

STP000037

July 1, 2013

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

)	
In the Matter of)	Docket Nos. 52-012-COL
)	52-013-COL
NUCLEAR INNOVATION NORTH AMERICA LLC)	
)	
(South Texas Project Units 3 and 4))	July 1, 2013
)	

**DIRECT TESTIMONY OF APPLICANT WITNESSES SAMUEL J. COLLINS AND
ROBERT S. WOOD REGARDING CONTENTION FC-1**

I. WITNESS BACKGROUND

A. Samuel J. Collins (SJC)

Q1. Please state your full name.


A1. (SJC) My name is Samuel J. Collins.

Q2. By whom are you employed and what is your position?

A2. (SJC) I am currently the president of my own consulting company and serve on several corporate review boards and oversight committees for nuclear power plant operating companies. I also am the Chairman of the Constellation Energy Nuclear Group ("CENG") Nuclear Safety Review Board. CENG has successfully implemented protections against inappropriate foreign ownership, control, or domination ("FOCD"). I am a citizen of the United States.

Q3. Please describe your educational and professional qualifications.

A3. (SJC) My professional and educational qualifications are summarized in my resume (Exh. STP000040). Briefly, I earned a Bachelor of Science from the Marine Maritime Academy. Before starting my own consulting company, I worked for the U.S. Nuclear Regulatory Commission ("NRC") for over 30 years in various capacities, including Director of

United States Nuclear Regulatory Commission Official Hearing Exhibit			
In the Matter of:		NUCLEAR INNOVATION NORTH AMERICA LLC (South Texas Project Units 3 and 4)	
	ASLBP #:	09-885-08-COL-BD01	
	Docket #:	05200012 05200013	
	Exhibit #:	STP000037-00-BD01	
	Admitted:	1/6/2014	
	Rejected:		
	Other:		
	Identified:	1/6/2014	
	Withdrawn:		
	Stricken:		

Nuclear Reactor Regulation (“NRR”). As Director of NRR, I managed members of the NRC Staff who had responsibility for review of applications, including issues related to FOCD. In my last position, I was the Regional Administrator of NRC’s Northeast Region (Region I) in King of Prussia, Pennsylvania. In this capacity, I directed a staff of about 255 employees in implementing the NRC’s regional programs at commercial nuclear power plants, decommissioning sites, and materials licensee sites. Before working for the NRC, I worked as an engineer for nine years to support the U.S. Navy’s nuclear program. In total, I have more than 40 years of experience in the nuclear industry.

B. Robert S. Wood (RSW)

Q4. Please state your full name.

A4. (RSW) My name is Robert S. Wood.

Q5. By whom are you employed and what is your position?

A5. (RSW) I currently work as a consultant to various clients on issues relevant to NRC regulations, policies, and procedures with respect to many financial and economic issues faced by nuclear companies, such as nuclear insurance, decommissioning funding assurance requirements, financial qualification requirements for nuclear power plant licensees, and FOCD issues. I am a citizen of the United States.

Q6. Please describe your educational and professional qualifications.

A6. (RSW) My professional and educational qualifications are summarized in my resume (Exh. STP000041). Briefly, I earned a Bachelor of Arts in Economics from Drew University and a Master of Public Administration from Ohio State University. Before consulting, I worked for the NRC and its predecessor, the Atomic Energy Commission, as a financial and economic policy analyst.

I was intimately and extensively involved with various nuclear power reactor financial issues facing the NRC from 1978 until my retirement from the NRC in June 2002. These issues included: the financial qualifications of licensees to operate and decommission their nuclear plants safely; nuclear liability and property insurance; antitrust; utility deregulation and license transfers; foreign ownership issues; and other issues.

Beginning in late 1995, the Commission began to focus on the changes in the electric utility industry – specifically, how industry restructuring pursuant to new federal and state policies, such as separation of generation from transmission and rate deregulation, might impact the NRC’s mission to protect public health and safety. I was tasked with developing an action plan for Commission consideration that would address all financial aspects of restructuring that could potentially impact the financial wherewithal of the NRC’s power reactor licensees to construct, operate, and decommission their facilities safely. A focus of the activities arising from the action plan was license transfers to non-rate-regulated merchant generators, including those owned by foreign interests. Then NRC Chairman Shirley Jackson took an active interest in the impact of rate deregulation and license transfers and asked me and my Branch Chief at the time, Dave Matthews, to brief her periodically on our findings and recommendations. This work culminated in, among other NRC actions, substantial revisions to the NRC’s policies on decommissioning funding assurance, financial qualifications, and foreign ownership issues. One of the many work products resulting from this effort was the Final Standard Review Plan on Foreign Ownership, Control or Domination that was approved by the Commission and published in the *Federal Register* on September 28, 1999 at 64 Fed. Reg. 52,335 (“FOCD SRP”) (Exh. NRC000106). Although this SRP was written by an attorney with the NRC’s Office of the

General Counsel, I had extensive input to it and had developed the Commission paper that initially broached the issue in light of industry deregulation and restructuring.

Because of my extensive experience with financial and ownership issues relevant to the safe construction, operation, and decommissioning of nuclear power plants, I applied for and was selected as the NRC's first Senior Licensee Financial Policy Advisor in 1997, a Senior Level Service position in NRR. I served in that capacity until my retirement in 2002.

C. Documents Reviewed

Q7. Please describe the materials that you reviewed in preparation of this testimony.

A7. (SJC, RSW) We reviewed various materials in preparing this testimony, including the parties' pleadings on Contention FC-1 and the September 30, 2011 Memorandum and Order (LBP-11-25) of the Atomic Safety and Licensing Board ("Licensing Board") admitting Contention FC-1. We also reviewed the following documents that are related to the South Texas Project ("STP") Units 3 and 4 project, or were generated as part of Nuclear Innovation North America LLC's ("NINA") combined license ("COL") Application ("COLA") or the NRC Staff's review of the COLA:

1. Third Amended and Restated Operating Agreement of Nuclear Innovation North America LLC (May 8, 2009) ("NINA LLC Agreement") (Exh. STP000043);
2. NINA Response to NRC Request for Additional Information ("RAI") 01-21 (Aug. 4, 2011) (Exh. STP000044);
3. STP Units 3 and 4 COLA, Revision 6 (Aug. 30, 2011) ("COLA Revision 6"), including COLA Part 1, General and Financial Information, and Final Safety Analysis Report ("FSAR") Appendix 1D, which provides NINA's Negation Action Plan ("NAP") (Exh. STP000045);
4. NINA Response to RAI 01-22 (Nov. 8, 2011), including proposed NAP revisions (Exh. STP000046);

5. NRC Staff letter with negative determination regarding FOCD issues (Dec. 13, 2011) (“Staff December 2011 Letter”) (Exh. NRC000118);
6. STP Units 3 and 4 COLA, Revision 7 (Feb. 1, 2012) (“COLA Revision 7”), including COLA Part 1, General and Financial Information, and FSAR Appendix 1D, which provides the NAP (Exh. STP000048);
7. NINA Supplemental Response to RAI 01-22 (Feb. 23, 2012) (Exh. STP000049);
8. NINA Response to April 18, 2012 RAIs (May 17, 2012) (Exh. STP000050);
9. NINA Supplemental Response to April 18, 2012 RAIs (Sept. 5, 2012) (Exh. STP000051);
10. STP Units 3 and 4 COLA, Revision 8 (Sept. 17, 2012) (“COLA Revision 8”), including COLA Part 1, General and Financial Information, and FSAR Appendix 1D, which provides the NAP (Exh. STP000052);
11. NINA Proposed Update to COLA Part 1 Information (Jan. 31, 2013) (Exh. STP000053);
12. STP Units 3 and 4 COLA, Revision 9 (Apr. 17, 2013) (“COLA Revision 9”), including COLA Part 1, General and Financial Information, and FSAR Appendix 1D, which provides the NAP (Exh. STP000054);
13. NRC Staff letter with negative determination regarding FOCD issues (Apr. 29, 2013) (“Staff FOCD Evaluation”) (Exh. NRC000104);
14. STP Nuclear Operating Company (“STPNOC”) Letter Regarding Foreign Ownership, Control, or Influence (Apr. 30, 2013) (Exh. STP000056); and
15. Minutes of meetings of the NINA Board of Managers since 2011 (Exhs. STP000057 to STP000064).

II. PURPOSE OF TESTIMONY

Q8. What is the purpose of your testimony?

A8. (SJC, RSW) The purpose of our testimony is to address Contention FC-1 regarding FOCD issues related to STP Units 3 and 4. In particular, Mr. Collins’ testimony focuses on the Security Committee of the NINA Board of Managers (sometimes referred to as “Board of Directors”) (“Board”) because he is a prospective candidate for that Committee. Mr. Wood’s testimony focuses on NINA’s Nuclear Advisory Committee (“NAC”) because he is

a prospective candidate for that Committee. We both address whether NINA and the STP Units 3 and 4 project satisfy the NRC’s FOCD requirements, and we both address the Staff FOCD Evaluation.

Q9. Are you familiar with Contention FC-1, as originally proposed by Intervenor, and relevant pleadings?

A9. (SJC, RSW) Yes. On May 16, 2011, the Intervenor submitted Contention FC-1 regarding FOCD of STP Units 3 and 4. Intervenor argued: “Based on media releases and statements made by NRG and NINA and Mr. Head on and after April 19, 2011, . . . NINA’s ownership structure runs afoul of 42 U.S.C. § 2133(d) and 10 CFR § 50.38 that prohibit licensure of applicants that are owned, controlled, or dominated by foreign interests.” (Intervenor’s Motion for Leave to File a New Contention Based on Prohibitions Against Foreign Control, page 4 (May 16, 2011)).

