009 letter. The master demand notes, in the amount of **[ ]**, will remain in place prior to and following the proposed EDF acquisition of a 49.99% interest in CENG.

4.2.6 <u>Conclusion of Financial Qualifications Related to Proposed EDF Acquisition of a 49.99% Interest in CENG.</u>

In view of the foregoing, the NRC staff concludes that the projected income statements, the Operating Agreement, support agreements, and master demand notes submitted by the applicant provide sufficient financial assurance to demonstrate reasonable assurance that direct sources of funding are available to cover operating and maintenance costs for each site, as needed. In consideration of all the foregoing, the NRC staff finds that the financial qualifications of the licensees for the subject units and ISFSI will not be adversely affected by the proposed indirect license transfer related to the acquisition of 49.99% of CENG by EDF.

However, to ensure that CENG and the licensees will continue to have an adequate source of funds, the NRC staff believes that the support agreements referenced in the applications should be subject to the following conditions of the Order approving the proposed license transfers, essentially as follows:

> (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 (up to $290 million) 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 ten 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.

4.3 Direct Transfer

CENG also requested NRC approval of the proposed conforming license amendments pursuant to 10 CFR 50.90 and 10 CFR 72.56 to reflect the transfer action and the change to the corporate form of CCNPP, Inc. to CCNPP, LLC so that these amendments can be implemented upon the closing of the proposed transaction. In addition, Calvert Cliffs Nuclear Power Plant, Inc. seeks NRC approval for the indirect transfer of control for the Calvert Cliffs Independent Spent Fuel Storage Installation (ISFSI), Materials License No. SNM-2505.

As stated in the application, Calvert Cliffs Nuclear Power Plant, Inc. will become Calvert Cliffs Nuclear Power Plant, LLC through a corporate change. This will be accomplished by having Constellation Nuclear Power Plants, LLC form an LLC subsidiary that will merge with Calvert Cliffs Nuclear Power Plant, Inc. The surviving entity will be Calvert Cliffs Nuclear Power Plant, LLC, which will be a direct subsidiary of Constellation Nuclear Power Plants, LLC.

According to the application, the proposed transaction and restructuring will not affect the qualifications of CENG and its subsidiaries to own and operate their licensed facilities in accordance with the existing Licenses. The applicant submitted a 5-year projected income statement, which is discussed in this SE at page 5. The proposed transaction and restructuring will not result in any adverse changes to their financial qualifications or decommissioning funding assurance. In addition, the technical qualifications of the CENG Companies to carry out their responsibilities will remain unchanged and not be adversely affected by the proposed restructuring. The applicant submitted information regarding the technical qualifications of the licensee, which is discussed in this SE at page 14.

On July 28, 2009 CENG submitted a plan, as part of the concurrent 2009 Biennial Decommissioning Review process, which provided further information regarding decommissioning funding assurance for its licensee subsidiaries, including Calvert Cliffs Unit 1 (ADAMS Accession No. ML092160414). Attachment (2) of the July 28th submittal indicated that the market value of the decommissioning trust fund for Calvert Cliffs Unit 1 had increased to the extent that Calvert Cliffs Unit 1 was providing adequate decommissioning funding assurance as of June 30, 2009.

Based on the discussion above, the staff concludes that the applicant has complied with the requirements of 10 CFR 50.75 (b) and (c) with respect to providing decommissioning funding assurance for Calvert Cliffs Units 1 and 2, and the Calvert Cliffs ISFSI.

The NRC staff finds that the applicant has provided sufficient financial and technical information to address the applicable regulatory requirements of 10 CFR 50.33 and 10 CFR 50.80. Therefore, in accordance with 10 CFR 50.80, the NRC staff finds acceptable the proposed direct transfer of control of the CCNPP, Inc. to CCNPP, LLC.

Therefore, the NRC staff finds that CCNPP, LLC is qualified to be the holder of the facility operating licenses for CCNPP 1 and 2, and the materials license for the Calvert Cliffs ISFSI, and that the transfer of the license is otherwise consistent with applicable provisions of law, regulations, and Orders issued by the Commission pursuant thereto, subject to all of the conditions addressed in this SE.

