

SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION

INDIRECT TRANSFERS OF LICENSES DUE TO THE MERGER OF

FPL GROUP, INC. AND CONSTELLATION ENERGY GROUP, INC.

ST. LUCIE NUCLEAR PLANT, UNITS 1 AND 2: DOCKET NOS. 50-335 AND 50-389

TURKEY POINT NUCLEAR PLANT, UNITS 3 AND 4: DOCKET NOS. 50-250 AND 50-251

SEABROOK STATION: DOCKET NO. 50-443

DUANE ARNOLD ENERGY CENTER: DOCKET NO. 50-331

CALVERT CLIFFS NUCLEAR POWER PLANT, UNITS 1 AND 2: DOCKET NOS. 50-317 AND 50-318

CALVERT CLIFFS INDEPENDENT SPENT FUEL STORAGE INSTALLATION: DOCKET NO. 72-8

NINE MILE POINT NUCLEAR STATION, UNITS 1 AND 2: DOCKET NOS. 50-220 AND 50-410

R.E. GINNA NUCLEAR POWER PLANT: DOCKET NO. 50-244

1.0 INTRODUCTION

By application dated January 20, 2006 (Agencywide Documents Access Management System (ADAMS) Accession No. ML060250623), Florida Power and Light Company, FPL Energy Seabrook, LLC, and FPL Energy Duane Arnold, LLC, requested consent by the U.S. Nuclear Regulatory Commission (NRC), pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.80, to the proposed indirect transfer of the operating licenses to the extent held by the previous licensees for the units listed that will occur as a result of the proposed merger between FPL Group, Inc. (FPL Group) and Constellation Energy Group, Inc. (CEG Inc.). In concordance, by application dated January 23, 2006 (ADAMS Accession No. ML060320090), Constellation Generation Group, LLC (CGG LLC), on behalf of Calvert Cliffs Nuclear Power Plant, Inc., Nine Mile Point Nuclear Station, LLC, and R.E. Ginna Nuclear Power Plant, LLC, also requested NRC approval, pursuant to Section 184 of the Atomic Energy Act of 1954, as amended, and 10 CFR 50.80 and 10 CFR 72.50, for the indirect transfer of control of the licenses, to the extent held by the immediately preceding licensees, for the respective units listed below as a result of the proposed merger between FPL Group and CEG Inc. In addition, Calvert Cliffs Nuclear Power Plant, Inc. seeks NRC approval for the indirect transfer of control of the Calvert Cliffs Independent Spent Fuel Storage Installation (ISFSI) Materials License No. SNM-2505.

Therefore, the following units, listed with their respective operating license numbers indicated, are being considered in this safety evaluation (SE):

St. Lucie Nuclear Plant, Unit 1; DPR-67  
St. Lucie Nuclear Plant, Unit 2; NPF-16  
Turkey Point Nuclear Plant, Unit 3; DPR-31  
Turkey Point Nuclear Plant, Unit 4; DPR-41  
Seabrook Station; NPF-86  
Duane Arnold Energy Center; DPR-49  
Calvert Cliffs Nuclear Power Plant, Unit 1; DPR-53  
Calvert Cliffs Nuclear Power Plant, Unit 2; DPR-69  
Nine Mile Point Nuclear Station, Unit 1; DPR-63  
Nine Mile Point Nuclear Station, Unit 2; NPF-69  
R. E. Ginna Nuclear Power Plant; DPR-18  
Calvert Cliffs Independent Spent Fuel Storage Installation; SNM-2505

The proposed indirect transfer of the operating licenses will be a result of a merger between CEG Inc. and FPL Group, the ultimate parent companies of the licensees for the above units.

Supplemental information, filed by CGG LLC, dated April 25 and May 25, 2006 (ADAMS Accession Nos. ML061170448 and ML062000108, respectively), not specifically noticed in the *Federal Register* did not expand the application beyond the scope of the notices, but clarified the initial applications.

## 2.0 BACKGROUND

Upon consummation of the proposed merger, FPL Group and its subsidiaries will be respectively direct and indirect wholly owned subsidiaries of CEG Inc. CEG Inc. will preserve its current corporate structure after the proposed merger with the FPL Group, while the FPL Group corporate structure will remain intact as part of CEG Inc. CEG Inc. will, thus, become the ultimate parent holding company for all corporate subsidiaries.

Under the proposed merger agreement, each common share of CEG Inc. stock outstanding immediately prior to the merger will be converted into 1.444 common shares of CEG Inc. stock, and each common share of FPL Group stock outstanding immediately prior to the merger will be converted into one share of CEG Inc. stock at the time of the merger. Based on the number of common shares currently outstanding, FPL Group shareholders will own approximately 60 percent of the common equity of the combined company, and CEG Inc. shareholders will own approximately 40 percent.

Under the proposed merger, the current chairman, president and chief executive officer of FPL Group (Mr. Lewis Hay III) will become the chief executive officer of CEG Inc. The current chairman, president and chief executive officer of CEG Inc. (Mr. Mayo A. Shattuck III) will continue as chairman of the board of CEG Inc. and will also head the company's competitive energy business. The post-merger CEG Inc. board will be composed of 15 members, 9 of whom will be current FPL Group directors, and 6 of whom will be CEG Inc. directors. Thirteen board members of CEG Inc. will be nonexecutive directors.