We are generally familiar with the relevant pleadings. NINA filed an answer on June 10, 2011 opposing the proposed contention, primarily because the proposed contention did not satisfy contention admissibility requirements, but also because the Intervenor failed to challenge the adequacy of NINA’s NAP, which addressed any FOCD concerns with the project. The NRC Staff also filed an answer on June 10, 2011. The Staff did not oppose admission of a contention. The Intervenor replied on June 21, 2011. NINA notified the Licensing Board and the parties on July 8, 2011 that it had submitted an update to the COLA, including a new FSAR Appendix 1D that provided a NAP. The parties then submitted briefs on July 29, 2011 regarding the effect of the COLA update on the proposed contention.

Q10. Are you familiar with Contention FC-1, as admitted by the Licensing Board on September 30, 2011?

A10. (SJC, RSW) Yes. We have reviewed the Licensing Board's September 30, 2011 Order, LBP-11-25. The Licensing Board concluded that Contention FC-1 raises a genuine dispute with the COLA regarding FOCD issues. As admitted by the Licensing Board, Contention FC-1 states:

Applicant, [NINA], has not demonstrated that its STP Units 3 and 4 joint venture with Toshiba, is not owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government contrary to 42 U.S.C. § 2133(d) and 10 C.F.R. § 50.38. (*Nuclear Innovation North America LLC* (South Texas Project Units 3 & 4), LBP-11-25, 74 NRC 380, 382 (2011)).

Q11. Are you familiar with the Staff's positions on FOCD issues for STP Units 3 and 4?

A11. (SJC, RSW) Yes. On December 13, 2011, the NRC Staff issued the Staff December 2011 Letter (Exh. NRC000118) with its determination regarding the discussion of FOCD issues in COLA Revision 6 and NINA's responses to RAI 01-21 and RAI 01-22. The Staff December 2011 Letter stated (page 1) that "[t]he staff has determined that NINA's application does not meet the requirements of 10 CFR 50.38." NINA responded to the Staff December 2011 Letter by submitting a revision to the COLA and new or supplemental responses to RAIs in an attempt to resolve the Staff's FOCD concerns.

Notwithstanding these efforts, the Staff issued the Staff FOCD Evaluation (Exh. NRC000104) on April 29, 2013 with a determination that the STP Units 3 and 4 project does not satisfy the NRC's FOCD requirements. Specifically, the Staff concluded (page 1) that "NINA and its wholly owned subsidiaries (NINA Texas 3 LLC and NINA Texas 4 LLC) continue to be under foreign ownership, control, or domination and do not meet the requirements of Section 103d of the Atomic Energy Act or the requirements of 10 CFR 50.38."

Q12. Are you familiar with the Direct Testimony of Mark A. McBurnett?

A12. (SJC, RSW) Yes. We have reviewed Mr. McBurnett's Direct Testimony.

Mr. McBurnett's testimony concludes that the COLA for STP Units 3 and 4, as supplemented by NINA's responses to NRC Staff RAIs, satisfies the requirements in the Atomic Energy Act of 1954, as amended ("AEA"), and 10 CFR § 50.38 regarding FOCD requirements, and that there is no inappropriate FOCD of NINA. He also evaluates NINA's submissions to the NRC and the attributes of the project, and discusses why they demonstrate that there is no inappropriate FOCD. Finally, Mr. McBurnett discusses the requirements of the FOCD SRP and how the STP Units 3 and 4 project satisfies the FOCD SRP requirements. On this point, he concludes that there is no inappropriate FOCD of NINA. We agree with the opinions in Mr. McBurnett's testimony.

Q13. Are you familiar with the Direct Testimony of Jamey S. Seely?

A13. (SJC, RSW) Yes. We have reviewed Ms. Seely's direct testimony. Ms. Seely is the former Chief Executive Officer ("CEO") and General Counsel of NINA. Ms. Seely testifies that NRG Energy continues to support NINA, with an NRG Energy executive serving as the NRG Energy member and Chairman of the NINA Board. She testifies that NRG Energy is a U.S. owned and controlled company, which owns approximately 90% of the voting membership interests of NINA. Ms. Seely explains that NRG Energy decided to write off its investment in NINA in April 2011 and announced that it would not make further financial contributions to the development of the project. However, NRG Energy also indicated that it would make contributions to NINA of up to \$20 million to fund reduction in its workforce and other wind down expenses. NRG Energy supports the development of STP Units 3 and 4, and continues to exercise its supermajority voting authority over NINA, including the appointment of the CEO and Chief Nuclear Officer ("CNO"). Ms. Seely testifies that the NRG Energy appointed NINA

Board member (currently Denise Wilson) would exercise voting authority to assure that NINA meets its regulatory responsibilities, including compliance with the restriction against FOCD. In contrast, Toshiba America Nuclear Energy Corporation (“TANE”) has a limited ownership share of NINA, which is restricted to no more than 10%, and TANE has no authority to remove or appoint a new CEO or CNO. TANE therefore has no ability to control or inhibit NINA’s compliance with regulatory requirements.

Q14. Please summarize your testimony.

A14. (SJC) My testimony demonstrates that, as a former NRC Staff senior manager who was responsible for the review of FOCD submissions, NINA’s NAP conforms to the NRC’s FOCD SRP and NRC precedent involving approval of foreign participation in U.S. reactor projects. I also explain that NINA’s NAP includes numerous attributes that negate any potential for improper FOCD with respect to the STP Units 3 and 4 project, including the establishment of a Security Committee. Finally, I also testify that I disagree with certain aspects of the Staff FOCD Evaluation, and that I would not have had a concern with the STP Units 3 and 4 project satisfying the FOCD requirements if I still were the Director of NRR.

(RSW) My testimony demonstrates that, as one of the authors of the FOCD SRP and as a former Staff member who reviewed FOCD submissions, NINA’s NAP includes numerous attributes that negate any potential for improper FOCD with respect to the STP Units 3 and 4 project, including the establishment of a NAC. I conclude that the NAP conforms to the FOCD SRP and NRC precedent involving approval of foreign participation in U.S. reactor projects. Finally, I also testify that I disagree with certain aspects of the Staff FOCD Evaluation, and that I would not have had a concern with the STP Units 3 and 4 project satisfying the FOCD requirements if I still were a reviewer of these issues in NRR.

III. FOCD REQUIREMENTS

Q15. Please describe the source of the FOCD requirements.

A15. (SJC, RSW) Sections 103 and 104 of the AEA preclude the issuance of a reactor license to “any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, foreign corporation, or a foreign government. In any event, no license may be issued to any person within the United States if, in the opinion of the Commission, the issuance of a license to such person would be inimical to the common defense and security or to the health and safety of the public.”

Q16. Has the Commission issued any guidance for evaluating the FOCD requirements?

A16. (SJC, RSW) Yes. The Commission’s guidance for evaluating FOCD requirements is found in the 1999 FOCD SRP. The NRC has also reviewed and approved FOCD issues as part of a number of projects over the years, which provide precedent for the FOCD requirements.

Q17. Please describe the primary purpose of the FOCD SRP.

A17. (SJC, RSW) The FOCD SRP is primarily focused on preventing FOCD over matters affecting the common defense and security. Such matters include protection of Restricted Data, diversion of special nuclear material, and nonproliferation concerns (e.g., transfer of nuclear technology to foreign entities). In addition to that primary purpose, the FOCD SRP is also intended to prevent FOCD over matters affecting compliance with NRC’s safety requirements.

Q18. Based on your involvement with FOCD issues at the NRC, how would you characterize the NRC's concern about foreign involvement in matters related to safety or reliability?

A18. (SJC, RSW) Historically, the focus of the NRC with respect to FOCD has been on issues related to national defense and security, because this was the purpose and intent of the restrictions on FOCD in the statute. Safety and reliability are a major focus of the NRC independent review of potential foreign or domestic control and are governed by many regulations other than 10 CFR § 50.38.

U.S. nuclear power plants routinely use foreign vendors and contractors for a variety of services, including design, procurement, construction, testing, and maintenance, irrespective of any foreign control related issues. NRC has rules and oversight to ensure these services provide the requisite safety and reliability.

It is also important to note that the interests of owners, investors, and lenders will be aligned regardless of their foreign or domestic domicile. A foreign investor in a nuclear power plant has the same interest as a domestic investor in ensuring the safety and reliability of the plant. If the plant does not perform safely and reliably, the investor (whether foreign or domestic) will suffer economic losses. Once safety and reliability are ensured, owners of and investors in nuclear power plants have an interest in cost control. That interest is the same, whether the owner or investor is a domestic company or foreign company. A foreign company is as likely as a domestic company to select the least-cost contractor as long as the contractor has the requisite qualifications to provide services in a safe and reliable manner. When the foreign investor is also the reactor vendor (as is the case for STP Units 3 and 4), the investor has a

significant interest in ensuring the safety and reliability of the project in order to facilitate its ability to market its reactor design in the United States and the remainder of the world.

Q19. What type of oversight is in place at nuclear power plants to ensure safe and reliable operation?

A19. (SJC, RSW) Nuclear power plants are subject to a wide variety of oversight to ensure that the plants are safe and reliable. In addition to the licensee's own Quality Assurance ("QA") Program (which must satisfy NRC requirements in Appendix B to 10 CFR Part 50), U.S. nuclear power plants routinely receive inspection and oversight by the NRC. Additionally, the Institute of Nuclear Power Operations ("INPO") provides for industry guidance and oversight in the pursuit of excellence. The NRC also maintains a resident inspector program whereby NRC inspectors have an ongoing on-site presence to detect any safety problems. If a nuclear power plant (with or without foreign investors) is not meeting requirements or expectations for nuclear safety or reliability, NRC or INPO detects such deficiencies and takes action to ensure the licensee takes corrective action.

Q20. Does the FOCD SRP prohibit foreign involvement in a nuclear power plant project?

A20. (SJC, RSW) No. The FOCD SRP makes clear that foreign involvement combined with a NAP that precludes foreign control over decisions affecting nuclear safety and common defense and security is consistent with NRC FOCD restrictions. For example, the FOCD SRP allows a foreign entity to contribute 50% or more of the costs of construction, participate in project review, consult on policy and cost issues, and designate personnel to design and construct the reactor, subject to the approval and direction of U.S. citizens. (FOCD SRP, 64 Fed. Reg. at 52,358 (Exh. NRC000106)). Furthermore, foreign ownership is permissible as long

as sufficient negation measures are established to protect against: diversion of special nuclear material; diversion of nuclear technology (whenever nonproliferation concerns are present); diversion of national security information; or a disruption in the licensee's ability to comply with safety requirements.

