

CONSTELLATION ENERGY GROUP INC
Form S-8
November 18, 2005

As filed with the Securities and Exchange Commission on November 18, 2005

Registration No. 333-

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-8

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

CONSTELLATION ENERGY GROUP, INC.

(Exact name of registrant as specified in its charter)

Maryland

(State of Incorporation)

52-1964611

(I.R.S. Employer Identification No.)

750 East Pratt Street

Baltimore, Maryland

(Address of Principal Executive Offices)

21202

(Zip Code)

**Constellation Energy Group, Inc. Employee Savings Plan
Represented Employee Savings Plan for Nine Mile Point**

(Full title of the plans)

E. Follin Smith
Executive Vice President, Chief Financial Officer and Chief Administrative Officer
750 East Pratt Street
Baltimore, MD 21202

(Name and address of agent for service)

(410) 783-3013

(Telephone number, including area code, of agent for service)

Calculation of Registration Fee

| Title of each class of Securities to be registered | Amount to be registered (1) | Proposed maximum offering price per share (2) | Proposed maximum aggregate offering price (2) | Amount of registration fee (2) |
|---|------------------------------------|--|--|---------------------------------------|
| Common Stock, without par value | 2,000,000 \$ | 50.96 \$ | 101,920,000 \$ | 11,996 |

(1) Pursuant to Rule 416(a) under the Securities Act of 1933 (the Act), this registration statement also registers such additional shares as may be issued by reason of stock splits, stock dividends or similar transactions. In addition, pursuant to Rule 416(c) under the Act, this registration statement also covers an indeterminate amount of interests to be offered or sold pursuant to the Constellation Energy Group, Inc. Employee Savings Plan and the Represented Employee Savings Plan for Nine Mile Point (collectively, the Plans).

(2) Estimated solely for the purposes of calculating the registration fee pursuant to Rule 457(c) and (h) under the Act, based on the average of the high and low prices for the common stock on November 14, 2005, as reported on the New York Stock Exchange.

Registration of Additional Securities

Incorporation of Earlier Registration Statement by Reference

Constellation Energy Group, Inc. (Constellation Energy or the Company) hereby incorporates by reference into this registration statement the contents of the Registration Statement on Form S-8 filed by Constellation Energy on January 24, 2002 (Registration No. 333-81292).

PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

WHERE YOU CAN FIND MORE INFORMATION

Item 3. Incorporation of Documents by Reference.

Constellation Energy and the Plans incorporate by reference into this registration statement the following documents:

Constellation Energy's Annual Report on Form 10-K for the year ended December 31, 2004.

Constellation Energy Group, Inc. Employee Savings Plan Annual Report on Form 11-K for the year ended December 31, 2004.

Represented Employee Savings Plan for Nine Mile Point Annual Report on Form 11-K for the year ended December 31, 2004.

Constellation Energy's Quarterly Reports on Form 10-Q for the quarters ended March 31, 2005, June 30, 2005 and September 30, 2005.

Constellation Energy's Current Reports on Form 8-K dated March 2, 2005 and March 31, 2005.

The description of Constellation Energy's common stock contained under the caption "Proposal No. 1, Approval of the Share Exchange and Formation of the Holding Company - Capital Stock" in Constellation Energy's Registration Statement on Form S-4 (Registration No. 33-64799).

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All documents subsequently filed by Constellation Energy or the Plans pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, prior to the filing of a post-effective amendment which indicates that all securities offered have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference in this registration statement and to be part hereof from the date of filing of such documents. Constellation Energy and the Plans do not incorporate by reference any documents that are furnished to, but are not deemed filed with, the Securities and Exchange Commission.

Item 6. Indemnification of Directors and Officers.

The following description of indemnification allowed under Maryland statutory law is a summary rather than a complete description. Reference is made to Section 2-418 of the Corporations and Associations Article of the Maryland Annotated Code, which is incorporated herein by reference, and the following summary is qualified in its entirety by such reference.

By a Maryland statute, a Maryland corporation may indemnify any director who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (Proceeding) by reason of the fact that he is a present or former director of the corporation and any person who, while a director of the corporation, is

or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another corporation, partnership, joint venture, trust, other enterprise, or employee benefit plan (Director). Such indemnification may be against judgments, penalties, fines, settlements and reasonable expenses actually incurred by him in connection with the Proceeding unless it is proven that (a) the act or omission of the Director was material to the matter giving rise to the Proceeding and (i) was committed in bad faith, or (ii) was the result of active and deliberate dishonesty; or (b) the Director actually received an improper personal benefit in money, property, or services; or (c) in the case of any criminal proceeding, the Director had reasonable cause to believe his act or omission was unlawful. However, the corporation may not indemnify any Director in connection with a Proceeding by or in the right of the corporation if the Director has been adjudged to be liable to the corporation. A Director or officer who has been successful in the defense of any Proceeding described above shall be indemnified against reasonable expenses incurred in connection with the Proceeding. The corporation may not indemnify a Director in respect of any Proceeding charging improper personal benefits to the Director in which the Director was adjudged to be liable on the basis that personal benefit was improperly received. The corporation may not indemnify a director or advance expenses for a proceeding brought by the director against the corporation except if the proceeding is brought to enforce indemnification by the corporation or if the corporation's charter or bylaws, a board resolution or contract provides otherwise. Notwithstanding the above provisions, a court of appropriate jurisdiction, upon application of the Director, may order indemnification if it determines that in view of all the relevant circumstances, the Director is fairly and reasonably entitled to indemnification; however, indemnification with respect to any Proceeding by or in the right of the corporation or in which liability was adjudged on the basis that personal benefit was improperly received shall be limited to expenses. A corporation may advance reasonable expenses to a Director under certain circumstances, including a written undertaking by or on behalf of such Director to repay the amount if it shall ultimately be determined that the standard of conduct necessary for indemnification by the corporation has not been met.