As described in the applications, the proposed merger will be effectuated through the following steps. CEG Inc. will form a new, directly owned subsidiary, CF Merger Corporation. CEG Inc. will then effect a stock split, whereby each outstanding share of CEG Inc. common stock will be converted into 1.444 shares of CEG Inc. common stock. CF Merger Corporation will then merge with FPL Group, with FPL Group becoming the surviving corporation and a wholly owned subsidiary of CEG Inc.. At the effective time of this proposed merger, each outstanding share of FPL Group common stock (other than shares owned by FPL Group or CEG Inc.) will be convertible to one share of CEG Inc. common stock.

Florida Power and Light Company, an electric utility as defined in 10 CFR 50.2, is the 100-percent owner and operator of Turkey Point Nuclear Plant, Units 3 and 4, and St. Lucie Nuclear Plant, Unit 1. Florida Power and Light Company has an 85.1-percent ownership interest, and is the operator of, St. Lucie Nuclear Plant, Unit 2. Florida Power and Light Company is a direct wholly owned subsidiary of FPL Group. After the proposed merger, CEG Inc. will be the ultimate parent owner of Florida Power and Light Company, through FPL Group.

FPL Energy Seabrook, LLC, has an ownership interest of 88.23 percent and is the licensed operator of the Seabrook Station. As of January 27, 2006, FPL Energy Duane Arnold, LLC, closed on its acquisition of a 70-percent ownership interest in, and is also the licensed operator of, the Duane Arnold Energy Center. FPL Energy Seabrook, LLC, and FPL Energy Duane Arnold, LLC, are indirect wholly owned subsidiaries of FPL Group through intermediate companies, ESI Energy, LLC, FPL Energy, and FPL Group Capital. FPL Energy Seabrook, LLC, and FPL Energy Duane Arnold, LLC, are non-electric utilities.

Calvert Cliffs Nuclear Power Plant, Inc., a non-electric utility, is the 100-percent owner and licensed operator of the Calvert Cliffs Nuclear Power Plant, Units 1 and 2. Calvert Cliffs Nuclear Power Plant, Inc., is a wholly owned subsidiary of CGG LLC, which in turn is a wholly owned subsidiary of CEG Inc. This corporate structure will remain unchanged after the proposed merger. Calvert Cliffs Nuclear Power Plant, Inc. also maintains an ISFSI on the site of the Calvert Cliffs Nuclear Power Plant, Units 1 and 2.

Nine Mile Point Nuclear Station, LLC, a non-electric utility, is the 100-percent owner and licensed operator of Nine Mile Point Nuclear Station, Unit 1. Nine Mile Point Nuclear Station, LLC, is the 82-percent owner and licensed operator of Nine Mile Point Nuclear Station, Unit 2. Nine Mile Point Nuclear Station, LLC, is a wholly owned subsidiary of Constellation Nuclear Power Plants, Inc., which in turn is a wholly owned subsidiary of CGG LLC, which in turn is a wholly owned subsidiary of CEG Inc. This corporate structure will remain unchanged after the proposed merger.

R.E. Ginna Nuclear Power Plant, LLC, a non-electric utility, is the 100-percent owner and licensed operator of the R.E. Ginna Nuclear Power Plant. R.E. Ginna Nuclear Power Plant, LLC, is and will remain a wholly owned subsidiary of Constellation Nuclear Power Plants, Inc. This corporate structure will remain unchanged after the proposed merger.

### 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. Section 50.80(a) of 10 CFR states, "No license for a production utilization facility, or any right thereunder, 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."

In addition, the requirements of 10 CFR 50.80(b) and (c) apply. Section 50.80(b) states that an applicant for a license transfer shall include as much information described in 10 CFR 50.33 and 10 CFR 50.34 of this part "with respect to the identity and technical and financial qualifications of the proposed transferee as would be required by those sections if the applicant were for an initial license . . . ." Section 50.80(c) states that "the Commission will approve the 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." For indirect license transfers, where the licensee remains the same, the staff must find that the proposed transaction (i.e., the proposed merger of FPL Group and CEG Inc.) will not affect the qualifications of the holders of the licenses.

The requirements of 10 CFR 72.50, "Transfer of license," apply to the materials license for the independent storage of spent nuclear fuel. Section 72.50(b)(1) in part states that "an application for transfer of a license must include as much of the information described in Sections 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." Section 72.50(c) states that "the Commission will approve an application for the transfer of a license, if the Commission determines that: (1) The proposed transferee is qualified to be the holder of the license; and (2) Transfer of the license is consistent with applicable provisions of law, and the regulations and orders issued by the Commission."

### 4.0 EVALUATIONS

#### 4.1 Financial Qualifications

Pursuant to 10 CFR 50.33(f), an electric utility as defined in 10 CFR 50.2 is not required to demonstrate its financial qualifications. Section 50.2 of 10 CFR defines an electric utility as "any 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 staff finds that:

- St. Lucie Nuclear Plant, Unit 1
- St. Lucie Nuclear Plant, Unit 2
- Turkey Point Nuclear Plant, Unit 3
- Turkey Point Nuclear Plant, Unit 4

are owned and operated by an electric utility, the Florida Power and Light Company, prior to the proposed merger.