Q21. Does the FOCD SRP describe a percentage ownership limit that foreign entities may have in a nuclear power plant project?

A21. (SJC, RSW) No. The FOCD SRP explicitly recognizes that acceptable foreign ownership could exceed 50% if appropriate negation measures (*e.g.*, by requiring the officers and employees of the applicant responsible for special nuclear material to be U.S. citizens) are adopted to assure U.S. control over matters of concern under the AEA. (FOCD SRP, 64 Fed. Reg. at 52,358 (Exh. NRC000106)).

Q22. Is the country of origin of the foreign owner relevant to the analysis under the FOCD SRP?

A22. (SJC, RSW) Yes. This was an adjustment that was recommended by Commissioner McGaffigan in connection with reviewing the FOCD SRP. The NRC Staff's information paper included the following proposed language:

Previous Commission decisions with respect to [FOCD] did not distinguish among the home countries of the ultimate owners of the applicants. Thus, the staff does not intend to use considerations of the home country of BE, plc [British Energy], in its determinations of foreign ownership, control, or domination. (SECY-98-252, Preliminary Staff Views Concerning Its Review of the Foreign Ownership Aspects of AmerGen, Inc.'s Proposed Purchase of Three Mile Island, Unit 1, page 6 (Exh. STP000080)).

In his 1999 Response Sheet for the Notation Vote (page 3) (Exh. STP000081), Commissioner McGaffigan objected to this approach, indicating that he preferred "attention to the realities of national security." Significantly, the country of origin criterion was taken into account in the

NRC Staff’s review of the proposed license transfers involving AmerGen Energy Company, LLC (“AmerGen”), which were being conducted contemporaneously with the Commission’s approval of the FOCD SRP. This precedent is discussed in further detail later in our testimony.

Q23. How would you apply the country of origin consideration in connection with NINA and the STP Units 3 and 4 Project?

A23. (SJC, RSW) TANE’s parent company, Toshiba Corporation, is a Japanese company, and Japan is an ally of the United States that has strong nuclear nonproliferation credentials. For example, the Federation of American Scientists issued an FAS Issue Brief in December 2012 entitled “Japan’s Role as Leader for Nuclear Nonproliferation” (Exh. STP000082). This paper documents Japan’s longstanding history of cooperation with the United States regarding the peaceful uses of nuclear energy and notes that Japan’s “experience with the peaceful use of nuclear power and its reputation as a responsible player make Japan a world leader in the international nonproliferation and security regime.” Given that Toshiba Corporation is supplying the technology for STP Units 3 and 4, and given Japan’s strong nonproliferation record, any potential for FOCD concerns are greatly diminished.

Q24. Please describe NRC precedent for evaluating FOCD issues.

A24. (SJC, RSW) Concurrently with the development of the draft and final SRPs on FOCD, the NRC received an application dated December 3, 1998 for the transfer of the operating license for the Three Mile Island, Unit 1, Nuclear Generating Station (“TMI-1”) from General Public Utilities, Inc. and its subsidiaries to AmerGen. AmerGen was 50% owned by PECO Energy Company, and 50% owned by British Energy, Inc., which was owned by British Energy plc (“BE”), a U.K. company. Thus, by virtue of BE’s ownership share in AmerGen, BE, as a foreign entity, would own 50% of TMI-1, and would have the potential to exert FOCD over

TMI-1. The NRC Staff evaluated this application pursuant to the draft SRP on FOCD, which had been approved by the Commission for interim use until adoption of the final SRP. The results of the Staff evaluation were contained in a Safety Evaluation Report (“SER”) dated April 12, 1999. In that report, the Staff concluded that “the transfer of the operating license for TMI-1 to AmerGen would not violate the prohibitions in the AEA pertaining to [FOCD].” (Safety Evaluation by the Office of Nuclear Reactor Regulation – Transfer of Facility Operating License from General Public Utilities Nuclear, Inc., et al., to AmerGen Energy Company, LLC and Approval of Conforming Amendment Three Mile Island Nuclear Station, Unit 1, page 17 (Apr. 12, 1999) (Exh. STP000072)). The Staff’s conclusion was subject to the adoption of the NAP developed by AmerGen, which would be implemented by license conditions stipulated in the NRC order approving the license transfer.

Q25. What is the significance of the AmerGen license transfer to this proceeding?

A25. (SJC, RSW) Several aspects of the AmerGen license transfer are germane to the STP Units 3 and 4 COL proceeding. First, AmerGen was precedent-setting in that it was the first power reactor license transfer proceeding to raise FOCD issues. Thus, the NRC Staff carefully considered the facts in the AmerGen application to ensure that appropriate policy was being established and that the improper FOCD ban was being upheld. Second, the NRC’s approval of the license transfer implicitly recognized that not every senior manager in AmerGen had to be a U.S. citizen. It recognized that the President of AmerGen was a British citizen, but also realized that that officer was concerned with business decisions not relevant to protection of the public health and safety and common defense and security of the United States. Third, with the implementation of mitigating measures through the NAP and implementing license conditions, the NRC accepted that a “firewall” could, in effect, be implemented to ensure that AmerGen

management decisions with respect to protection of the public health and safety and common defense and security of the United States would be made by U.S. citizens. Fourth, the TMI-1 license transfer represented a transfer of both ownership and operating authority to an existing nuclear plant, not one merely under construction using a previously-approved design. The ramifications for protection of the public health and safety and common defense and security for operating plants are more profound than for a plant under construction. Fifth, in AmerGen the foreign owner was from the United Kingdom, which like Japan is a country that is an ally of the United States and that has a longstanding history of solid nuclear nonproliferation credentials. As noted above, the Commission approved the final FOCD SRP. Consistent with Commissioner McGaffigan's stipulation that consideration should be given to the home country of the foreign owner, the NRC Staff did give such consideration in its AmerGen review. Noting these credentials, the NRC Staff evaluation indicated that this was "consistent with a favorable determination," because the FOCD prohibition "should be given an orientation toward safeguarding the national defense and security." (TMI SER, page 17 (Exh. STP000072)).

In addition to the TMI-1 license transfer, the NRC received three other license transfer applications involving AmerGen in the 1999 to 2000 timeframe: (1) By application dated July 23, 1999, Illinois Power Company and AmerGen jointly applied to the NRC for the transfer of the operating license for the Clinton Power Station to AmerGen. The NRC approved this transfer on November 24, 1999 (NRC Approval of Clinton Transfer (Nov. 24, 1999) (Exh. STP000073)); (2) By application dated November 5, 1999, GPU Nuclear, Inc. and AmerGen jointly applied for the transfer of the operating license of the Oyster Creek Nuclear Generating Station to AmerGen. The NRC approved this transfer on June 6, 2000 (NRC Approval of Oyster Transfer (June 6, 2000) (Exh. STP000074)); (3) By application dated January 6, 2000, Vermont

Yankee Nuclear Power Station and AmerGen Vermont, a wholly-owned subsidiary of AmerGen, jointly applied for the transfer of the operating license for Vermont Yankee Nuclear Power Station to AmerGen Vermont. The NRC approved this transfer on July 7, 2000 (Order Approving Transfer of License for Vermont Yankee Nuclear Power Station from Vermont Yankee Nuclear Power Corporation to AmerGen Vermont, LLC, and Approving Conforming Amendment (July 7, 2000) (Exh. STP000075)). In each of these transfers, as with the TMI-1 license transfer, the nuclear plants being transferred were to be indirectly owned 50% by a foreign entity, by virtue of 50% ownership in AmerGen (and AmerGen Vermont) by BE. The NRC used essentially the same set of license conditions based on AmerGen's NAP for these three transfers as it did for the TMI-1 transfer to mitigate FOCD, following the review procedures established in the FOCD SRP. Thus, the NRC has well-established precedent for approving license transfers of nuclear power plants when such plants are 50% owned by foreign entities as long as NAPs are in place to mitigate FOCD, with specific emphasis on reserving decisions on protection of the public health and safety and common defense and security of the United States to U.S. citizens.

Q26. During your tenure at NRC, were there any other applications that involved foreign ownership?

A26. (SJC, RSW) Yes. In addition to the AmerGen transfers, the NRC received license transfer applications for other plants with varying degrees of direct or indirect foreign ownership. On March 15, 1999, New England Power Company ("NEP") applied for an indirect transfer of ownership of its 12.2% ownership share in the Millstone Station, Unit 3 (Millstone 1999 Order (Exh. STP000086)), and its 9.9% ownership share in Seabrook Station, Unit 1 (Seabrook 1999 Order (Exh. STP000085)). NEP, in turn, was a wholly-owned subsidiary of the

New England Electric System (“NEES”). NEES agreed to a plan of merger with the National Grid Group plc (“National Grid”), a British company, in which NEES would become a wholly-owned subsidiary of National Grid. Although this application was subject to intervenor challenges, in part with respect to FOCD issues, intervenor concerns were resolved and were withdrawn by notice dated November 4, 1999. (Notice of Withdrawal of Petition for Leave to Intervene and for Hearing and Joint Motion to Terminate Proceeding (Nov. 4, 1999) (Exh. STP000076)). The license transfer was approved by the NRC using the standards set forth in the FOCD SRP, with specific emphasis on reserving decisions on protection of the public health and safety and common defense and security of the United States to U.S. citizens. However, non-U.S. citizens could take part in decisions relating to (1) whether to close the facility and begin decommissioning and whether to seek license renewal; and (2) whether to sell, lease, or otherwise dispose of NEP’s interests in the facility. (Seabrook Safety Evaluation (Exh. STP000088)). NEP also acquired another 4% interest in Millstone 3 in 2000, for a total of 16.2% (Millstone 2000 Order (Exh. STP000087)).

