

PMSTPCOL PEmails

From: Joseph, Stacy
Sent: Monday, August 08, 2011 8:09 AM
To: Simmons, Anneliese; Spencer, Michael; Ghosh, Anita
Cc: STPCOL
Subject: FW: Response to Request for Additional Information Letter No. 379
Attachments: U7-C-NINA-NRC-110106.pdf

Attached is STP's response to the Foreign Ownership RAI.

Stacy

From: Chappell, Coley [<mailto:ccchappell@STPEGS.COM>]
Sent: Thursday, August 04, 2011 3:28 PM
To: Joseph, Stacy; Wunder, George
Subject: Response to Request for Additional Information Letter No. 379

Stacy,

Attached is a courtesy (information only) electronic copy of the response to RAI 01-21 related to South Texas Project Units 3 & 4, COLA Part 1. The official paper copy was sent overnight to Document Control Desk.

Please contact me if there are any questions.

Regards,

Coley Chappell

NINA Licensing STP 3&4

Hearing Identifier: SouthTexas34Public_EX
Email Number: 3001

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From: Joseph, Stacy

Created By: Stacy.Joseph@nrc.gov

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August 4, 2011
U7-C-NINA-NRC-110106

U. S. Nuclear Regulatory Commission
Attention: Document Control Desk
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11555 Rockville Pike
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South Texas Project
Units 3 and 4
Docket Nos. 52-012 and 52-013
Response to Request for Additional Information

Attached is the response to the NRC staff question included in Request for Additional Information (RAI) letter number 379 related to Combined License Application (COLA) Part 1, General and Financial Information. The attachment provides the response to RAI question 01-21.

The response does not require a change to the COLA.

There are no commitments in this letter.

If you have any questions, please contact Scott Head at (361) 972-7136 or Bill Mookhoek at (361) 972-7274.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 8/4/11

Mark McBurnett
Senior Vice President, Oversight & Regulatory Affairs
Nuclear Innovation North America LLC

ccc

Attachment: RAI 01-21

STI 32910216

cc: w/o attachment except*
(paper copy)

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CPS Energy

RAI 01-21**QUESTION:**

The request for additional information (RAI) is related to Part 1, General and Financial Information, Rev. 5 of the combined license application (COLA) for the South Texas Project, Units 3 and 4.

Section 103d. of the Atomic Energy Act prohibits the NRC from issuing a license to:

“an alien or 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.”

Section 50.38 of 10 CFR is the regulatory provision that implements this statutory prohibition.

Further, per the NRC Standard Review Plan on Foreign Ownership, Control, or Domination, one of the factors that the staff may review regarding foreign ownership, control or domination is whether the applicant is indebted to foreign interests or has contractual or other agreements with foreign entities that may affect control of the applicant.

In its May 5, 2011 10-Q filing with the Securities and Exchange Commission (page 12), NRG stated that it planned to reduce the scope of development at STP 3 & 4 and that it was withdrawing from further financial participation in NINA. NRG further stated:

Due to the events described above, NRG evaluated its investment in NINA for impairment. As part of this process, NRC evaluated the contractual rights and economic interests held by the various stakeholders in NINA and concluded that while it continues to hold majority legal ownership, NRG ceased to have a controlling financial interest in NINA at the end of the first quarter of 2011.

Explain the basis for the determination that "NRG ceased to have a controlling financial interest in NINA at the end of the first quarter of 2011." Provide information, in sufficient detail for the staff to make a determination, including, but not limited to, percentages and amounts of financing, as to who has the controlling financial interest in NINA and how this impacts foreign ownership, control and domination of the applicant.

RESPONSE:

The NRG determination to deconsolidate its financial statements with NINA's financial statements does not change the conclusion that NINA will not be subject to the foreign ownership, control and domination (FOCD) within the meaning of 10 CFR 50.38. The STP 3&4 Negation Action Plan already addresses and mitigates any potential foreign influence that might arise through foreign economic support for the development of STP 3&4, even if foreign sources were to provide 100% of the remaining funding required for development and construction of STP 3&4.

“Controlling financial interest” is a term of art that is used for financial accounting purposes, in order to determine whether the financial statements for one company (financial results such as income or losses, and balance sheet, including assets and debts) should be consolidated with the financial statements of another company, *i.e.*, a parent company/owner. The term is used in the context of Accounting Standards Codification (ASC) Topic 810-10, *Consolidation*.

Decisions regarding consolidation or deconsolidation of financial statements involve a complex set of factors that are meant to assure that the appropriate accounting treatment is applied to a given set of facts. Among the factors at issue are whether a parent company or joint venturer has “financial control” and is essentially “at risk” for future losses of the subsidiary or joint venture. There is a presumption that “voting control” equates to financial control. However, this presumption can be overcome based upon various economic and other factors that can be considered.