5.0 DECOMMISSIONING FUNDING

The NRC staff has determined that the provision of reasonable assurance of decommissioning funding is necessary to ensure the adequate protection of public health and safety. The regulation at 10 CFR 50.33(k) requires that an applicant for an operating license for a utilization facility must demonstrate how reasonable assurance will be provided and that funds will be available to decommission the facility. A similar requirement is imposed on ISFSIs under 10 CFR 72.22(e).

5.1 Constellation Energy

The NRC staff notes that information regarding the status of decommissioning funding assurance for CCNPP 1 and 2, NMP 1 and 2, and Ginna, were reported to the NRC in accordance with 10 CFR 50.75(f)(1), on March 26, 2009 (ADAMS Accession No. ML090850399). The applicant states that the proposed merger will not affect the decommissioning funding arrangements previously reported. After the indirect transfers, the licensees will continue to maintain the existing decommissioning trust funds segregated from their other assets and outside their administrative control in accordance with the requirements of 10 CFR 50.75(e)(1). The trustee for all of the licensees' decommissioning funds will remain Bank of New York Mellon.

5.2 Calvert Cliffs Nuclear Power Plant Decommissioning Funding Mechanism

CCNPP, Inc. currently provides decommissioning funding assurance for CCNPP 1 and 2, through an external sinking fund.

CENG's regulated affiliate, Baltimore Gas and Electric Company (BGE), pursuant to Maryland Senate Bill 1 (signed into law in 2006), and a 1999 restructuring order from the Maryland Public Service Commission, collects an annual decommissioning charge of approximately $18.7 million from its electric customers for the Calvert Cliffs plant through its delivery service charges. In the past, BGE transferred these collected funds to CCNPP, Inc., and later CENG, in accordance with a Decommissioning Funds Collection Agent Agreement. CCNPP, Inc. and CENG then deposited the funds into the decommissioning trusts for the Calvert Cliffs plants each year. The NRC reviewed the details of the original contractual arrangement, and in its June 30, 2000, SE, concluded that, given the inter-company agreements that obligate the payments, the company was providing decommissioning funding assurance in the form of an external sinking fund tied to a non-bypassable charge, pursuant to 10 CFR 50.75(e)(ii)(B).

However, Maryland Senate Bill 1013, which was signed into law on April 24, 2008, gave effect to a settlement agreement between CENG and its affiliates and the Maryland Public Service Commission which authorized continued collections by BGE of $18.7 million annually in decommissioning charges for Calvert Cliffs through December 31, 2016. Senate Bill 1013 also directed BGE to provide credit for residential customers equal to the approximately $18.7 million dollars collected annually for decommissioning and also relieved ratepayers of all nuclear decommissioning liability for CCNPP, Inc.

Based on this information, CCNPP Inc. may no longer take credit for a non-bypassable charge and may no longer rely exclusively on an external sinking fund as its decommissioning funding assurance mechanism. It will be required to implement an alternate decommissioning funding assurance mechanism, acceptable per NRC requirements outlined in 10 CFR 50.75(e)(1), which will be used to provide decommissioning funding assurance as a condition of the direct transfers.

5.3 Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2

The application submitted on January 22, 2009 included information pursuant to 10 CFR 50.75 regarding decommissioning funding assurance. The NRC staff verified the calculations provided by the applicant in the above referenced reports and confirmed that, as of December 31, 2006, the decommissioning trust funds associated with the respective ownership interests for each of the plants involved in the proposed transaction were funded in accordance with the NRC's regulations. The applicant stated that it provides decommissioning funding assurance for the Calvert Cliffs ISFSI in accordance with 10 CFR 72.30(c)(5).

Subsequent to the above review, the NRC staff received the 2009 Biennial Decommissioning report from CENG on March 26, 2009. Based on its review of the 2009 Biennial Decommissioning report, the NRC staff determined that based on trust fund balances as of December 31, 2008, there was a potential decommissioning funding assurance shortfall of approximately $16.9 million for Calvert Cliffs Unit 1 at the time of permanent termination of operations. Information in the 2009 Biennial Decommissioning report indicated that Calvert Cliffs Unit 2 was providing adequate decommissioning funding assurance, including a projected surplus of $82 million.