After the proposed merger, Florida Power and Light Company will continue to be the direct owner of its current interests in the plants and the operator, and will continue to generate and distribute electricity and recover the cost of this electricity through rates authorized by the Florida Public Service Commission and by the Federal Energy Regulatory Commission. Therefore, the NRC staff finds that Florida Power and Light Company will continue to meet the definition of “an electric utility” set forth in 10 CFR 50.2. Accordingly, its financial qualifications are presumed by 10 CFR 50.33(f) and no specific demonstration of financial qualifications is required.

In view of the NRC’s concern that corporate restructuring (involving either a direct or indirect transfer of control) can lead to a diminution of assets necessary for the safe operation and decommissioning of a licensee’s nuclear power plant or related facilities such as an ISFSI, the NRC’s practice has been to condition corresponding license transfer approvals upon a requirement that the licensee not transfer significant assets from the licensee to an affiliate without first notifying the NRC. This requirement assists the NRC in assuring that a licensee will continue to maintain adequate resources to contribute to the safe operation and decommissioning of its facilities. Thus, the following should be made a condition of the St. Lucie and Turkey Point Nuclear Plant orders approving the application regarding the proposed transactions:

Florida Power and Light Company shall provide the Director of the Office of Nuclear Reactor Regulation a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from Florida Power and Light Company to its direct or indirect parents, or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding ten percent (10 percent) of Florida Power and Light Company’s consolidated net utility plant, as recorded on its books of account.

In consideration of the foregoing, the staff finds that the proposed corporate structure changes resulting in the indirect transfer of control of the licenses held by Florida Power and Light Company will not affect Florida Power and Light Company’s financial qualifications to hold these licenses.

The staff finds that the direct license holder(s) 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:

Seabrook Station  
Duane Arnold Energy Center  
Calvert Cliffs Nuclear Power Plant, Unit 1  
Calvert Cliffs Nuclear Power Plant, Unit 2  
Nine Mile Point Nuclear Station, Unit 1  
Nine Mile Point Nuclear Station, Unit 2  
R.E. Ginna Nuclear Power Plant

In accordance with 10 CFR 50.33(f), a nonutility 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 transfers, the applicant must show that the proposed merger will not affect the licensees' financial qualifications.

Also, 10 CFR 50.33(k)(1) requires that the licensees for the above-named units (including the Florida Power and Light 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 decommissioning funding assurance is discussed in Section 4.2 of this SE.

The staff evaluated the financial qualifications of the applicant in a manner that is consistent with the guidance provided in NUREG-1577, Rev. 1, "Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance," dated March 1999. The 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.

#### 4.1.1 Seabrook Station

According to the applicant, there will be no change in the financial qualifications of FPL Energy Seabrook, LLC, as a result of the proposed merger between FPL Group and CEG Inc.. The Projected Income Statement submitted by the applicant shows that the anticipated revenues from the sales of energy and capacity from Seabrook Station will exceed anticipated operating expenses, for FPL Energy Seabrook, LLC's 88.2-percent ownership interest in the plant, during the 5-year period covered by the projections. The applicant also provided projected income statements reflecting a sensitivity analysis showing the effect of a 10-percent reduction in the capacity factor, and/or a 10-percent reduction in the price of a megawatt hour of electricity. In addition, the applicant states that the existing support agreement between FPL Energy Seabrook and FPL Group Capital, under which FPL Group Capital agreed to make funding of up to \$100 million available to FPL Energy Seabrook, will not be affected by the merger.

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



TABLE 1  
(ABBREVIATED) PROJECTED INCOME STATEMENT  
FPL ENERGY SEABROOK, LLC (88.2% of PLANT)  
\$000s

	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>
<b>Total Revenue:</b>	\$( )	\$( )	\$( )	\$( )	\$( )
<b>Total Oper. Exp.:</b>	\$( )	\$( )	\$( )	\$( )	\$( )
<b>Oper. Income:</b>	\$( )	\$( )	\$( )	\$( )	\$( )
<b>Less: Exps. &amp; Tax:</b>	\$( )	\$( )	\$( )	\$( )	\$( )
<b>Net Income:</b>	\$( )	\$( )	\$( )	\$( )	\$( )

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 FPL Energy Seabrook, LLC's Projected Income Statement at an 88.2-percent ownership level shows that FPL Energy Seabrook, LLC's anticipated revenues from sales of energy and capacity from the Seabrook Station will exceed Seabrook Station's anticipated expenses during the 5-year period covered by the projections. The applicant also provided projected income statements reflecting a sensitivity analysis showing the effect of a 10-percent reduction in the capacity factor, and/or a 10-percent reduction in the price of a megawatt hour of electricity, which still show positive net income. Accordingly, the NRC staff finds that FPL Energy Seabrook, LLC, 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, notwithstanding the indirect transfer of control of FPL Energy Seabrook, LLC, and the Seabrook Station license held by FPL Energy Seabrook, LLC.

