

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

Within 20 days from the date of publication of this notice, any person whose interest may be affected by the Commission's action on the application may request a hearing and, if not the applicant, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart C "Rules of General Applicability: Hearing Requests, Petitions to Intervene, Availability of Documents, Selection of Specific Hearing Procedures, Presiding Officer Powers, and General Hearing Management for NRC Adjudicatory Hearings," of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.309. Untimely requests and petitions may be denied, as provided in 10 CFR 2.309(c)(1), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.309(c)(1)(i) through (viii).

Requests for a hearing and petitions for leave to intervene should be served upon Mr. Jay M. Gutierrez at Morgan, Lewis & Bockius, LLP, 1111 Pennsylvania Avenue, Washington, DC 20004, telephone: 202-739-5466, fax: 202-739-3001, and e-mail [jgutierrez@morganlewis.com](mailto:jgutierrez@morganlewis.com); the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001 (e-mail address for filings regarding license transfer cases only: [OGCLT@NRC.gov](mailto:OGCLT@NRC.gov)); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.302 and 2.305.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, within 30 days from the date of publication of this notice, persons may submit written comments regarding the

license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated January 23, 2006, available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agency wide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1-800-397-4209, 301-415-4737 or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

Dated at Rockville, Maryland this 13th day of February 2006.

For the Nuclear Regulatory Commission.

**Patrick D. Milano,**

*Senior Project Manager, Plant Licensing Branch I-1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

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## **NUCLEAR REGULATORY COMMISSION**

**[Docket No. 50-244]**

### **R.E. Ginna Nuclear Plant, LLC; R.E. Ginna Nuclear Power Plant; Notice of Consideration of Approval of Application Regarding Proposed Merger and Opportunity for a Hearing**

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the indirect transfer of the Renewed Facility Operating License, which is numbered DPR-18, for the R.E. Ginna Nuclear Power Plant (Ginna), currently held by R.E. Ginna Nuclear Power Plant, LLC (Ginna LLC), as owner and licensed operator.

According to an application for approval filed by Constellation

Generation Group, LLC (CGG), on behalf of Ginna LLC, in connection with the merger of CGG's parent company, Constellation Energy Group, Inc. (CEG, Inc.), and FPL Group, Inc. (FPL Group), FPL Group will become a wholly owned subsidiary of CEG, Inc. At the closing of the merger, the former shareholders of FPL Group will own approximately 60% of the outstanding stock of CEG, Inc., and the pre-merger shareholders of CEG, Inc., will own the remaining approximately 40%. In addition, the CEG, Inc., board of directors will be composed of fifteen members, nine of whom will be named by FPL Group, and six of whom will be named by the current CEG, Inc. Ginna LLC will continue to own and operate the facility and hold the license.

No physical changes to the facility or operational changes are being proposed in the application.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve the application for the indirect transfer of a license, if the Commission determines that the proposed merger will not affect the qualifications of the licensee to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

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established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.309(c)(1)(i) through (viii).

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Dated at Rockville, Maryland this 13th day of February 2006.

For the Nuclear Regulatory Commission.

**Patrick D. Milano,**

*Senior Project Manager, Plant Licensing Branch I-1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

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## NUCLEAR REGULATORY COMMISSION

[IA 05-041]

### In the Matter of Theodore D. Simmons, II; Confirmatory Order (Effective Immediately)

#### I

Theodore D. Simmons, II (Mr. Simmons) is employed by a contractor hired to provide various health and safety services to NASA's Goddard Space Flight Center. Mr. Simmons serves as the Radiation Safety Officer (RSO) on the NRC license.

#### II

On January 16, 2003, the NRC Office of Investigations (OI) initiated an investigation (OI Case No. 1-2003-011) at NASA. Based on the evidence developed during its investigations, OI did substantiate that Mr. Simmons deliberately failed to report missing licensed material as required, and provided incomplete and inaccurate information, verbally and in writing, to the NRC in violation of 10 CFR 30.9(a). The results of the investigation, completed on May 25, 2005, were sent to Mr. Simmons in a letter dated August 18, 2005.

#### III

Subsequent to the inspection in December 2002, and after becoming aware of the details of the apparent violation, Mr. Simmons undertook a number of corrective actions to assure that these events would not recur. These actions included changing the manner in which assessments were completed and source location was verified, and attendance at a 40-hour Radiation Safety Officer course in November 2005 which addressed the issue of communications and reportability to the NRC.

In response to the NRC's August 18, 2005, letter, Mr. Simmons requested the use of Alternative Dispute Resolution (ADR) to resolve these apparent

violations and pending enforcement action. ADR is a process in which a neutral mediator, with no decision-making authority, assists the NRC and the individual to resolve any disagreements on whether a violation occurred, the appropriate enforcement action, and the appropriate corrective actions. At Mr. Simmons' request: (1) A joint Alternative Dispute Resolution (ADR) mediation session was held at the NASA facility in Greenbelt, Maryland, on November 4, 2005, between Mr. Simmons, NASA, and the NRC; and (2) an individual ADR session was held in the Region I Office in King of Prussia, PA, on December 19, 2005, between Mr. Simmons and the NRC, at which NASA participated in portions of the mediation. These ADR sessions were mediated by a professional mediator, arranged through Cornell University's Institute of Conflict Management. Based on the discussions during the ADR sessions, a settlement agreement was reached regarding this matter. The elements of the settlement agreement are as follows:

1. The NRC determined that violations of NRC requirements occurred at NASA when: (a) Contrary to 10 CFR 20.1501, Mr. Simmons failed to perform a reasonable and necessary evaluation of information provided to him in memoranda from a health physics technician on September 10, 2002, and October 21, 2002, to determine whether the licensed material reported, in those memoranda, as missing at the NASA Goddard Space Flight Center in Greenbelt, Maryland, reached the threshold for reportability under 10 CFR 20.2201; and (b) contrary to 10 CFR 30.9 (a) Mr. Simmons provided inaccurate information to an NRC inspector during an NRC inspection on December 18-19, 2002, when he provided an inspector with an inventory form used by health physics technicians to account for sources indicating all sources were accounted for, when in fact, sources were not accounted for at the time.

2. Mr. Simmons agreed that he caused NASA to violate NRC requirements when he failed to perform a reasonable and necessary evaluation, pursuant to 10 CFR 20.1501, of information provided to him by the health physics technician, to determine whether the licensed material reported as missing in the memoranda identified in Item 1 reached the threshold for reportability under 10 CFR 20.2201. Mr. Simmons also agreed that he provided inaccurate information during the December 18-19, 2002, inspection, as noted in Item 1.

3. The NRC maintained that Mr. Simmons' actions were willful, at a