On July 28, 2009 Constellation submitted a plan, as part of the concurrent 2009 Biennial Decommissioning Review process, which provided further information regarding decommissioning funding assurance for its licensee subsidiaries, including Calvert Cliffs Unit 1 (ADAMS Accession No. ML092160414). Attachment (2) of the July 28th submittal indicated that the market value of the decommissioning trust fund for Calvert Cliffs Unit 1 had increased to the extent that Calvert Cliffs Unit 1 was providing adequate decommissioning funding assurance as of June 30, 2009.
Based on the discussion above, the staff concludes that the applicant has complied with the requirements of 10 CFR 50.75 (b) and (c) with respect to providing decommissioning funding assurance for Calvert Cliffs Units 1 and 2, and the Calvert Cliffs ISFSI.

5.4 Nine Mile Point Nuclear Station, Unit Nos. 1 and 2

NMPNS, LLC currently provides decommissioning funding assurance for NMP 1, and its share of NMP 2, through existing prepaid decommissioning trust assets, in accordance with 10 CFR 50.75(e)(1)(I).

In a separate action, pursuant to the 2009 Biennial Decommissioning Report submitted to the NRC by CENG on March 26, 2009, the NRC staff reviewed the financial assurance for decommissioning provided by NMP 1 and 2. Based on its review, the NRC staff projected a potential shortfall at the time of permanent termination of operations in the decommissioning funding assurance provided for NMP 1 and 2. The NRC staff will resolve the shortfalls in an independent action, pursuant to the Decommissioning Funding Status Plan submitted by CENG to the NRC on July 29, 2009.

5.5 R.E. Ginna Nuclear Power Plant

R.E. Ginna, LLC currently provides decommissioning funding assurance through existing prepaid decommissioning trust assets, in accordance with 10 CFR 50.75(e)(1)(I).

Based on its review of the 2009 Biennial Decommissioning Report, the NRC staff projected a potential shortfall at the time of permanent termination of operations in the decommissioning funding assurance provided for Ginna. The NRC staff will resolve the shortfalls in an independent action, pursuant to the Decommissioning Funding Status Plan submitted by CENG to the NRC on July 29, 2009.

5.6 Conclusion of Decommissioning Funding Assurance

The decision criterion applied to an indirect license transfer case is whether the proposed shift in ultimate corporate control will affect the licensee's existing financial qualifications. The NRC staff finds the indirect license transfers of control approved by the Order for CCNPP 1 and 2, the CCNPP ISFSI, and NMP 1 and 2, and Ginna will not affect the amounts of decommissioning funding assurance of funding available for these units or the acceptable methods to cover any funding shortfalls.

However, because CCNPP, Inc. may no longer take credit for a non-bypassable charge and may no longer rely exclusively on an external sinking fund as its decommissioning funding assurance mechanism, the following condition should be included in the Order approving the direct license transfers for CCNPP, LLC, and in the licenses, essentially as follows:

> CCNPP, LLC may no longer rely exclusively on an external sinking fund as its decommissioning funding assurance mechanism and will be required to implement an alternate decommissioning funding assurance mechanism, acceptable per NRC requirements outlined in 10 CFR 50.75(e)(1), which will be used to provide decommissioning funding assurance.

6.0 TECHNICAL QUALIFICATIONS

The proposed transaction arises from an investment agreement between CEG, CENG, EDF Development, and EDFI, for the acquisition by EDF Development of an ownership interest in CENG, which manages the nuclear generation and operation business of CEG. Following the proposed indirect license transfers for both the CEG corporate restructuring activities and the proposed proposed EDF acquisition of a 49.99% interest in CENG, CEG will continue to possess ownership interest in CENG until the final transfer involving EDF Development. The proposed governance structure is designed to assure continued U.S. control by CEG over CENG with respect to matters related to nuclear safety, security, and reliability. For non-operational purposes, the name of CCNPP, Inc. will be changed to CCNPP, LLC, and will require a license amendment. Ginna, LLC and NMPNS, LLC do not require license amendments; however, the corporate restructuring will convert Constellation Nuclear Power Plants, Inc. (an intermediate holding company over Ginna, LLC and NMPNS, LLC) to a Delaware limited liability company, and become Constellation Nuclear Power Plants, LLC, which will become an intermediate holding company for all of the licensed entities (Ginna, LLC, NMPNS, LLC, and the proposed CCNPP, LLC).