Likewise, on May 24, 1999, PacifiCorp applied for an indirect transfer of its 2.5% share in the Trojan Nuclear Plant, by virtue of its proposal to become a wholly-owned subsidiary of ScottishPower, plc, a British company. As with the NEP license transfer, the license transfer was approved by the NRC using the standards set forth in the FOCD SRP, with specific emphasis on reserving decisions on protection of the public health and safety and common defense and security of the United States to U.S. citizens. However, non-U.S. citizens could take part in decisions relating to:

- (1) The right to decide to sell, lease, or otherwise dispose of PacifiCorp’s interest in the facility.

(2) The right to authorize and determine the budget related to the facility; and

(3) The right to take any action which is ordered by the NRC or any agency or court of competent jurisdiction. (Safety Evaluation by the Office of Nuclear Reactor Regulation Proposed Merger of PacifiCorp and ScottishPower plc Trojan Nuclear Plant, page 5 (Nov. 10, 1999) (Exh. STP000077)).

It is clear from these examples that certain decisions not related to the protection of public health and safety or common defense and security can be made by foreign nationals (*e.g.*, budgeting, asset sales, or other business-related decisions) without violating the FOCD provisions of the AEA and NRC regulations in 10 CFR § 50.38.

IV. NINA’S FOCD COMPLIANCE

A. Overview of NINA’s NAP

Q27. Are you familiar with NINA’s NAP?

A27. (SJC, RSW) Yes.

Q28. Please provide an overview of the purpose of NINA’s NAP.

A28. (SJC, RSW) The purpose of the NAP for STP Units 3 and 4 (Exh. STP000054) is to ensure that foreign persons do not exercise impermissible foreign control over NRC licensed activities (*i.e.*, foreign persons do not exercise ultimate decision making “control” over nuclear safety, security, or reliability issues through ownership of NINA). The NAP is not intended to prohibit all foreign involvement in issues related to nuclear safety, security, or reliability. For example, at essentially all nuclear plants in the United States, foreign controlled entities are involved in supplying products and services. Such foreign involvement is permissible, as long as U.S. citizens have ultimate control over decisions involving nuclear safety, security, or reliability.

Q29. What measures are contained in NINA's NAP to negate FOCD issues?

A29. (SJC, RSW) The NAP for STP Units 3 and 4 (Exh. STP000054) contains measures to negate FOCD with respect to matters involving nuclear safety, security, or reliability of STP Units 3 and 4 throughout the licensing stage, construction, and operation of STP Units 3 and 4. Some of the requirements of the NAP include:

- The Chairman of the NINA Board, and anyone acting for the Chairman, must be a U.S. citizen.
- The CEO, anyone acting for the CEO, and the CNO of NINA must be U.S. citizens.
- The CEO and CNO each must execute a certificate that acknowledges a special duty to the U.S. Government to protect against and negate the potential for any FOCD of NINA.
- NINA will establish a Security Committee.
- NINA will establish a NAC.
- The CNO exercises U.S. control and oversight of nuclear safety issues through control of the NINA QA Program and Safeguards Information Program.
- The NAP provides that any person involved in the licensing, design, construction, or operation of STP Units 3 and 4 may raise safety concerns or any potential FOCD issues.
- The NAP prescribes actions by NINA to ensure U.S. control if any concern related to FOCD were to arise.
- Prior to implementation of the Security Committee and NAC, the CEO has ultimate authority on decisions affecting nuclear safety, security, or reliability.

B. Security Committee

Q30. Please provide an overview of the Security Committee.

A30. (SJC) Sections 1D.1 and 1D.2.2 of the NAP provide relevant structures and functions of the Security Committee of the NINA Board. The Security Committee must be established before pouring safety-related concrete for STP Units 3 and 4, and will have exclusive authority to make the corporate decisions for NINA regarding nuclear safety, security, or reliability matters.

Q31. What are the Security Committee membership requirements?

A31. (SJC) The Security Committee will be composed entirely of U.S. citizens, a majority of whom will be independent outside members. The Security Committee will have the exclusive right to exercise the Board's authority over the matters that are required to be under U.S. control. NINA's governance will assure that decisions regarding matters affecting nuclear safety, security, or reliability of STP Units 3 and 4 will be outside the control of any foreign owner, because they would be delegated to the Security Committee.

The Security Committee will be comprised of three U.S. citizens: the Chairman of the Board and two independent members. Attendance and participation of the two independent U.S. citizen members are required to constitute a quorum for the Security Committee to conduct business. This assures control will be exercised by U.S. citizens who are independent from any foreign entities.

Q32. What authority will the Security Committee have to make corporate decisions for NINA?

A32. (SJC) The Security Committee will have a broad delegation of exclusive authority to make the corporate decisions for NINA regarding any issue related to nuclear safety, security, or reliability. These decisions include: (1) any matter that is to be brought before the Board, where U.S. legal and regulatory requirements direct that the matter must be decided under U.S. control; or (2) any matter that ordinarily might be decided by corporate officers, but where there is a concern that decision making regarding the matter may be subject to foreign control or influence, and U.S. legal and regulatory requirements direct that the matter must be decided under U.S. control. (COLA Revision 9, NAP, page 1.D-7 (Exh. STP000054)). In other words,

the Security Committee has the authority to decide any matter that could give rise to an FOCD concern.

Q33. Please describe the matters for which the Security Committee will have the exclusive authority of the Board to vote and decide for NINA.

A33. (SJC) The Security Committee will exercise exclusive authority of the Board to vote and decide the following matters:

- Any matter that, in view of U.S. laws or regulations, requires or makes it reasonably necessary to assure U.S. control;
- Any matter relating to nuclear safety, security, or reliability, including, but not limited to, the following matters:
 - Implementation or compliance with any NRC generic letter, bulletin, order, confirmatory order or similar requirement issued by the NRC;
 - Prevention or mitigation of a nuclear event or incident or the unauthorized release of radioactive material;
 - Placement or restoration of the plant in a safe condition following any nuclear event or incident;
 - Compliance with the AEA (as in effect from time-to-time), the Energy Reorganization Act of 1974 (as in effect from time-to-time), or any NRC rule;
 - The obtaining of, or compliance with, a specific license issued by the NRC and its technical specifications;
 - Conformance with a specific FSAR, or other licensing basis document; and
 - Implementation of security plans and procedures, control of security information, control of special nuclear material, administration of access to controlled security information, and compliance with government clearance requirements regarding access to Restricted Data.
- Any other issue reasonably determined by a majority of the members of the Security Committee in office, in their prudent exercise of discretion, to be an exigent nuclear safety, security, or reliability issue; and
- Appointment of any successor CEO of NINA and CNO of NINA, in each case as nominated by the Board. (COLA Revision 9, NAP, page 1.D-7 (Exh. STP000054)).

Q34. Do you have an opinion regarding whether or not this list of matters for which the Security Committee will be delegated authority is adequate to negate FOCD concerns?

A34. (SJC) Yes, I believe that delegating these matters to the Security Committee is adequate to negate FOCD concerns. This list of matters designated to be under U.S. control is consistent with the list of such matters that was used in the negation action measures adopted to address the roughly 50% foreign ownership involved in two companies that were approved by the NRC Staff to own and operate multiple nuclear reactor sites: (1) AmerGen (TMI-1; Clinton; and Oyster Creek) (TMI-1 Safety Evaluation (Exh. STP000072); Clinton Safety Evaluation (Exh. NRC000153); Oyster Safety Evaluation (Exh. STP000090)); and (2) CENG (Calvert Cliffs, Units 1 & 2; Ginna; and Nine Mile Point, Units 1 and 2) (Revised Safety Evaluation (Exh. NRC000154)).

Q35. Will the Security Committee have any other authority to ensure there is no inappropriate foreign control?

A35. (SJC) Yes. The Security Committee also will have the authority to conduct audits to ensure that there is no inappropriate foreign control. This includes the authority to obtain direct access to any employee or contractor personnel involved in the licensing, design, construction and/or operation of STP Units 3 and 4.

Q36. Who is responsible for the day-to-day management of the affairs of NINA?

A36. (SJC) The day-to-day management of the affairs of NINA has been delegated to NINA's executive personnel, but such delegation is subject to limitations including the ultimate authority of the Board and the Security Committee to make decisions for NINA when necessary. The NINA governance is structured to ensure that the required U.S. control over matters of

nuclear safety, security, or reliability is not circumvented by having such issues decided without consultation with and oversight by the Security Committee, whenever necessary.

Q37. Is anything else done to assure the U.S. Government that the Security Committee has responsibility for FOCD compliance?

A37. (SJC) Yes. In order to underscore the special role undertaken by the Security Committee, each Security Committee member is required to execute a certificate acknowledging their special responsibility and duty to the U.S. Government. The certificate states:

By execution of this Certificate, I acknowledge the protective measures that have been taken by Nuclear Innovation North America LLC (“NINA”) through adoption and implementation of the provisions of Section 5.1(e) of its Fourth Amended and Restated Limited Liability Company Agreement (“Agreement”), in order to protect against and negate the potential of any foreign ownership, control or domination of NINA within the meaning of 10 CFR 50.38 and Section 103.d of the Atomic Energy Act of 1954, as amended.

I further acknowledge that the United States Government has placed its reliance on me as a United States citizen to exercise all of the responsibilities provided for in Section 5.1(e) of the Agreement; to assure that members of the NINA Board of Directors, the officers of NINA, and the employees of NINA comply with the provisions of Section 5.1(e) of the Agreement; and to assure that the Nuclear Regulatory Commission is advised of any violation of, attempt to violate, or attempt to circumvent any of the provisions of Section 5.1(e) of the Agreement, of which I am aware. (COLA Revision 9, NAP, pages 1D-9 to 1D-10 (Exh. STP000054)).

Q38. Under what circumstances will the Security Committee conduct meetings?