#### 4.1.2 Duane Arnold Energy Center

The NRC found, in its Order dated December 23, 2005 (ADAMS Accession No. ML053420246), that FPL Energy Duane Arnold, LLC, was financially qualified to hold the license for Duane Arnold Energy Center to the extent requested. According to the applicant, there will be no change in the financial qualifications of FPL Energy Duane Arnold, LLC, as a result of the proposed merger between FPL Group and CEG Inc..

In addition, the applicant states that the existing support agreement between FPL Energy Duane Arnold and FPL Group Capital, under which FPL Group Capital agreed to make funding of up to \$50 million available to FPL Energy Duane Arnold, will not be affected by the merger.

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

TABLE 2  
(ABBREVIATED) PROJECTED INCOME STATEMENT  
FPL ENERGY DUANE ARNOLD, LLC  
(70.0% of PLANT)  
\$000s

	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>
<b>Total Revenue:</b>	\$( )	\$( )	\$( )	\$( )	\$( )
<b>Total Oper. Exp.:</b>	\$( )	\$( )	\$( )	\$( )	\$( )
<b>Oper. Income:</b>	\$( )	\$( )	\$( )	\$( )	\$( )
<b>Less: Exps. &amp; Tax:</b>	\$( )	\$( )	\$( )	\$( )	\$( )
<b>Net Income:</b>	\$( )	\$( )	\$( )	\$( )	\$( )

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 FPL Energy Duane Arnold, LLC's Projected Income Statement at a 70-percent ownership level shows that FPL Energy Duane Arnold, LLC's anticipated revenues from sales of energy and capacity from the Duane Arnold Energy Center will exceed Duane Arnold Energy Center's anticipated expenses during the 5-year period covered by the projections. The applicant also provided projected income statements reflecting a sensitivity analysis showing the effect of a 10-percent reduction in the capacity factor, and/or a 10-percent reduction in the price of a megawatt hour of electricity, which still show positive net income. Accordingly, the NRC staff finds that FPL Energy Duane Arnold, LLC, 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, notwithstanding the indirect transfer of control of FPL Energy Duane Arnold, LLC, and the Duane Arnold Energy Center license held by FPL Energy Duane Arnold, LLC.

#### 4.1.3 Calvert Cliffs Nuclear Power Plant, Units 1 and 2

According to the applicant, there will be no change in the financial qualifications of Calvert Cliffs Nuclear Power Plant, Inc., as a result of the proposed merger between FPL Group and CEG Inc.. Calvert Cliffs Nuclear Power Plant, Inc.'s revenue is provided from a Purchase Power Agreement with a subsidiary of Constellation Power Source Holdings, Inc. The agreement provides for fixed monthly payments from that subsidiary of Constellation Power Source Holdings, Inc., as well as additional monthly variable payments equal to Calvert Cliffs Nuclear Power Plant, Inc.'s cost for fuel, transmission costs, and variable operations and maintenance costs. The Purchase Power Agreement commenced in October 2002, and is for an indefinite period of time. The Purchase Power Agreement may only be terminated upon mutual agreement between Calvert Cliffs Nuclear Power Plant, Inc., and the subsidiary of Constellation Power Source Holdings, Inc.



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

TABLE 3  
(ABBREVIATED) PROJECTED INCOME STATEMENT  
CALVERT CLIFFS NUCLEAR POWER PLANT, INC.  
(UNITS 1 AND 2)  
\$000s

	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>
<b>Total Revenue:</b>	\$( )	\$( )	\$( )	\$( )	\$( )
<b>Total Oper. Exp.:</b>	\$( )	\$( )	\$( )	\$( )	\$( )
<b>Oper. Income:</b>	\$( )	\$( )	\$( )	\$( )	\$( )
<b>Less: Exps. &amp; Tax:</b>	\$( )	\$( )	\$( )	\$( )	\$( )
<b>Net Income:</b>	\$( )	\$( )	\$( )	\$( )	\$( )

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 Calvert Cliffs Nuclear Power Plant, Inc.'s Projected Income Statement at a 100.0-percent ownership level shows that Calvert Cliffs Nuclear Power Plant, Inc.'s anticipated revenues from sales of energy and capacity from the Calvert Cliffs Nuclear Power Plant, Units 1 and 2, will exceed Calvert Cliffs Nuclear Power Plant, Units 1 and 2's anticipated expenses during the 5-year period covered by the projections. The applicant also provided projected income statements reflecting a sensitivity analysis showing the effect of a 10-percent reduction in the capacity factor, and/or a 10-percent reduction in the price of a megawatt hour of electricity, which still show positive net income. Accordingly, the NRC staff finds that Calvert Cliffs Nuclear Power Plant, 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, notwithstanding the indirect transfer of control of Calvert Cliffs Nuclear Power Plant, Inc., and the Calvert Cliffs Nuclear Power Plant, Units 1 and 2, licenses held by Calvert Cliffs Nuclear Power Plant, Inc.

#### 4.1.3.1 Calvert Cliffs Independent Spent Fuel Storage Installation

The requirements of 10 CFR 72.50 state that "No license or any part included in a license issued under this part for an ISFSI or MRS [Monitored Retrievable Storage Installation] shall be transferred, assigned, or in any manner disposed of . . . unless the Commission gives its consent in writing."