6.1 Management and Technical Support Organization

The NRC staff reviewed the applicants' submittal to determine the acceptability of the proposed corporate management and technical support organization. The NRC staff evaluated the submittal using the applicable acceptance criteria contained in SRP Section 13.1.1, "Management and Technical Support Organization."

In its letter dated January 22, 2009, CENG stated, "Calvert Cliffs Nuclear Power Plant, Inc. would be renamed Calvert Cliffs Nuclear Power Plant, LLC." CCNPP, Inc. is currently a wholly-owned direct subsidiary of CENG, and the owner and licensed operator of CCNPP 1 and 2. CENG requests the name change for non-operational purposes. CENG also stated, "there would be no change in the management structure or governance of the licensee as a result of the reorganization, or any changes to the technical staff or day-to-day operations of the licensed Facilities." The letter also stated, "Calvert Cliffs Nuclear Power Plant, LLC will continue to be managed by a board of directors composed of the same directors that currently serve on the Calvert Cliffs Nuclear Power Plant, Inc. board." CENG's submittal indicated that the proposed corporate structure establishes an action plan consisting of significant measures to ensure that prior to, during, and after consummation of the transaction, CEG will retain control over CENG with respect to all matters relating to the safety and security of its nuclear fleet.

The January 22, 2009, submittal stated that CENG and EDF Development each will appoint members to a new CENG Board of Directors, with a final vote on matters related to safety, security and reliability reserved exclusively to the chairman of CENG. The January 22, 2009, submittal further stated, "The CNO [Chief Nuclear Officer] will continue to have both the responsibilities and authorities to direct any actions as necessary to assure compliance with regulatory requirements or provide for the protection of public health and safety. In the event that a CENG Board action is needed to support an action that in the judgment of the CNO is necessary to assure compliance with regulatory requirements or provide for the protection of public health and safety and the CENG Board is deadlocked, then the CENG Board Chairman has a casting vote regarding implementation of the action."

The submittal stated, "The technical qualifications of the CENG Companies to carry out their responsibilities under the Licenses are not affected by the proposed transaction. Both before and after the acquisition by EDF Development of an ownership interest in CENG and the proposed restructuring actions, essentially the same nuclear organization and staff will be responsible for the operation and maintenance." This statement applied to CCNPP 1 and 2, NMP 1 and 2, and Ginna. The submittal also indicated that the proposed transaction creates an opportunity for CEG to utilize EDF expertise and knowledge acquired from the nuclear experience of EDF. The submittal also stated, "The proposed elimination of Constellation Nuclear Power Plants, Inc. and the conversion of Calvert Cliffs Nuclear Power Plant, Inc. into a limited liability company will not affect the technical qualifications of the licensees."

Based on CENG's submittal, the applicants have shown and described their organization for managing, and their means for providing technical support will be equivalent to the current qualifications of the Facilities' management and technical support organization, regarding which the NRC staff is aware of no deficiencies. Therefore, the technical qualifications of CENG to carry out their responsibilities will remain unchanged and not be adversely affected by the proposed restructuring. Accordingly, the NRC staff concludes that the proposed organization for managing and its means of providing technical support for the continued operation of the Facilities under both normal and off-normal conditions are in accordance with SRP Section 13.1.1, "Management and Technical Support Organization."

6.2 Operating Organization

The NRC staff reviewed CENG's submittal to determine the acceptability of the Facilities' operating organization and to evaluate changes to the operating organization proposed as a result of the license transfer. The initial operating organization was determined to be acceptable by the initial licensing review. Subsequent safety-related changes to the operating organization should have been evaluated with an appropriate methodology. Therefore, the existing operating organization remains acceptable. The NRC staff's review focused on evaluating any changes to the operating organization proposed as a result of the transfer. The NRC staff evaluated the applicant's submittal using the applicable acceptance criteria contained in SRP Section 13.1.2-13.1.3, "Operating Organizations."

CENG's submittal indicated that essentially the same nuclear organization and staff will be responsible for the operation and maintenance of the Facilities. The submittal stated, "Neither does the proposed transaction or restructuring require any change in the staffing and qualifications of personnel who operate the plants." Therefore, the technical qualifications of CENG to carry out their responsibilities under Operating Licenses DPR-53, DPR-69, DPR-63, NPF-69, and DPR-18 will remain unchanged and not adversely affected by the proposed restructuring.