A corporation may indemnify and advance expenses to an officer of the corporation to the same extent that it may indemnify Directors under the statute.

The indemnification and advancement of expenses provided by statute is not exclusive of any other rights, by indemnification or otherwise, to which a Director or officer may be entitled under the charter, by-laws, a resolution of shareholders or directors, an agreement or otherwise.

A corporation may purchase and maintain insurance on behalf of any person who is or was a Director or officer, whether or not the corporation would have the power to indemnify a Director or officer against liability under the provision of this section of Maryland law. Further, a corporation may provide similar protection, including a trust fund, letter of credit or surety bond, not inconsistent with the statute.

Article Eighth of the Company's Charter reads as follows:

(a)(i) The Corporation shall indemnify

(A) Its Directors and Officers, whether serving the Corporation or at its request any other entity, to the full extent required or permitted by the general laws of the State of Maryland, now or hereafter in force, including the advance of expenses, under the procedures and to the full extent permitted by law, and

(B) other employees and agents, to such extent as shall be authorized by the Board of Directors or the Corporation's by-laws and be permitted by law.

(ii) The foregoing rights of indemnification shall not be exclusive of any other rights to which those seeking indemnification may be entitled.

(iii) The Board of Directors may take such action as is necessary to carry out these indemnification provisions and is expressly empowered to adopt, approve and amend from time to time such by-laws, resolutions or contracts implementing such provisions or such further indemnification arrangements as may be permitted by law. No amendment of the Charter of the Corporation or repeal of any of its provisions shall limit or eliminate the right to indemnification provided hereunder with respect to any act or omission occurring prior to such amendment or repeal.

(b) To the fullest extent permitted by Maryland statutory or decisional law, as amended or interpreted, no Director or Officer of this Corporation shall be personally liable to the Corporation or its stockholders for money damages. No amendment of the Charter of the Corporation or repeal of any of its provisions shall limit or eliminate the limitation on liability provided to Directors and Officers hereunder with respect to any act or omission occurring prior to such amendment or repeal.

Article V of the Company's By-Laws reads as follows:

The Corporation shall indemnify all Directors, Officers and employees to the fullest extent permitted by the general laws of the State of Maryland and shall provide indemnification expenses in advance to the extent permitted thereby. The Corporation will follow the procedures required by applicable law in determining persons eligible for indemnification and in making indemnification payments and advances.

The indemnification and advance of expenses provided by the Charter and these by-laws shall not be deemed exclusive of any other rights to which a person seeking indemnification or advance of expenses may be entitled under any law (common or statutory), or any agreement, vote of stockholders or disinterested Directors or other provision that is consistent with law, both as to action in his or her official capacity and as to action in another capacity while holding office or while employed or acting as agent for the Corporation, shall continue in respect of all events occurring while a person was a Director or Officer after such person has ceased to be a Director or Officer, and shall inure to the benefit of the estate, heirs, executors and administrators of such person. All rights to indemnification and advance of expenses under the Charter of the Corporation and hereunder shall be deemed to be a contract between the Corporation and each Director or Officer of the Corporation who serves or served in such capacity at any time while this by-law is in effect. Nothing herein shall prevent the amendment of this by-law, provided that no such amendment shall diminish the rights of any person hereunder with respect to events occurring or claims made before its adoption or as to claims made after its adoption in respect of events occurring before its adoption. Any repeal or modification of this by-law shall not in any way diminish any rights to indemnification or advance of expenses of such Director or Officer or the obligations of the Corporation arising hereunder with respect to events occurring, or claims made, while this by-law or any provision hereof is in force.

The directors and officers of the Company are covered by insurance indemnifying them against certain liabilities which might be incurred by them in their capacities as such, including certain liabilities arising under the Securities Act of 1933. The premium for this insurance is paid by the Company.

Item 8. Exhibits.

Reference is made to the Exhibit Index filed as a part of this Registration Statement. Since the Plans are qualified under Section 401 of the Internal Revenue Code, neither an opinion of counsel concerning compliance with the requirements of the Employee Retirement Income Security Act (ERISA) nor an Internal Revenue Service (IRS) determination letter are being filed as an exhibit and the Company hereby undertakes that it will submit or has submitted to the IRS in a timely manner all amendments necessary to maintain the qualified status of the Plans and has made or will make all changes required by the IRS in order to maintain the qualification of the Plans.