A38. (SJC) If a request is made for a matter to be considered by the Security Committee, a Special Meeting of the Security Committee shall be conducted. Such a request may be made by the CEO, any member of the Security Committee, the NAC, or the Board. The Security Committee is required to promptly resolve any issues referred in this manner. If any

person is not satisfied with the resolution of an FOCD concern that is not referred to the Security Committee, that person may raise the issue directly to one or more members of the Security Committee. If any member of the Security Committee agrees that the issue should be brought before the Security Committee, a Special Meeting is required. (COLA Revision 9, NAP, page 1D-9 (Exh. STP000054)).

Q39. Are you currently a member of the Security Committee?

A39. (SJC) No. The Security Committee has not yet been established. However, NINA has indicated that it potentially would like to retain me as an independent member of the Board and to serve on the Security Committee. At the time NINA's Security Committee is established, I would be agreeable to participate as an independent member and will sign the certificate acknowledging my special responsibility and duty to the U.S. Government.

Q40. Is someone responsible for the functions of the Security Committee until it is established?

A40. (SJC) Until the Security Committee is established, the CEO of NINA performs the functions of the Security Committee, except the right to approve a new CEO (which resides with the Board). (COLA Revision 9, NAP, page 1D-10 (Exh. STP000054)).

Q41. What is your opinion on the propriety of deferring the establishment of the Security Committee?

A41. (SJC) Prior to the time that the Security Committee is established, there are essentially no activities for STP Units 3 and 4 that could affect the national defense and security. Furthermore, prior to that time, given the absence of a closing of a Project Finance, there will be no licensed construction activities. Since the NRC reviews and approves licensing activities, there is assurance that such activities will not be adversely affected by any FOCD. Consequently,

I conclude that it is appropriate from an FOCD perspective to have the CEO perform the functions of the Security Committee prior to its establishment.

Q42. As a potential member of the Security Committee, how would you describe the responsibilities of a member of the Committee?

A42. (SJC) I would be engaged part-time as a member of the Security Committee. My responsibilities on the Security Committee would involve periodic meetings (*e.g.*, Board, Security Committee, and Special Meetings, as needed) and routine consultations with NINA management. I anticipate that the primary source of information will be provided by the NAC; however, I would also expect to make site visits from time-to-time and to participate in periodic briefings by NINA or STPNOC management and to make myself available to receive information from any person involved with the project that would like to discuss an FOCD-related concern.

Q43. What are your qualifications to serve as a member of the Security Committee?

A43. (SJC) As a former Director of NRR with overall responsibility for NRC's review and enforcement activities for nuclear reactors, I am familiar with NRC's FOCD restrictions. Therefore, if I were appointed as a member of the Security Committee, I would be well-positioned to ensure NINA complies with NRC restrictions on FOCD. Furthermore, as a former Director of NRR and a former NRC Regional Administrator, I am familiar with NRC requirements related to nuclear safety, security, or reliability, and will ensure that those requirements are met by NINA.

Finally, as described above, I am currently employed by my consulting company, and thus I have additional sources of income, including my NRC pension. Therefore, I would not be

in any way dependent on the income received from my participation on the Security Committee, and would not be influenced in any manner by that income. For the same reason, this testimony presents my independent judgment, and it is not designed to influence NINA to appoint me to the Security Committee.

Q44. If you become a member of the Security Committee, would you adhere to the requirements set forth in the NAP?

A44. (SJC) Yes. Additionally, I have devoted almost my entire adult life working for the U.S. Government, first working to support the U.S. Navy nuclear program and then in the NRC, ensuring the nuclear safety, security, or reliability of nuclear reactors and promoting the interests of the United States. There is absolutely nothing that would induce me to ever compromise nuclear safety, security, or reliability or harm the interests of the United States.

C. Nuclear Advisory Committee (“NAC”)

Q45. Please provide an overview of the NAC.

A45. (RSW) Sections 1D.1(i) and 1D.2.4 of the NAP state that NINA will establish the NAC before pouring safety-related concrete of STP Units 3 and 4 to provide oversight, focused primarily on monitoring for compliance with FOCD restrictions. The NAC will provide periodic oversight, including inquiry and investigation whenever needed, in order to assure FOCD compliance.

Q46. What are some of the primary functions of the NAC?

A46. (RSW) One of the primary functions of the NAC will be to provide transparency to the NRC and the U.S. Government regarding the authority of the Security Committee over certain matters in order to protect against and negate the potential for any FOCD of NINA. The NAC will perform an ongoing monitoring function to assess FOCD issues and surface any potential concerns regarding FOCD matters. If necessary, the NAC can alert the U.S.

Government regarding issues involving potential non-compliance with applicable FOCD requirements.

Another function of the NAC is to advise and make recommendations to the Board regarding whether measures additional to those already in place should be taken to ensure NINA's FOCD compliance. The NAC will provide reports and supporting documentation to the Board on these matters on at least an annual basis, no later than November 30 of each year. Section 1D.2.4(a) of the NAP states that the CNO of NINA will assure that copies of these reports are submitted to the NRC. (COLA Revision 9, NAP, page 1D-14 (Exh. STP000054)).

Q47. What are the NAC membership requirements?

A47. (RSW) NAC members must be U.S. citizens, independent from STP, have substantial experience in national security and nuclear safety matters, and be able to serve as a resource to NINA and its senior management in assuring FOCD compliance. Members will serve two-year terms, but may be reappointed by the Board at the end of the term. NAC members cannot otherwise be employed by NINA, its subsidiaries, its owners, or any of their affiliates. NAC members will serve in a non-voting capacity to the Board.

Q48. Are you currently a member of the NAC?

A48. (RSW) No. The NAC has not yet been established. NINA has indicated, however, that it believes that I have the relevant background and experience that make me suitable for appointment to be a member of the NAC, and I am independent from STP. At the time NINA's NAC is established, I would be agreeable to participate as a NAC member.

Q49. What is your opinion on the propriety of deferral of establishment of the NAC?

A49. (RSW) Prior to the time that the NAC is established, there are essentially no activities for STP Units 3 and 4 that could affect the national defense and security. Furthermore, prior to that time, given the absence of a closing of a Project Finance, there will be no licensed construction activities. Since the NRC reviews and approves licensing activities, there is assurance that such activities will not be adversely affected by any FOCD. Consequently, I conclude that it is appropriate to defer establishment of the NAC until the pouring of safety-related concrete.

Q50. As a member of the NAC, what would your responsibilities entail?

A50. (RSW) I would be working part-time as a member of the NAC. My responsibilities on the NAC would involve routine consultations with NINA management and meetings at least 3-4 times per year. As a NAC member, I would be available for consultations with the NINA CEO, the STPNOC CEO, or the NINA Security Committee members at any time. I would be expected to make site visits from time-to-time and to participate in periodic briefings by NINA or STPNOC management. Additionally, I would be expected to seek opportunities to solicit information from site workers and make myself available to receive information from any person involved with the project that wants to discuss an FOCD-related concern.

Q51. What are your qualifications to serve as a member of the NAC?

A51. (RSW) As a former member of NRR with responsibility for NRC's review of activities related to FOCD and as one of the drafters of the FOCD SRP, I am familiar with NRC's FOCD restrictions. Additionally, as a former member of NRR, I have performed reviews to verify compliance with those restrictions. Therefore, I would be well-positioned to ensure NINA complies with NRC restrictions on FOCD.

As I described above, from time-to-time I am employed as a consultant, but my primary source of income is my NRC pension. I would not be in any way dependent on the income received from my participation on the NAC and would not be influenced in any manner by that income. For the same reason, this testimony presents my independent judgment, and is not designed to influence NINA to appoint me to the NAC.

Q52. If you become a member of the NAC, would you adhere to the requirements set forth in the NAP?

A52. (RSW) Yes. Additionally, I believe that I am well-situated to serve on the NAC. For a significant part of my career working with the NRC, I had responsibility for ensuring compliance with the FOCD restrictions. If I were appointed to the NAC, my responsibilities would be a natural extension of my work with the NRC.

My career has included responsibility for assuring that applicants and licensees are not subject to inappropriate FOCD. I would not tolerate a situation in which a foreign entity was exercising control over nuclear safety, security, or reliability, and would promptly take steps to remedy any such actions. Such actions would include, if necessary, informing the NRC.

Q53. How does the NAC relate to the Security Committee?

A53. (SJC, RSW) The two committees act in a complementary manner. The Security Committee has the ultimate authority over all issues that could implicate FOCD. This authority, in conjunction with the fact that all of the members of the Security Committee will be U.S. citizens, and a majority also will be entirely independent of NINA and its parent and subsidiary companies, provides assurance that NINA will comply with the FOCD restrictions. To further ensure compliance, the NAC, which is composed of U.S. citizens, will provide additional oversight. The NAC will monitor and audit NINA's practices, periodically issuing reports to the

Board and to the NRC on NINA's compliance with the NRC's FOCD requirements. The NAC is also available to assist the CEO, the Board, and the Security Committee in addressing any FOCD concerns should they arise. Together these committees provide overlapping and robust protection against FOCD. In other words, the Security Committee and the NAC provide defense in depth on FOCD issues both with respect to each other and also with the other FOCD negation measures.

D. Comparison of NINA NAP to NAPs for Other Licensees

Q54. Are you familiar with NAPs for other companies?

A54. (SJC, RSW) Yes. As part of our responsibilities at the NRC, we reviewed and were responsible for the evaluation of NAPs for other companies. Additionally, we are familiar with the NAPs that have been established since we retired from the NRC.

Q55. How does NINA's NAP compare to those for other companies?

A55. (SJC, RSW) NINA's NAP is very robust and includes all of the "state-of-the-art" features that have been employed to negate FOCD for commercial reactor licenses in the United States.