Since the operating organizations and personnel responsible for the operation and maintenance of the Facilities will not be affected by the indirect transfer, the NRC staff concludes that the CENG Companies' onsite organizations established to operate and maintain the Facilities under both normal and off-normal conditions are in accordance with SRP Section 13.1.2-13.1.3, "Operating Organizations."

6.3 Summary

CENG has described the corporate level management, technical support organization, and the onsite operating organization that will be responsible for the operation and maintenance of CCNPP 1 and 2, NMP 1 and 2, and Ginna following the proposed change in ownership of CENG and the proposed restructuring actions. The NRC staff concludes that CENG will have an acceptable corporate organization. The licensed entities will retain an acceptable onsite organization, and adequate resources to provide technical support for the safe operation of the plant under both normal and off-normal conditions after the proposed corporate restructuring. The CENG submittal adequately addresses the relevant requirements of 10 CFR 50.40 (b) and 10 CFR 50.80. Accordingly, in light of the foregoing evaluation, the NRC staff concludes that CCNPP, LLC, NMPNS, LLC, and R.E. Ginna, LLC will be technically qualified to hold the licenses for CCNPP 1 and 2, NMP 1 and 2, and Ginna, respectively.

7.0 ANTITRUST REVIEW

The Atomic Energy Act of 1954 as amended (AEA) does not require or authorize antitrust reviews of post-operating license transfer applications (*Kansas Gas and Electric Co., et al.* (Wolf Creek Generating Station, Unit 1), CLI-99-19, 49 NRC 441 (1999)). The application here postdates the issuance of the operating licenses for units under consideration, and therefore no antitrust review is required or authorized.

8.0 FOREIGN OWNERSHIP, CONTROL, OR DOMINATION

8.1 Background

Sections 103d and 104d of the AEA prohibit the NRC from issuing a license for a nuclear power plant to “any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government.” The NRC’s regulation, 10 CFR 50.38, contains language to implement this prohibition. The NRC staff evaluated the application in a manner that is consistent with the guidance provided in the Standard Review Plan Regarding Foreign Ownership, Control, or Domination of Applicants for Reactor Licenses, dated June 1999, to determine whether the applicant is owned, controlled, or dominated by an alien, a foreign corporation, or foreign government.

The NRC position outlined in the SRP states that "the foreign control prohibition should be given an orientation toward safeguarding the national defense and security." Further, the SRP outlines how the effects of foreign ownership may be mitigated through implementation of a "negation action plan" to ensure that any foreign interest is effectively denied control or domination over the applicant.

More specifically, the SRP states that where an applicant "is partially owned by a foreign entity, for example, partial ownership of 50% or greater, [it] may still be eligible for a license if certain conditions are imposed, such as requiring that officers and employees of the applicant responsible for special nuclear material must be U.S. citizens."

8.2 Discussion

CEG is a publicly traded company, and is currently traded on the New York Stock Exchange and widely held. According to the application, Électricité de France S.A. (EDF SA), directly and through its subsidiaries, is the largest nuclear plant owner in the world, and is the largest utility in France, where nuclear power provides nearly 80% of the country’s electricity.

The applicant states EDF SA is a Société Anonyme, a French limited company governed by a Board of Directors. The French government will hold at least 70% of the capital and voting rights of EDF SA. The business and affairs of EDF SA are managed by its Board of Directors.

The applicant further states that EDFI is a wholly-owned subsidiary of EDF SA. EDFI is a holding company that, through its subsidiaries, produces, transmits, and distributes electricity.

The business and affairs of EDFI are managed by its Board of Directors. EDF Development is a Delaware corporation and a direct wholly-owned subsidiary of EDFI. The business and affairs of EDF Development are managed by its Board of Directors.

The application states that following the conclusion of the indirect transfers, EDF Development will acquire a 49.99% ownership interest in CENG, which owns and manages CEG's nuclear generation and operation business. In addition, upon closing of the proposed transaction, EDFI will have the right to nominate a single director for appointment to the CEG Board of Directors; and prior to closing, EDF Development is entitled to have an observer seat on the CEG Board. In return for its cash infusion in CEG, EDF Development has also acquired $1 billion of non-voting, non-convertible preferred stock in CEG, which will be surrendered at closing. Under the Amended and Restated Investor Agreement provided with the application, subject to certain exceptions, EDFI may purchase and hold additional common stock in CEG not to exceed a 9.9% interest.