The principles behind the accounting standards for consolidation are perhaps best illustrated by the example of a wholly owned subsidiary, where the parent company has made an investment in the business of the subsidiary and has complete control of all of the financial decisions made by the subsidiary. The theory is that given the investment in the ongoing business and control over its financial decisions, the parent company is essentially bound to the financial results of the subsidiary. Thus, the parent is “at risk” for the losses of the business, and for accounting purposes, the business is treated the same as if it were a business division of the parent, rather than merely an arms length investment in a totally separate company.

This same accounting logic applies where a subsidiary company is a joint venture that is also owned by other investors. The accounting standards would not permit a parent company to deconsolidate the subsidiary from the parent’s financial statements by simply having other investors join in the ownership of the company, where the parent company retains ongoing control over financial matters and the performance of the company. Thus, where a parent retains voting control and controls the economics of the subsidiary, financial accounting rules require that the financial results of the subsidiary continue to be consolidated with the financial statements of the parent. However, the presumption that voting control equates to financial control can be overcome based upon an evaluation of various other factors that might warrant different accounting treatment.

In the case of NRG’s ownership interest in NINA, NINA had been consolidated with NRG for financial accounting purposes until earlier this year. NRG made the decision in the Spring of this year that, under the applicable financial accounting standards, NRG would deconsolidate its financial results from NINA’s financial results as of the end of March 31, 2011. NRG’s deconsolidation decision was made based upon a number of criteria including contract rights and economic interests that it evaluated in connection with an impairment charge and a write down of NRG’s net investments in NINA, following NRG’s decision that it would not continue to fund NINA or NINA’s effort to develop STP 3&4.

NRG was able to unilaterally determine that it could cease or limit its funding of NINA, but under the terms of its agreements with the other NINA investors, NRG does not have the ability

to cancel the STP 3&4 project, shutdown NINA's activities, or restrict others from contributing capital or loaning money to NINA. In other words, NINA can continue to develop STP 3&4 as long as entities other than NRG are willing to lend or contribute funds to NINA, and NRG does not have the authority to restrict NINA from continuing to operate without funding from NRG.

NRG has written off its investment in NINA for accounting purposes. However, it continues to maintain its ownership interests and voting rights. To the extent NINA's other investors or lenders provide funding to NINA, the NINA Board continues to have fiduciary duties to properly manage NINA's affairs and its ongoing activities.

TANE has determined that it would continue to fund NINA's activities, by loaning money to NINA and by providing services to NINA. In addition, NRG is expected to continue to fund certain limited activities. Funding is currently provided, and in the coming months is expected to be provided, as follows:

1. It is expected that NRG will make limited further capital contributions in 2011 to fund certain lease and other obligations associated with NINA's headquarters office located in New York City, including compensation, *etc.*, for NINA's CEO and General Counsel, Jamey S. Seely, who is the only remaining employee in that office. The remaining funding to be provided by NRG after August 1, 2011 is expected to be less than 1% of the remaining funding necessary for NINA to obtain COLs for STP 3&4.
2. All other funding for NINA is expected to be provided by TANE in the form of services and loans to fund NINA's operations.

TANE continues to treat NINA's financial statements separately under applicable financial accounting standards, and NINA's financial results are not currently consolidated with TANE's financial statements. As such, NINA currently operates on the basis that neither of its owners believes that it holds a controlling financial interest, and thus, NINA considers that it is a separate and independent entity for financial accounting purposes.

The STP 3&4 Negation Action Plan assures that U.S. citizens will continue to maintain control over nuclear safety and security issues in compliance with 10 CFR 50.38, even if TANE were to be viewed as exercising "financial control" of NINA for financial accounting purposes. NINA's U.S. citizen Chief Executive Officer, Jamey S. Seely, and its U.S. citizen Chief Nuclear Officer and Senior Vice President, Oversight and Regulatory Affairs, Mark A. McBurnett, will continue to control nuclear safety and security decisions and fulfill their key responsibilities under the STP 3&4 Negation Action Plan (*e.g.*, Section 1D.2.3). In addition, the Negation Action Plan provides that NINA's governance will include provisions for implementation of a Security Subcommittee made up of all U.S. citizens, with a majority of independent U.S. citizen directors, to exercise control over nuclear safety and security decisions, and a Nuclear Advisory Committee, to oversee FOCD negation measures. These measures are to be implemented no later than the commencement of safety-related construction and long before any special nuclear material arrives at STP 3&4.

No changes to the COLA are required by this response.