Staff review 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 3 above. Operating costs resulting from loading spent nuclear fuel into casks for

storage in the Calvert Cliffs ISFSI are included in the projections for operation and maintenance, which are included in the "Total Oper. Exp." of TABLE 3 above.

The financial information required of an applicant to demonstrate its qualifications to maintain and operate an ISFSI is set out in 10 CFR 72.22(e). The information which is the subject of Section 72.22(e)(1) is not needed because the ISFSI has already been constructed and the information requested in Section 72.22(e)(3) is addressed in the decommissioning funding discussion that follows. The remaining item for which an applicant must demonstrate financial qualifications is the estimated operating costs over the planned life of the ISFSI (see Section 72.22(e)(2)). These costs were factored into the financial statements of Calvert Cliffs Nuclear Power Plant, Inc. The basis for concluding that Calvert Cliffs Nuclear Power Plant, Inc. will have the funds necessary to safely operate Calvert Cliffs for the period of the licenses under 10 CFR 50.33(f) also provides reasonable assurance that Calvert Cliffs Nuclear Power Plant, Inc. will have sufficient funds to cover the operating costs of the ISFSI over its planned life.

Accordingly, the NRC staff finds that Calvert Cliffs Nuclear Power Plant, 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, notwithstanding the indirect transfer of control of Calvert Cliffs Nuclear Power Plant, Inc. and the Calvert Cliffs ISFSI license held by Calvert Cliffs Nuclear Power Plant, Inc.

#### 4.1.4 Nine Mile Point Nuclear Station, Units 1 and 2

According to the applicant, there will be no change in the financial qualifications of Nine Mile Point Nuclear Station, LLC, as a result of the proposed merger between FPL Group and CEG Inc. Group. The Projected Income Statement includes the projected revenue that is expected from the sale of (approximately) 90 percent of the facility's total output under the Power Purchase Agreements. Other output is sold at market prices. The Purchase Power Agreement for Nine Mile Point Unit 1 terminates in August 2009, and the projections then include sales of 100 percent from Unit 1 at market prices. The Purchase Power Agreement for Nine Mile Point Unit 2 terminates in November 2011.

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

TABLE 4  
(ABBREVIATED) PROJECTED INCOME STATEMENT  
NINE MILE POINT NUCLEAR STATION, LLC  
(UNITS 1 AND 2)  
(100.0% of UNIT 1)  
(82.0% of UNIT 2)  
\$000s

	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>
<b>Total Revenue:</b>	\$( )	\$( )	\$( )	\$( )	\$( )
<b>Total Oper. Exp.:</b>	\$( )	\$( )	\$( )	\$( )	\$( )
<b>Oper. Income:</b>	\$( )	\$( )	\$( )	\$( )	\$( )
<b>Less: Exps. &amp; Tax:</b>	\$( )	\$( )	\$( )	\$( )	\$( )
<b>Net Income:</b>	\$( )	\$( )	\$( )	\$( )	\$( )

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 Nine Mile Point Nuclear Station, LLC's Projected Income Statement at a stated ownership level shows that Nine Mile Point Nuclear Station, LLC's anticipated revenues from sales of energy and capacity from the Nine Mile Point Nuclear Station, Units 1 and 2, will exceed Nine Mile Point Nuclear Station, Units 1 and 2's anticipated expenses during the 5-year period by the projections. The applicant also provided projected income statements reflecting a sensitivity analysis showing the effect of a 10-percent reduction in the capacity factor, and/or a 10-percent reduction in the price of a megawatt hour of electricity, which still show positive net income. Accordingly, the NRC staff finds that Nine Mile Point Nuclear Station, LLC, has reasonable assurance of obtaining the funds necessary to cover estimated operating costs for the period of the licenses and, thus, will continue to be financially qualified to hold the licenses, notwithstanding the indirect transfer of control of Nine Mile Point Nuclear Station, LLC, and the Nine Mile Point Nuclear Station, Units 1 and 2 licenses held by Nine Mile Point Nuclear Station, LLC.

#### 4.1.5 R.E. Ginna Nuclear Power Plant

According to the applicant, there will be no change in the financial qualifications of R.E. Ginna Nuclear Power Plant, LLC, as a result of the proposed merger between FPL Group and CEG Inc. The Projected Income Statement includes the projected revenue that is expected from the sale of 100 percent of the facility's total output under the Power Purchase Agreements that will terminate on July 1, 2014. The staff notes that the Projected Income Statement does not assume a 17-percent power uprate projected to be completed in November 2006.