Table 1 below compares attributes of the STP Units 3 and 4 project and the NINA NAP with those for other projects that have been previously accepted by the NRC. As shown on the table, NINA only includes 10% foreign ownership of the licensee, as compared to 49.99% or higher for the other companies. Additionally, unlike the AmerGen and CENG examples, NINA would not have licensed operating authority for the reactor units. Consistent with other projects, the NINA NAP requires that the CEO and CNO be U.S. citizens. Even though a foreign Chief Financial Officer ("CFO") is allowed under NINA's NAP, that is consistent with other projects that either did not include restrictions or specifically allowed for a foreign CFO (CENG) or even a foreign president (AmerGen). In addition, the NINA NAP provides for the execution of

Certificates of special duty to the U.S. Government, whereby the U.S. citizens involved accept personal responsibility for meeting their FOCD obligations. Only the Maine Yankee example also required this. Significantly, the NINA NAP not only includes a NAC that is tasked with assessing FOCD compliance (which has only been required in one other example for CENG), but it includes a formal delegation of corporate authority to a Security Committee, which is controlled by independent U.S. citizens, who can effectively negate any potential for inappropriate FOCD. The Security Committee structure is similar to the “Nuclear Committee” of the Board structure that was used in two examples: (1) by NEP to control its licensed interests in Seabrook and Millstone 3, when NEP was acquired by National Grid plc (a U.K. company); and (2) by PacifiCorp to control its licensed interest in Trojan, when PacifiCorp was acquired by ScottishPower plc (a U.K. company). For these reasons, Table 1 demonstrates that the NINA NAP and project attributes are the most conservative of the examples with respect to negation of FOCD issues.

Table 2 below compares the authority delegated to U.S. citizens for NINA with the authority delegated in other projects accepted by the NRC. The table highlights common features between NINA and the other examples using similar colors to depict similar features. This shows that NINA has incorporated delegation of authority to U.S. citizens of nearly all the same matters as present in the prior examples. The only matters for which authority is delegated to U.S. citizens in the prior examples that have not been adopted by NINA are two issues delegated as part of the CENG precedent (“Any decision relating to U.S. regulatory strategy or the relationship with the NRC” and “Settlement of certain claims in connection with a dispute involving a U.S. or Canadian governmental authority”). These two issues either are business-

related or are encompassed within other authority already required to be delegated to U.S. citizens to the extent they could raise FOCD concerns.

Table 3 below compares NINA matters reserved for TANE consent with those matters for other projects accepted by the NRC. That table shows that the matters reserved for consent by TANE are consistent with the consent rights for foreign owners accepted by the NRC for prior projects. For example, the right to dissolve the company is typically reserved for consent by all investors. These types of provisions are standard protective rights used in business for non-controlling owners.

In summary, the following tables demonstrate that NINA's NAP and other project features are state-of-the-art and are either consistent with or more restrictive than the NAPs or attributes of earlier projects that were approved by the NRC. Given these measures, it is not reasonable to believe that a foreign investor could effectively subvert these formal mechanisms and coerce the U.S. citizens involved to abrogate their duties for nuclear safety, security, or reliability.

Table 1 – Comparison of NINA Foreign Negation Attributes with Other Projects Accepted by the NRC

Company/ Licensee	Foreign Ownership % of Licensee	Licensed Operating Authority	Licensed Ownership %	Executive Personnel	Cert. of Spec. Duty	Key Governance Features	NAC
AmerGen (1999)	50%	yes	100% of 3 units	CEO (U.S.) Pres. (foreign) CNO (U.S.)	no	Board (3 members U.S. and 3 members Foreign) <ul style="list-style-type: none"> U.S. Chairman has “casting” or deciding vote on key governance matters (see Table 2) 	no
CENG (2009 / 2012)	49.99%	yes	100% of 4 units + 82% of 1 unit	CEO (U.S.) CNO (U.S.) CFO (foreign)	no	Board (5 members U.S. and 5 members Foreign) <ul style="list-style-type: none"> U.S. Chairman has “casting” or deciding vote on key governance matters (see Table 2) U.S. Chairman has “exigent” authority to decide that a matter must be decided under U.S. control 	yes
New England Power (1999 / 2000)	100%	no	9.9% of 1 unit 16.2% of 1 unit	No provision.	no	Nuclear Committee (all U.S. citizens, majority independent) <ul style="list-style-type: none"> Delegated authority over all matters relating to nuclear plant, except matters reserved for full Board (foreign controlled) 	no
PacifiCorp (1999)	100%	no	2.5% of 1 unit	No provision.	no	Nuclear Committee (all U.S. citizens, majority independent) <ul style="list-style-type: none"> Delegated authority over all matters relating to nuclear plant, except matters reserved for full Board (foreign controlled) 	no
Maine Yankee [CY, YAEC] (2012)	76%	no	100% of 1 unit	CNO (U.S.)	yes	CNO (U.S. citizen) <ul style="list-style-type: none"> Delegated authority over nuclear matters (see Table 2) 	no
NINA	10%	no (STPNOC would have this authority)	92.375% of 2 units	CEO (U.S.) CNO (U.S.) CFO (foreign)	yes	Security Committee (all U.S. citizens, majority independent) <ul style="list-style-type: none"> Delegated authority over nuclear matters (see Table 2) Security Committee has “exigent” authority to decide that a matter must be decided under U.S. control 	yes

Table 2 – Comparison of NINA Authority Delegated to U.S. Citizens with Other Projects Accepted by the NRC

NINA	CENG	AmerGen	MYAPC
<p>(1) Any matter that, in view of U.S. laws or regulations, requires or makes it reasonably necessary to assure U.S. control;</p> <p>(2) Any matter relating to nuclear safety, security or reliability, including, but not limited to, the following matters:</p> <ul style="list-style-type: none"> (i) Implementation or compliance with any NRC generic letter, bulletin, order, confirmatory order or similar requirement issued by the NRC; (ii) Prevention or mitigation of a nuclear event or incident or the unauthorized release of radioactive material; (iii) Placement of the plant in a safe condition following any nuclear event or incident; (iv) Compliance with the Atomic Energy Act, the Energy Reorganization Act, or any NRC rule; (v) The obtaining of or compliance with a specific license issued by the NRC and its technical specifications; (vi) Conformance with a specific Final Safety Analysis Report, or other licensing basis document; and (vii) Implementation of security plans and procedures, control of security information, administration of access to controlled security information, and compliance with government clearance requirements regarding access to restricted data. <p>(3) Any other issue reasonably determined by such Members, in their prudent exercise of discretion to be an exigent nuclear safety, security or reliability issue; and</p> <p>(4) Staffing of key executive officer positions of the Company.</p> <p>[Changes to NAP, including NAC, resulting in decrease in effectiveness require prior NRC approval.]</p>	<p>(1) Any matter that, in view of U.S. laws or regulations, requires or makes it reasonably necessary to assure U.S. control;</p> <p>(2) Any matter relating to nuclear safety, security or reliability, including, but not limited to, the following matters:</p> <ul style="list-style-type: none"> (i) implementation or compliance with any NRC generic letter, bulletin, order, confirmatory order, or similar requirement issued by the NRC; (ii) prevention or mitigation of a nuclear event or incident or the unauthorized release of radioactive material; (iii) placement of the plant in a safe condition following any nuclear event or incident; (iv) compliance with the Atomic Energy Act, the Energy Reorganization Act, or any NRC rule; (v) the obtaining of or compliance with a specific license issued by the NRC and its technical specifications; and (vi) compliance with a specific Final Safety Analysis Report, or other licensing basis document; <p>(3) Any decision relating to U.S. regulatory strategy or the relationship with the NRC;</p> <p>(4) The adoption of any charter, any change in the authority or composition, or any matter relating to compensation, of the Nuclear Advisory Committee;</p> <p>(5) Settlement of certain claims in connection with a dispute involving a U.S. or Canadian governmental authority;</p> <p>(6) Any other issue reasonably determined by the Chairman in his prudent exercise of discretion to be an exigent nuclear safety, security or reliability issue; and</p> <p>(7) Staffing of key executive officer positions of CENG.</p>	<p>(i) implementation or compliance with any Generic Letter, Bulletin, Order, Confirmatory Order or similar requirement issued by the NRC;</p> <p>(ii) prevention or mitigation of a nuclear event or incident or the unauthorized release of radioactive material;</p> <p>(iii) placement of the plant in a safe condition following any nuclear event or incident;</p> <p>(iv) compliance with the Atomic Energy Act, the Energy Reorganization Act, or any NRC rule;</p> <p>(v) compliance with a specific operating and its technical specifications;</p> <p>(vi) compliance with a specific Updated Final Safety Analysis Report, or other licensing basis document.</p>	<p>(1) control over access to classified information, safeguards information, and special nuclear material;</p> <p>(2) decisions related to the protection of public health and safety and security related to special nuclear material at the Maine Yankee NRC-licensed facility.</p>

Table 3 – Comparison of NINA Matters Reserved for Foreign Consent with Other Projects Accepted by the NRC

NINA	CENG	AmerGen	NEP	PacifiCorp
Liquidate or dissolve the Company.	Any reorganization, dissolution, liquidation, winding up or bankruptcy of the Company or any Subsidiary of the Company, or any vote by the Company relating to its ownership interest in any Subsidiary or Investee Company.	Dissolution of the company.	Whether to sell, lease, or otherwise dispose of NEP's interests in the facility.	The right to decide to sell, lease, or otherwise dispose of PacifiCorp's interest in the facility.
	The decision to buy, sell, lease or otherwise dispose of its interest in a nuclear facility.			
	Any decision by the Company to enter into any material acquisition, divestiture, joint venture or partnership.	Approval of funding for plant acquisition or construction.		
Amend the LLC Agreement or other organizational documents.	Approval of an amendment to the LLC agreement.	Amend the LLC agreement.		
Change to the unanimous consent rights.	Approval of any amendment to the company's Articles of Organization.			
Approve budget (until June 1, 2011).	The timing of the presentation and adoption of each Annual Budget, Three-Year Budget and Strategic Plan.			The right to authorize and determine the budget related to the facility.
Approval of budget for loans.	Material increases elements of the Annual Budget or Provisional Budget.			
	The entry into of any contract that exceeds \$50 million, not in the Budget.			
Distributions.	Distributions.			
Affiliate indebtedness.	Affiliate loans.			
	Incurrence of certain indebtedness.			
Affiliate transactions.	Affiliate contracts.			
Carry on any business other than relating to the development of nuclear reactor projects.	Decision to enter into a new line of business.			
Issue equity to a Prohibited Competitor.	Issuance of new securities or admission of a Member.			
	The decision as to whether or not to stop operations and/or close a nuclear facility to begin its decommissioning.		Whether to close the facility and begin decommissioning and whether to seek license renewal.	
	The decision to seek re-licensing of a nuclear facility.			