8.3 Negation Action Plan

The applicant submitted a negation action plan as discussed below to ensure that CEG will retain control over CENG with respect to all matters relating to safety, security, and reliability of its nuclear fleet, prior to, during, and following the proposed transaction.

According to the application, the post-transaction CENG will be operated under the terms of a Second Amended and Restated Operating Agreement (Operating Agreement). Under the Operating Agreement, a ten member Board of Directors will manage CENG. CEG and EDF Development each will appoint five directors. All CEG appointees must be U.S. citizens. CEG will, at all times, appoint the Chairman from among its appointees.

Under the quorum provisions of the Operating Agreement submitted on October 25, 2009, action may be taken by a majority of directors present, provided that at least one director appointed by each of CEG and EDF Development votes in favor of the action, and excepting matters decided by the Chairman's casting vote. Thus, it is possible that foreign directors could outnumber the U.S. directors at a particular meeting. Nevertheless, the foreign directors could not exercise control, because the CEG appointed U.S. directors could block the action (since at least one vote from a CEG director would be required), and matters for which the Chairman has a casting vote are excluded from the actions that can be taken by quorum.
Further, the Chairman will hold a casting vote in the event of deadlock on matters related to safety, security and reliability of CENG's nuclear facilities, and the casting vote shall constitute an action of the Board. The Chairman, and anyone who acts for him, must be a U.S. citizen. Specifically, per the application, in the event of a deadlock of the CENG Board of Directors, the Chairman shall have a casting (deciding) vote on the following matters:

1. Any matter that, in view of U.S. laws or regulations, requires or makes it reasonably necessary to assure U.S. control;

2. Any matter relating to nuclear safety, security or reliability, including, but not limited to, the following matters:

    a) Implementation or compliance with any NRC generic letter, bulletin, Order, Confirmatory Order, or similar requirement issued by the NRC;

b) Prevention or mitigation of a nuclear event or incident or the unauthorized release of radioactive material;

c) Placement of the plant in a safe condition following any nuclear event or incident;

d) Compliance with the Atomic Energy Act, the Energy Reorganization Act, or any NRC regulation;

e) The obtaining of or compliance with a specific license issued by the NRC and its technical specifications; and

f) Compliance with a specific Final Safety Analysis Report, or other licensing basis document;

g) Any decision relating to U.S. regulatory strategy or the relationship with the NRC;

h) The adoption of any charter, any change in the authority or composition, or any matter relating to compensation, of the Nuclear Advisory Committee;

i) Settlement of certain claims in connection with a dispute involving a U.S. or Canadian governmental authority;

3. Any other issue reasonably determined by the Chairman in his prudent exercise of discretion to be an exigent nuclear safety, security or reliability issue; and

4. Staffing of key executive officer positions of CENG.

The application notes that the listing of matters on which the Chairman of CENG will have a casting vote does not affect the authority and responsibilities of the CNO or the management of the CENG Companies. It is intended only to make clear the specific board-level decisions which are reserved for the casting vote process because they must be subject to ultimate control by a U.S. citizen appointed by CEG.

The application also states that under the Operating Agreement, certain fundamental business decisions and actions require unanimous approval of the CENG Board of Directors. For these special matters, all of the directors appointed by a member must vote in the same manner (i.e., as a block), either for or against.

The application further states that the Chairman, CEO, and CNO of CENG, all of whom must be U.S. citizens, are responsible for ensuring that the business and activities of CENG and the CENG Companies with respect to their licensed facilities are at all times conducted in a manner consistent with the protection of the public health and safety and common defense and security of the United States. The CNO will continue to have both the responsibility and authority to direct any actions as necessary to assure compliance with regulatory requirements or provide for the protection of public health and safety. Similarly, the CENG Companies, as the NRC licensed operators, will continue to have responsibility for the day-to-day operation of the facilities in accordance with their NRC licenses.