Item 9. Undertakings.

(a) The undersigned Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the Registration Statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective registration statement;

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement;

provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the Registration Statement is on Form S-3, Form S-8, or Form F-3 and the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Securities and Exchange Commission by the Registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the Registration Statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new Registration Statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the Registration Statement shall be deemed to be a new Registration Statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to Directors, officers and controlling persons of the Registrant pursuant to the provisions described under Item 6 above, or otherwise, the Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a Director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such Director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

SIGNATURES

The Registrant. Pursuant to the requirements of the Securities Act of 1933, Constellation Energy Group, Inc., the Registrant, certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Baltimore, State of Maryland on the 16th day of November, 2005.

CONSTELLATION ENERGY GROUP, INC.
(Registrant)

By: /s/ Charles A. Berardesco
Charles A. Berardesco
Associate General Counsel, Chief
Compliance
Officer and Corporate Secretary

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed below by the following persons in the capacities and on the dates indicated.

| Signature | Title | Date |
|---|--|-------------------|
| Principal executive officer: | | |
| * Mayo A. Shattuck III | Chairman of the Board, President and Chief Executive Officer | November 16, 2005 |
| Principal financial and accounting officer: | | |
| * E. Follin Smith | Executive Vice President, Chief Financial Officer and Chief Administrative Officer | November 16, 2005 |

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| Signature | | Title | Date |
|---------------------------|---|--------------|-------------------|
| Douglas L. Becker | * | Director | November 16, 2005 |
| James T. Brady | * | Director | November 16, 2005 |
| Frank P. Bramble | * | Director | November 16, 2005 |
| Edward A. Crooke | * | Director | November 16, 2005 |
| James R. Curtiss | * | Director | November 16, 2005 |
| Yves C. de Balmann | * | Director | November 16, 2005 |
| Freeman A. Hrabowski, III | * | Director | November 16, 2005 |
| Edward J. Kelly, III | * | Director | November 16, 2005 |
| Nancy Lampton | * | Director | November 16, 2005 |
| Robert J. Lawless | * | Director | November 16, 2005 |
| Lynn M. Martin | * | Director | November 16, 2005 |
| Michael D. Sullivan | * | Director | November 16, 2005 |

*By: /s/ Charles A. Berardesco
Charles A. Berardesco, Attorney-in-Fact

The Plan. Pursuant to the requirements of the Securities Act of 1933, the trustee (or other persons who administer the Plan) have duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Baltimore, State of Maryland on the 16th day of November, 2005.

CONSTELLATION ENERGY GROUP, INC. EMPLOYEE SAVINGS PLAN

By: /s/ Richard D. Honaker

Richard D. Honaker, Plan Administrator

EXHIBIT INDEX

| | |
|----------------|---|
| * Exhibit 4(a) | Articles of Amendment and Restatement of the Charter of Constellation Energy Group, Inc. as of April 30, 1999. (Designated as Exhibit No. 99.2 to the Current Report on Form 8-K dated April 30, 1999, File No. 1-1910.) |
| * Exhibit 4(b) | Articles Supplementary to the Charter of Constellation Energy Group, Inc., as of July 19, 1999. (Designated as Exhibit No. 3(a) to the Quarterly Report on Form 10-Q for the quarter ended June 30, 1999, File Nos. 1-12869 and 1-1910.) |
| * Exhibit 4(c) | Certificate of Correction to the Charter of Constellation Energy Group, Inc. as of September 13, 1999. (Designated as Exhibit No. 3(c) to the Annual Report on Form 10-K for the year ended December 31, 1999, File Nos. 1-12869 and 1-1910.) |
| * Exhibit 4(d) | Articles Supplementary to the Charter of Constellation Energy Group, Inc. as of November 20, 2001. (Designated as Exhibit No. 3(e) to the Annual Report on Form 10-K for the year ended December 31, 2001, File Nos. 1-12869 and 1-1910.) |
| * Exhibit 4(e) | Bylaws of Constellation Energy Group, Inc., as amended to February 27, 2004. (Designated as Exhibit 3(a) to the Quarterly Report on Form 10-Q for the quarter ended March 31, 2004, File Nos. 1-12869 and 1-1910.) |
| Exhibit 5 | Opinion of Counsel as to legality of the shares of Common Stock being registered. |
| Exhibit 23(a) | Consent of PricewaterhouseCoopers LLP, Independent Registered Public Accounting Firm. |
| Exhibit 23(b) | Consent of Mitchell & Titus, LLP, Independent Registered Public Accounting Firm, relating to the Constellation Energy Group, Inc. Employee Savings Plan. |
| Exhibit 23(c) | Consent of Mitchell & Titus, LLP, Independent Registered Public Accounting Firm relating to the Represented Employee Savings Plan for Nine Mile Point. |
| Exhibit 23(d) | Consent of Counsel (included in Exhibit 5). |
| Exhibit 24 | Power of Attorney. |

* Incorporated by reference