NINA	CENG	AmerGen	NEP	PacifiCorp
			Whether to take action ordered by the Commission or any agency or court of competent jurisdiction.	The right to take any action which is ordered by the NRC or any other agency or court of competent jurisdiction.
	<p>Settlement or compromise of a claim in excess of \$10 million.</p> <p>Staffing of key executive officer positions of the Company, but subject to other provisions.</p> <p>Grant of new authority to the Chairman, CEO or other officers of the Company.</p> <p>Requirement for Additional Capital Contributions.</p> <p>Changes in material accounting policies, other than as required by GAAP, or engagement of independent auditors.</p> <p>Any decision by the Company to enter into a change of control transaction or an initial public offering of the Company.</p> <p>Any recapitalization, reclassification or similar event by the Company.</p>			

Q56. Are there any changes or additions that you would recommend for NINA's NAP?

A56. (SJC, RSW) No. We believe that NINA's NAP includes all of the requirements necessary to negate any inappropriate FOCD for STP Units 3 and 4.

E. Compliance with FOCD SRP

Q57. Have you reviewed the STP Units 3 and 4 project against the FOCD SRP?

A57. (SJC, RSW) Yes. We have reviewed the detailed comparison of the STP Units 3 and 4 project against the elements of the FOCD SRP as provided in Mr. McBurnett's testimony (Exh. STP000036), and we agree with his assessment.

On a higher level, the FOCD SRP, informed by NRC precedent, is primarily focused on preventing FOCD related to issues affecting the common defense and national security or the ability of foreigners to inhibit compliance with nuclear safety requirements. The primary concern is that a foreign investor might use its role in a U.S. project to gain inappropriate access to nuclear technology or special nuclear material that could be of concern from a non-proliferation perspective. However, in a situation such as the case presented here, where the foreign participant already possesses the nuclear technology and has majority ownership of a licensee (Westinghouse) that has access to special nuclear material, there is no genuine concern regarding non-proliferation. Therefore, based on the FOCD SRP and precedent, FOCD negation measures should be viewed as adequate so long as they vest ultimate control and authority over nuclear safety, security, or reliability in U.S. hands.

In a situation where the foreign investor did not have its own access to nuclear technology or material, and where the U.S. Government might have concerns about nuclear technology or material flowing to the foreign investor, the NRC Staff might appropriately be concerned that a foreign participant might use funding or financial leverage to gain such

inappropriate access. However, it is not reasonable to postulate the use of financial control or influence for inappropriate purposes where the foreign investor already possesses the nuclear technology, such as is the case with STP Units 3 and 4.

Moreover, the issues presented by foreign involvement in U.S. reactors differ significantly depending upon the stage of the project. The U.S. Government's interest in nuclear safety, security, or reliability is of paramount significance when a nuclear power plant is operating. The level of scrutiny and the rigor of negation measures need not be as high during the construction stage.

For example, there is no concern regarding a foreign vendor designing and constructing a reactor project. Similarly, there should be little concern, if any at all, regarding a foreign investor holding an ownership interest in or funding a licensee responsible for a reactor project during construction, especially when the investor is also the reactor vendor (as is the case for STP Units 3 and 4). Furthermore, there is additional assurance of the safety of construction activities, because they are subject to the NRC's stringent Construction Inspection Program for new reactors. Also, the only nuclear material of concern during construction would be the receipt of the initial load of nuclear fuel, which would arrive on-site during the last part of the Construction Phase. STPNOC will be implementing its security program to control the nuclear fuel for STP Units 3 and 4.

Additionally, for the Construction Phase, FOCD negation measures are sufficient if the licensee adopts measures to assure that U.S. persons exercise ultimate responsibility for quality assurance and accountability to the NRC for overall project oversight, and NINA has adopted such measures.

Finally, during the Pre-Construction Phase, the activities undertaken by a project developer do not require a license. Therefore, concerns regarding FOCD are relatively minor during that phase, because a completely foreign company would be authorized to conduct activities that do not require any license from the NRC. Moreover, during the Licensing Phase, the COLA is undergoing a high level of NRC scrutiny, including detailed NRC Staff reviews and reviews by the Advisory Committee on Reactor Safeguards.

Despite the minimal FOCD concerns presented by TANE's participation in NINA, NINA has adopted a robust set of negation measures to protect against any inappropriate FOCD being exercised by TANE. The U.S. citizen CEO and CNO, designated by NRG Energy, has responsibility for assuring FOCD compliance until construction is to begin. Then, prior to pouring safety-related concrete, NINA will implement the Security Committee and NAC, which are measures that have been designed by applicants and accepted by the NRC for other projects to negate FOCD for companies involving nuclear reactor operations. Finally, the operation of STP Units 3 and 4 will be conducted by STPNOC, which is a U.S. controlled company, and FOCD concerns are essentially precluded. Nevertheless, NINA has committed to retain its robust negation measures to assure that any potential role played by NINA as an owner of STP Units 3 and 4 cannot result in impermissible FOCD of the STP Units 3 and 4 licensed activities.

Q58. Have you evaluated the current arrangements for funding of licensing activities by TANE?

A58. (SJC, RSW) Yes. Since April 2011, TANE has been providing loans to finance the licensing activities leading to issuance of COLs for STP Units 3 and 4. For several reasons, we conclude that such funding is not inconsistent with the FOCD SRP. First, such funding does not present any risks to national defense or security because the licensing activities do not

involve Restricted Data, diversion of special nuclear material, or nonproliferation concerns. Nor do licensing activities involve any risk to public health and safety, given that they are subject to NRC review and approval. Second, the amount of funding provided by TANE from April 2011 through issuance of the COLs is a very small percent (less than 2%) of the total investment in the project. Third, NRG Energy remains active on the NINA Board, and the NRG Energy member on the Board controls all votes related to nuclear safety, security, or reliability. Finally, by their very nature, the licensing activities are subject to review and approval by the NRC as part of the COL process. That will ensure that the licensing basis for STP Units 3 and 4 meets NRC requirements and provides reasonable assurance of safety. There is no evidence that TANE has ever attempted to exercise impermissible FOCD over NINA. Given its interests in a successful project, it is simply not reasonable to believe that TANE would attempt to adversely impact STP Units 3 and 4. Moreover, it is not plausible that by providing only approximately [REDACTED] in loans for the licensing activities conducted from April 2011 to now, TANE would somehow gain control over a project in which [REDACTED] has been invested to date.

Q59. Could TANE control the licensing activities by threatening to withhold future funding for those activities?

A59. (SJC, RSW) All projects face the possibility that one or more of its investors could withdraw funding and adversely impact the project schedule, and it is always possible to point to the last dollars needed for a project and suggest that the need for this funding could provide disproportionate power to the investor with such funds. For example, a minority investor (say an investor that contributes 5% of the costs of a project) could threaten to withhold future investment, thereby damaging or perhaps fatally crippling a project if other sources of

funds are not available to compensate for the shortfall. However, such an ability does not equate to exercise of control over a project with respect to nuclear safety, security, or reliability.

TANE has been briefed on its responsibility to avoid FOCD. If a foreign investor (such as TANE) understands the NRC requirement that it not exercise impermissible FOCD, it is reasonable to conclude that the foreign party will respect the legal requirements and adhere to the requirements of formal negation measures that are designed to assure compliance with the legal requirements. To assume otherwise, requires an assumption that a foreign party will disregard and disobey the law. TANE does not have a need to access nuclear technology associated with the STP Unit 3 and 4 project, or to acquire special nuclear material, and it would be contrary to TANE's interests to disrupt the safety or reliability of the project. It is not reasonable to believe that TANE would violate the legal requirements against FOCD.

Moreover, the FOCD SRP recognizes that foreign investors could provide 50% or more of the financing for a project. As long as a NAP exists to negate potential FOCD concerns such that U.S. citizens have control over decisions affecting nuclear safety, security, or reliability, it is permissible under the FOCD SRP to have foreign investment, including foreign investment that is critical to the economic viability of a project. There is nothing in the FOCD SRP that would preclude such investment, subject to an appropriate NAP. Even if TANE attempted to exercise impermissible FOCD over NINA, the NAP would prevent TANE from gaining control and such an effort would be reported by NINA management to the NRC, consistent with the FOCD SRP.

Q60. Does NINA's NAP comply with the FOCD SRP?

A60. (SJC, RSW) Yes. For the reasons we have discussed, we conclude that NINA's NAP complies with the FOCD SRP.

V. MR. COLLINS' OBSERVATIONS OF THE MEETINGS OF THE NINA BOARD

Q61. Mr. Collins, have you monitored any meetings of the NINA Board?

A61. (SJC) Yes. I monitored in person or telephonically the meetings of the NINA Board on July 9, 2012, September 11, 2012, November 13, 2012, January 24, 2013, February 26, 2013, and June 27, 2013. Additionally, I have reviewed the minutes of all of the meetings of the NINA Board since April 2011.

Q62. What are your impressions of the NINA Board meetings as related to FOCD?

A62. (SJC) The NRG Energy member of the Board was present and active. The TANE member of the Board also participated in the meetings, but did not threaten or imply that NINA should take any action based upon TANE's current funding of NINA. During the most recent meeting in June 2013, a presentation was made by the NINA CEO on the importance of avoiding FOCD and the provisions in the NAP. This was the second of such presentations to the Board. I observed absolutely no indication of any FOCD concerns. In fact, the decisions in the meetings predominately involved issues related to appointment of officers and other corporate housekeeping matters, such as approving the extension of the TANE Credit Facility term. The Board received presentations from NINA's CEO and CNO regarding the status of licensing activities, and accepted his decisions related to nuclear safety, security, or reliability.