Section 13 of the Securities and Exchange Act of 1934, as amended, 15 U.S.C. § 78m(d), requires that a person or entity that owns or controls more than 5% of the stock of a company must file notice with the Securities and Exchange Commission. The applicant identified that EDFI controls approximately 8.52% of the voting stock of CEG acquired through open market purchases consistent with the parties' investor agreement. The applicant also stated that, as of November 14, 2008, Barclays Global Investors, NA, a U.S. company that is owned by Barclays plc, a United Kingdom company (Barclays), controlled approximately 6.75% of the voting stock of CEG. Finally, AXA Financial, Inc., a U.S. subsidiary of AXA, a French company, controlled approximately 5.13% of CEG's voting stock. The applicant further stated that they are not aware of any other alien, foreign corporation, or foreign government that holds more than 5% of the voting securities of CEG.

Per the application, EDFI will have the right to nominate one director for appointment to the CEG Board following the closing and holds other equity interests in CEG, i.e., the $1 billion of Series B non-convertible preferred stock acquired by EDF Development and EDFI's ownership of approximately 8.52% of CEG's outstanding common stock.

First, the preferred shares are non-voting and do not have any rights that would constitute control. The preferred shares will be surrendered at closing, with the $1 billion amount credited against the purchase price for EDF Development's interest in CENG, and therefore, these shares will cease to be outstanding at the time that EDF Development acquires a 49.99% interest in CENG. Prior to closing, EDF Development has the right to appoint an observer to the CEG Board, but this observer has no voting rights.

Second, EDFI's additional ownership of approximately 8.52% of CEG's outstanding common stock does not confer any control. EDFI would have the right to nominate only a single director for appointment to CEG's Board of Directors (the EDFI Director will have less than 9 percent of the votes on board decisions), and neither that director nor EDFI would have any special veto or approval rights. Thus, EDFI will not be able to exercise control over CEG.

8.4 Establishment of a Nuclear Advisory Group

According to the application, CENG will also establish an independent Nuclear Advisory Committee (NAC) composed of U.S. citizens who are not officers, directors, or employees of CENG, CEG, or EDF Development. The role of the NAC will be to serve CENG in a non-voting advisory capacity to provide transparency to the NRC and other U.S. governmental authorities regarding foreign ownership and control of nuclear operations.

Further, the NAC will recommend appropriate additional policies to assure CENG's continued compliance with provisions of U.S. law and regulations regarding (i) nuclear security plans, including physical security and cyber security; (ii) screening of nuclear personnel; (iii) the protection of critical nuclear infrastructure; and (iv) U.S. export requirements. The NAC shall be appointed by the CENG Board of Directors. The NRC staff reviewed the roster of the proposed NAC, submitted as part of the application, and notes that all members are U.S. citizens.

8.5 Conclusion of Foreign Ownership, Control or Domination

The application states that EDF Development's acquisition of a partial ownership interest in

CENG will not result in CENG or the CENG Companies being owned, controlled, or dominated by an alien, foreign corporation, or foreign government within the meaning of Sections 103d or 104d of the Atomic Energy Act, or the licensee eligibility requirements of 10 CFR 50.38.

The NRC staff believes that the above facts are consistent with making a non-inimical finding with respect to protecting the common defense and security of the United States. Such facts, though not dispositive of the prohibition of foreign ownership, control or domination under Section 104 of the AEA, are consistent with a favorable determination under that section, because of previous Commission statements that the foreign control limitation should be given an orientation toward safeguarding the national defense and security.

In light of the above, the NRC staff does not know or have reason to believe that the subject licensees will be owned, controlled or dominated by an alien, a foreign corporation, or a foreign government.

However, to ensure that CENG and the licensees will not become owned, controlled or dominated by an alien, a foreign corporation, or a foreign government, the the Order approving the indirect license transfers to EDF Development should be subject to the following conditions, essentially as follows:

(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.

9.0 NUCLEAR INSURANCE AND INDEMNITY

According to the application, the proposed indirect transfer of the control of the licensees would not affect the existing Price-Anderson indemnity agreements and the required nuclear property damage insurance pursuant to 10 CFR 50.54(w) and nuclear energy liability insurance required under Section 170 of the AEA, and 10 CFR Part 140.

Also, the NRC staff has no reason to believe that the proposed corporate restructuring will affect the ability of CENG to meet its financial obligations for its pro rata share of obligations for retrospective premiums for CCNPP, LLC, NMPNS, LLC, and R.E. Ginna, LLC.