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

TABLE 5  
(ABBREVIATED) PROJECTED INCOME STATEMENT  
R. E. GINNA NUCLEAR POWER PLANT, LLC  
(UNIT 1)  
\$000s

	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>
<b>Total Revenue:</b>	\$( )	\$( )	\$( )	\$( )	\$( )
<b>Total Oper. Exp.:</b>	\$( )	\$( )	\$( )	\$( )	\$( )
<b>Oper. Income:</b>	\$( )	\$( )	\$( )	\$( )	\$( )
<b>Less: Exps. &amp; Tax:</b>	\$( )	\$( )	\$( )	\$( )	\$( )
<b>Net Income:</b>	\$( )	\$( )	\$( )	\$( )	\$( )

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 R.E. Ginna Nuclear Power Plant LLC's Projected Income Statement shows that R.E. Ginna Nuclear Power Plant LLC's anticipated revenues from sales of energy and capacity from the R.E. Ginna Nuclear Power Plant, will exceed R.E. Ginna Nuclear Power Plant's anticipated expenses during the 5-year period by the projections. The applicant also provided projected income statements reflecting a sensitivity analysis showing the effect of a 10-percent reduction in the capacity factor, and/or a 10-percent reduction in the price of a megawatt hour of electricity, which still show positive net income. Accordingly, the NRC staff finds that R.E. Ginna Nuclear Power Plant, LLC, 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, notwithstanding the indirect transfer of control of R.E. Ginna Nuclear Power Plant, LLC, and the R.E. Ginna Nuclear Power Plant.

#### 4.1.6 Constellation Generation Group Companies

In addition, Calvert Cliffs Nuclear Power Plant, Inc., Nine Mile Point Nuclear Station, LLC, and R. E. Ginna Nuclear Power Plant, LLC, currently have access to a cash pool that CEG Inc. operates for its subsidiaries that has previously been reviewed by the NRC staff, and the licensees maintain Inter-Company Credit Agreements in accordance with prior NRC Orders approving license transfers and license conditions imposed on the Licensees. The cash pools are backed up by credit agreements and committed bank lines of credit that exceed \$3.5 billion. The amounts of funding available under these agreements for each site are sufficient to fund the estimated fixed operating and maintenance costs each site for approximately 6 months. According to the applicant, these arrangements will remain in place, will be unchanged by the proposed merger, and will continue in compliance with existing license requirements. Based on these representations, the staff finds that there is additional assurance that the financial qualifications of the respective licensees will not be affected by the proposed merger.

## 4.2 Decommissioning Funding Assurance

The NRC has determined that the requirements to provide reasonable assurance of decommissioning funding are 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 contain information to demonstrate how reasonable assurance will be provided and that funds will be available to decommission the facility. The regulations at 10 CFR 72.22(e)(3) and 10 CFR 72.30(b) and (c) require that an applicant for an ISFSI license provide information to demonstrate its financial qualifications, including estimated decommissioning costs and the necessary financial arrangements to provide reasonable assurance that decommissioning will be carried out.

### 4.2.1 The FPL Group

According to the applicant, the proposed indirect license transfers will not affect decommissioning funding assurance for the Florida Power and Light Company plants, St. Lucie Nuclear Plant, Units 1 and 2, and Turkey Point Nuclear Plant, Units 3 and 4. Nor will the proposed indirect license transfers affect decommissioning funding for the Seabrook Station and Duane Arnold Energy Center.

Florida Power and Light Company, an electric utility, will continue to provide financial assurance for decommissioning the St. Lucie Nuclear Plant, Units 1 and 2, and Turkey Point Nuclear Plant, Units 3 and 4, in accordance with 10 CFR 50.75, utilizing the external sinking fund method of financial assurance to meet NRC requirements. Because Florida Power and Light Company will remain an electric utility recovering its costs through regulated cost of service rates, the proposed merger will not affect its ability to provide decommissioning funding assurance using external sinking funds.

Information in FPL Energy Seabrook, LLC's Biennial Decommissioning Funding Status Report, dated March 25, 2005, shows that the Seabrook Station meets the prepayment requirements when a 2-percent real rate of return on the accumulated funds are credited through to the license expiration date. This funding assurance method will not be affected by the proposed merger. FPL Energy Seabrook, LLC, will continue to provide financial assurance for decommissioning the Seabrook Station, and will continue to have responsibility for decommissioning. In order to provide additional assurances to the State of New Hampshire's Nuclear Decommissioning Financing Committee, FPL Group Capital, Inc., has guaranteed that FPL Energy Seabrook, LLC, will fully fund the projected cost of decommissioning in accordance with Nuclear Decommissioning Financing Committee requirements, including a schedule of additional deposits. This guaranty will remain in effect and be unaffected by the proposed merger.

FPL Energy Duane Arnold, LLC's decommissioning funding assurance for the Duane Arnold Energy Center was previously found acceptable in the NRC's SE supporting the December 23, 2005, order approving the direct license transfer from Interstate Power and Light Company to FPL Energy Duane Arnold, LLC. As described in that SE, the decommissioning funds in an external trust, coupled with a parent company guarantee provided by FPL Group Capital, Inc., meet NRC requirements. According to the applicant, the proposed merger will not affect this decommissioning funding assurance. FPL Energy Duane Arnold, LLC, will continue to provide

financial assurance for decommissioning Duane Arnold Energy Center. In addition, there will be no changes required to the parent company guarantee provided by FPL Group Capital, Inc., a parent company whose financial strength will be unchanged through the proposed merger, according to the application, in support of decommissioning funding.

Therefore, the staff finds that the proposed merger and resulting indirect transfer of control of the licenses for the Florida Power and Light Company plants, and the FPL Energy plants will have no effect on the decommissioning funding assurance for those plants.