Therefore, in consideration of the foregoing, the NRC staff concludes that the indirect transfer of control of the licensees held by CENG will have no adverse impact on its ability to provide required nuclear insurance and indemnity coverage and its ability to meet its nuclear insurance obligations.

By letter dated August 25, 2009, from Mr. John Hoffman, Director, Underwriting, American Nuclear Insurers (ANI), to Mr. Ira Dinitz of the NRC staff, ANI confirmed that it would write nuclear liability insurance for CCNPP, LLC upon consummation of the transaction.

However, to ensure that CENG obtains adequate insurance, the Order approving the proposed license transfers should be subject to the following conditions, essentially as follows:

> Before completion of the direct transfer of the CCNPP license, CENG shall provide the Director of the Office of Nuclear Reactor Regulation satisfactory documentary evidence that CCNPP, LLC has obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations.

10.0 COMMENTS RECEIVED

Notice of the request for approval and opportunity for a hearing was published in the *Federal Register* on May 6 and 7, 2009 (74 FR 21013, 74 FR 21015, 74 FR 21413). No hearing requests or petitions to intervene were received. The NRC staff received three comments (one for each site involved in the license transfer), as provided below, from a member of the public in Seattle, Washington, in an e-mail dated May 22, 2009:

> Comment:
>
> No further consideration of the proposed corporate restructuring and indirect transfer of licenses should be undertaken until the NRC has reviewed its facility operation license requirements and determines whether licenses involving multiple levels of wholly-owned subsidiaries provides adequate institutional and

corporate control, responsibility, accountability and liability for aging nuclear power plants.

As described in the preceding technical evaluation, the NRC staff has completed its review of the application and has determined the conforming license amendments and transfer of licenses resulting from the proposed corporate restructuring is consistent with the applicable provisions of law, regulations, and Orders issued by the Commission.

11.0 CONFORMING AMENDMENT

11.1 Proposed Amendment

The application requests approval of conforming amendments to Calvert Cliffs Renewed Facility Operating Licenses Nos. DPR-53 and DPR-69, and to the materials license for the Calvert Cliffs ISFSI. The amendments eliminate references to CCNPP, Inc., in the licenses and, as appropriate, replace them with references to CCNPP, LLC, to reflect the results of the proposed transfers. The proposed amendments were modified by the NRC staff for clarity and to reflect the conditions of approval of the license transfer.

The supplemental information of February 26, April 8, June 25, July 27, October 15, 19, 25 (2 letters), 26, and 28, 2009, to the application did not expand the scope of the application, as originally noticed in the *Federal Register.*

11.2 Discussion

The changes to be made to the licenses are indicated in Enclosure 2 to the cover letter forwarding the NRC staff's Order for CCNPP, Inc. regarding the subject transfers. The amendments involve no safety questions and are administrative in nature. Accordingly, the proposed amendments are acceptable.

The NRC staff finds that the applicant has provided sufficient financial information to address the applicable regulatory requirements of 10 CFR 50.33, 10 CFR 50.80 and 10 CFR 72.50. Therefore, in accordance with 10 CFR 50.80, the NRC staff finds acceptable the proposed direct transfer of control of the CCNPP, Inc. to CCNPP, LLC.

11.3 State Consultation

On accordance with the Commission's regulations, the State official from Maryland was notified of the proposed issuance of the amendments. The state official had no comments.

11.4 Conclusions with Respect to the Conforming Amendments

The Commission has concluded, based on the considerations discussed above, that: (1) there is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) such activities will be conducted in compliance with the Commission's regulations, and (3) the issuance of the amendments will not be inimical to the common defense and security or to the health and safety of the public.

12.0 ENVIRONMENTAL CONSIDERATIONS

The subject application is for approval of the transfer of licenses issued by the NRC and approval of conforming amendments. Accordingly, this amendment meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(21). Pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with approval of the application.

13.0 CONCLUSION

In view of the foregoing, the NRC staff finds that the proposed transfer of licenses for CCNPP Inc. to CCNPP, LLC, and the corporate restructuring between CEG, EDF Development, and CENG, will not affect the qualifications of the holders of the license for all the units reviewed herein, and that the transfer of the licenses is otherwise consistent with applicable provisions of law, regulations, and Orders issued by the Commission pursuant thereto.

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