#### 4.2.2 Constellation Energy Group, Inc.

The staff notes that information regarding the status of decommissioning funding assurance for Calvert Cliffs Nuclear Power Plant, Units 1 and 2, Nine Mile Point Nuclear Station, Units 1 and 2, and R. E. Ginna Nuclear Power Plant, was reported to the NRC in accordance with 10 CFR 50.75(f)(1), on March 29, 2005. The applicant states that the proposed merger will not affect the decommissioning funding arrangements previously reported. The licensees, after the proposed merger, 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 Mellon Bank N. A. As required by 10 CFR 50.75(f)(1), the licensees did provide updated status reports by March 31, 2006.

Calvert Cliffs Nuclear Power Plant, Inc. currently provides decommissioning funding assurance for Calvert Cliffs Nuclear Power Plant, Units 1 and 2, meeting the requirements of 10 CFR 50.75, and for the Calvert Cliffs ISFSI, meeting the requirements of 10 CFR 72.22(e)(3) and 10 CFR 72.30(b) and (c), through separate external sinking funds that are funded with additional contributions from a non-bypassable charge collected by CEG's regulated utility affiliate, the Baltimore Gas and Electric Company (BGE). BGE is contractually obligated to deposit the funds into the decommissioning trusts.

Nine Mile Point Nuclear Station, LLC, currently provides adequate decommissioning funding assurance for Nine Mile Point Nuclear Station Unit 1, and its share of Nine Mile Point Nuclear Station Unit 2, through existing prepaid decommissioning trust assets, in accordance with 10 CFR 50.75(e)(1)(i), combined with a parent company guarantee from Constellation Energy provided pursuant to 10 CFR 50.75 (e)(1)(iii)(B).

R.E. Ginna Nuclear Power Plant, LLC, provides adequate decommissioning funding assurance for R.E. Ginna Nuclear Power Plant through its existing prepaid decommissioning trust fund assets in accordance with 10 CFR 50.75(e)(1)(i).

Based on the foregoing, the staff finds that the proposed merger and resulting indirect transfer of control of the licenses for Calvert Cliffs Nuclear Power Plant, Units 1 and 2, the Calvert Cliffs ISFSI, Nine Mile Point Nuclear Station, Units 1 and 2, and R.E. Ginna Nuclear Power Plant will have no effect on the provision of adequate decommissioning funding assurance for those facilities after the proposed merger.



#### 4.3 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.

#### 4.4 Foreign Ownership, Control, or Domination

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.

Constellation Energy is a publicly traded company, and its securities are traded on the New York Stock Exchange and are widely held. After the proposed merger, Constellation Energy shall maintain principal offices in Baltimore, Maryland, and Juno Beach, Florida. Section 13 of the Securities 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 percent of the stock of a company must file a schedule with the Securities and Exchange Commission regarding its holdings. Based upon its review of the relevant filings with the Securities and Exchange Commission, the applicants have identified that AXA Assurance I.A.R.D. Mutuelle, a French insurance company, controls approximately 7.3 percent of the voting stock of CEG Inc., and Barclays Global Investors, NA, a United States company that is owned by Barclays PLC, a United Kingdom company, controls approximately 8.7 percent of the voting stock. The filings are 13G schedules, indicating the shares are not held for purposes of control. According to the applications, neither foreign company exercises control over CEG Inc., and neither company is expected to exercise control over CEG Inc. following the proposed merger. While both foreign companies own some FPL Group voting stock, neither entity has made a Securities and Exchange Commission filing indicating that they own more than 5 percent of such stock. In light of the share exchange ratio for the proposed merger, their respective percentage ownership interests in CEG Inc. following the proposed merger likely will be less than their current percentage ownership interests in CEG Inc., even if they were to retain their existing CEG Inc. shares and convert their existing FPL Group shares into CEG Inc. shares, as stated in the applications.

The applicants are not aware of any other alien, foreign corporation, or foreign government that holds more than 5 percent of the securities of CEG Inc. or will hold more than 5 percent of the securities of CEG Inc. following the proposed merger with FPL Group.

As stated in the applications, all of the directors of CEG Inc., Constellation Generation Group, LLC, and the subsidiaries of Constellation Generation Group, LLC, are United States citizens, and are expected to remain so after the proposed merger. (Staff notes that a list of all the directors and principal executive officers of CEG Inc., FPL Group and their respective subsidiaries holding licenses, is included in the application.) According to the applicants, the

appointed officers of the new CEG Inc. are expected to be limited to the current pool of officers and directors of the merging companies, all of whom are United States citizens.

The applications state that CEG Inc., following the proposed merger, will not be owned, controlled, or dominated by foreign interests or that the respective licensees will not be owned, controlled, or dominated by foreign interests.

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

#### 4.5 Nuclear Insurance and Indemnity

Since the proposed merger will not result in any direct license transfers or change in licensees, the current indemnity agreements will remain unchanged. All insurance requirements will continue to apply to the current licensees. Based on the financial qualifications review in this SE, each of the subject licensees will continue to be able to pay retrospective premiums.

#### 4.6 Technical Qualifications

According to the FPL Group application, the proposed merger between FPL Group and CEG Inc., does not involve any change to Florida Power and Light Company's role as the licensed operator of Turkey Point Nuclear Plant, Units 3 and 4, and St. Lucie Nuclear Power Plant, Units 1 and 2, and will not result in any changes to the technical qualifications or any changes to the conduct of operations at Turkey Point Nuclear Plant, Units 3 and 4, and St. Lucie Nuclear Power Plant, Units 1 and 2.

The application also states that the proposed merger between FPL Group and CEG Inc., does not involve any change to FPL Energy Seabrook, LLC's role as the licensed operator of the Seabrook Station, and will not result in any changes to the technical qualifications or any changes to the conduct of operations at the Seabrook Station.

The FPL Group and CGG LLC applications for the proposed merger between FPL Group and CEG Inc. make similar claims about the unchanged licensed operator roles of FPL Energy Duane Arnold, LLC, for the Duane Arnold Energy Center; Calvert Cliffs Nuclear Power Plant, Inc., for the Calvert Cliffs Nuclear Power Plant, Units 1 and 2, as well as the responsibility for the Calvert Cliffs Nuclear Power Plant ISFSI; Nine Mile Point Nuclear Station, LLC, for the Nine Mile Point Nuclear Station, Units 1 and 2, and R. E. Ginna Nuclear Power Plant, LLC, for the R. E. Ginna Nuclear Power Plant.

Based on the foregoing, the NRC staff finds that the indirect transfer of control of the above licenses does not raise any technical qualification issues.

## 5.0 Written Comments

The Maryland Office of the People's Counsel (MPC) filed written comments on March 24, 2006.

As best as the staff can determine, the major concern appears to be a perceived shortfall in decommissioning funding. The following are MPC's comments, which seem to focus on the Calvert Cliffs units and respective indirect license transfers.

1. Comprehensive policies to guide those seeking to transfer nuclear plant ownerships are absent, and without such affirmative guidance, there will be increased likelihood that some of the costs of decommissioning nuclear power plants will fall on the public.

Response: The regulations at 10 CFR 50.75 deal with the requirements a licensee must adhere to for maintaining minimum decommissioning funding. As such, MPC does not offer any insight as to why the proposed merger and resulting indirect transfer of the licenses will lead to Constellation not meeting the requirements of 10 CFR 50.75. Calvert Cliffs Nuclear Power Plant, Inc. currently provides decommissioning funding assurance for Calvert Cliffs Nuclear Power Plant, Units 1 and 2, through an external sinking fund which is funded with additional contributions from a non-bypassable charge collected by CEG Inc. Group's regulated utility affiliate, BGE. BGE is contractually obligated to deposit the funds into the decommissioning trusts. As specified in 10 CFR 50.75(e)(1)(ii), "An external sinking fund is a fund established and maintained by setting funds aside periodically in an account segregated from licensee assets and outside the administrative control of the licensee and its subsidiaries or affiliates in which the total amount of funds would be sufficient to pay decommissioning costs at the time permanent termination of operations is expected." In addition, there is guidance that deals with decommissioning funding, such as (1) NUREG-1307, Revision 11, "Report on Waste Burial Charges," (2) NUREG-1577, Revision 1, "Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance," and (3) Regulatory Guide 1.159, "Assuring the Availability of Funds for Decommissioning Nuclear Reactors."

2. There is no certainty as to how the new board of CEG Inc. will determine management, operation and control of the CEG Inc.'s regulated and unregulated subsidiaries, or how those "new" subentities will handle nuclear power plant operation as it relates to the internal and external decommissioning trust funds. Maryland ratepayers' interests are directly tied to the stewardship of these trust funds. The shortfall in the nuclear decommissioning funds compared to the minimum requirements of the NRC creates a liability for captive Maryland customers.

Response: Calvert Cliffs Nuclear Power Plant is required to submit a biennial decommissioning funding report, pursuant to 10 CFR 50.75(f)(1). As of March 31, 2005, the licensee submitted its decommissioning funding report. The NRC staff has determined that the decommissioning funding report provided reasonable assurance that decommissioning funding is progressing, such that minimum decommissioning funds required pursuant to 10 CFR 50.75 will be available for the NRC decommissioning process for this site.

3. The NRC should deny any license transfer approvals pending an investigation of the various trust fund levels within CEG Inc.'s control. Any approvals should be conditioned upon CEG Inc.'s commitment to preserve the status quo of its operation of the nuclear plants. CEG Inc.

should be ordered to file an acceptable plan to address the shortfall in the funding of the internal and external decommissioning trust funds through each operating company or entity that might take control after the merger is consummated. Transfer approvals should be conditioned upon the performance of a full accounting of any discrepancies caused by CEG Inc. or its subsidiaries.

Response: As noted in Response No. 2 above, the NRC has not identified any projected shortfall in decommissioning funding for the Calvert Cliffs site, as required by NRC regulations.

## 6.0 CONCLUSION

In view of the foregoing, the NRC staff finds that the proposed merger between FPL Group and CEG Inc. will not affect the qualifications of the holders of the licenses for all the units reviewed herein, and that the indirect transfer of the licenses is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto, subject to the conditions set forth above.

Principal Contributor: Michael A. Dusaniwskyj

Date: August 3, 2006