Q63. Based upon your observations of the NINA Board meetings, what are your conclusions with respect to FOCD issues?

A63. (SJC) I conclude that the TANE member of the Board is not exercising any control or domination of nuclear safety, security, or reliability issues, and the Board members are aware of their responsibility for avoiding and preventing FOCD.

VI. ANALYSIS OF STAFF FOCD EVALUATION

A. Financial Control

Q64. In its FOCD Evaluation, the Staff placed great emphasis on TANE's alleged financial control over NINA, through the loans TANE has provided, TANE's ability to select a CFO, and TANE's involvement with the budget. The Staff concluded that "TANE is in a position to control and dominate NINA." (Staff FOCD Evaluation, page 24 (Exh. NRC000104)). Do you agree with this determination?

A64. (SJC, RSW) No. The Staff is correct to consider the financial impacts that a foreign CFO or foreign loans might have on NINA, but the focus of the Staff's FOCD analysis should be on matters related to nuclear safety, security, or reliability. (FOCD SRP, 64 Fed. Reg. at 52,358 (Exh. NRC000106)). While important, none of the matters relied upon by the Staff is significant enough to provide TANE with the capability to control or dominate NINA. First, NINA's corporate governance structure does not allow TANE to exert such control. NRG Energy retains approximately 90% voting rights in NINA, and TANE is restricted to a limited ownership and voting share of approximately 10%. Given those constraints, TANE only possesses the power to prevent those actions that require unanimity of the Board or TANE's specific approval.

The NINA Board ultimately has the right to approve the budget, and that vote is controlled by the NRG Energy member. Therefore, NINA's approximately 90% voting rights give it control over the company's total budget, even if TANE can decide how much activity that it is willing to fund by extending further loans to NINA. Additionally, the NINA CEO has the authority to implement the budget, which is much more significant from an FOCD perspective, because that authority gives the CEO control over decisions affecting nuclear safety, security, or reliability.

In addition, the Staff also mischaracterizes the extent of TANE's funding of NINA. Although TANE has made contributions to NINA, it has only been about 25% of the equity and non-equity funding to date. Most of the remainder has come from NRG Energy. Additionally, the funding through TANE loans from April 2011 through issuance of the COLs is less than 2% of the total funding, and TANE has not made a capital contribution to NINA since 2009. Given this fact, it is clear that TANE does not represent NINA's primary or dominant investor.

Additionally, even when the period since April 2011 is considered in isolation, the situation is different than indicated by the NRC Staff. In April 2011, NRG Energy indicated that it would make contributions to NINA of up to \$20 million to fund reduction in its workforce and other wind down expenses, and in fact has made such contributions since April 2011 in amounts totaling approximately [REDACTED] (which were capital contributions). TANE has provided loans to NINA of approximately [REDACTED] to date. This situation falls squarely within the FOCD SRP, which allows a foreign entity to contribute 50% or more of the costs subject to the approval and direction of U.S. citizens. (FOCD SRP, 64 Fed. Reg. at 52,358 (Exh. NRC000106)).

TANE has the ability to nominate the CFO of NINA, and the Board is expected to approve the TANE nominee. Setting aside the fact that TANE has not elected to nominate a TANE employee to act as CFO (the prior CFO was chosen from NRG Energy's organization), the ability to choose one officer does not give TANE the ability to control NINA. Significantly, the CFO reports directly to the CEO, who is appointed by NRG Energy and is required to be a U.S. citizen. Thus, the CFO cannot exercise control over financial matters within the CFO's area of responsibility, if such actions are inconsistent with the direction of the CEO. Moreover, the CFO cannot exercise any control over matters relating to nuclear safety, security, or reliability.

Furthermore, it is permissible under the FOCD SRP for a foreign company to control the appointment of a director or officer of an applicant or licensee. (FOCD SRP, 64 Fed. Reg. at 52,359 (Exh. NRC000106)).

B. Ownership Changes

Q65. The Staff dismissed NINA's commitment to limit TANE's ownership to 10%. The Staff stated that TANE possesses the right to convert its debt to equity and NINA has not specified "how it would block TANE's apparently unilateral contractual right." (Staff FOCD Evaluation, page 22 (Exh. NRC000104)). Do you agree with the Staff's assessment?

A65. (SJC, RSW) No. The COLA (Part 1, Section 1.5) states that TANE's ownership of NINA will be limited to no more than 10%. If TANE were to attempt unilaterally to convert its debt to equity, it would be in violation of this NINA commitment. It was inappropriate for the NRC Staff to assume that a licensee and its parent companies will intentionally violate its licensing commitments. Additionally, it is our experience that the NRC captures key FOCD requirements as license conditions. Therefore, we expect that a requirement for NRC approval prior to increasing TANE ownership above 10% would be captured in the formal license conditions for COLs for STP Units 3 and 4. Regardless of the license condition, any change of control of NINA would require prior written consent from the NRC under 10 CFR § 50.80 and NINA's commitment.

C. Construction Funding

Q66. The Staff also criticized NINA's proposal to obtain at least 50% U.S. funding for construction, stating that "the applicant provided no evidence of additional or alternative financing for the project." (Staff FOCD Evaluation, page 22 (Exh. NRC000104)). How do you respond?

A66. (SJC, RSW) NINA has indicated that following the issuance of the COLs, and prior to commencing construction, it will obtain at least 50% of the funding for the project from U.S. sources. (COLA Revision 9, Part 1, page 1.0-17 (Exh. STP000054)). NINA has proposed to capture this requirement in a license condition. (COLA Revision 9, Part 1, pages 1.0-13 to 1.0-14 (Exh. STP000054)). As such, NINA's statement is not speculative and can be relied upon as part of the FOCD evaluation. If the license condition is not satisfied, then NINA would not be able to begin construction under the COLs.

D. Activities Prior to Construction

Q67. Please describe the activities that will occur between now and the commencement of construction, and whether those activities may raise any FOCD-related concerns.

A67. (SJC, RSW) During the period prior to the commencement of construction of the COLs, activities conducted by NINA would not involve significant matters of concern from an FOCD perspective. No licensed construction activities may be performed, and NINA will not possess any special nuclear material. Physical security of the STP site prior to construction is maintained by STPNOC, in connection with the operation of STP Units 1 and 2, and the limited licensing activities relating to STP Units 3 and 4 do not involve any notable physical security issues. Thus, there are not any significant FOCD issues currently or that would be presented during the period after issuance of the COL and prior to commencing construction. Nevertheless, NINA has committed to maintaining governance and ownership structures that assure any potential impermissible FOCD would be negated.

E. Satisfaction of FOCD Requirements

Q68. Given the facts in the record and having reviewed the Staff FOCD Evaluation, if you were still in NRR would you conclude that there are significant FOCD concerns with the STP Units 3 and 4 Project?

A68. (SJC, RSW) No. NINA's corporate structure is sufficient to prevent impermissible FOCD. NRG Energy, a U.S. company, possesses supermajority voting rights; the category of actions that would require TANE's consent is very small and none of those actions implicates nuclear safety, security, or reliability. Furthermore, NINA's CEO and CNO will be appointed by NRG Energy and are required to be U.S. citizens.

TANE has made investments in NINA and the STP Units 3 and 4 project, including loans totaling [REDACTED], but TANE's total contribution represents only about a quarter of the total investments in the project to date. NRG Energy has contributed roughly 60% of the total assets for the project. Although TANE can always decide to withhold further investment in the project, TANE itself cannot force a dissolution of NINA or termination of the project. At worst, the project would be suspended absent funding, which would also eliminate any potential FOCD issues. It is not realistic to expect that TANE would threaten to withhold funding as a means of attempting to gain control over nuclear safety, security, or reliability issues, since such a course of action could backfire and lead to adverse impacts on the project (or possible violations of FOCD restrictions by TANE). Nevertheless, even if such an attempt were made, the NAP includes sufficient provisions to ensure that the ultimate decision on such issues would be made by U.S. citizens, not TANE.

By the time of commencement of construction, the "financial control" issues raised by the NRC Staff will be fully negated and non-existent. NINA has committed that construction funding will be supplied through a Project Finance model, and at least half of the funding will

come from U.S. sources. Since the FOCD SRP allows more than half of funding to be supplied by foreign sources subject to an appropriate NAP, NINA's plans for construction funding are clearly acceptable under the FOCD SRP.

NINA has also adopted a NAP to further ensure that impermissible FOCD does not occur. This includes the creation of a Security Committee, which will be composed entirely of U.S. citizens, a majority of whom will be independent outside members. The Security Committee will have the authority to make corporate decisions for NINA regarding any issues related to nuclear safety, security, or reliability, and will intervene when there is a concern that decision makers may be subject to FOCD. The NAP also requires creation of the NAC, which will provide further protection against any inappropriate FOCD.

Taken together, there is ample evidence to support a finding that the FOCD requirements have been satisfied for the STP Units 3 and 4 project.

VII. SUMMARY AND CONCLUSIONS

Q69. Please summarize your testimony regarding Contention FC-1.

A69. (SJC, RSW) In summary, for the many reasons discussed above, NINA's COLA for the STP Units 3 and 4 project complies with the AEA, 10 CFR § 50.38, and the FOCD SRP. There is no inappropriate FOCD of NINA.

(SJC) If I become a member of NINA's Security Committee, I will assure that decisions regarding matters affecting nuclear safety, security, or reliability of STP Units 3 and 4 will be subject to U.S. control without any impermissible FOCD.

(RSW) If I become a member of the NAC, I will assure that decisions regarding matters affecting nuclear safety, security, or reliability of STP Units 3 and 4 will be subject to U.S. control without any impermissible FOCD.

Q70. Are true, accurate and correct copies of each of the exhibits referenced in your testimony attached?

A70. (SJC, RSW) Yes.

Q71. Does this conclude your testimony?

A71. (SJC, RSW) Yes.

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

Executed on July 1, 2013.

Executed in Accord with 10 CFR § 2.304(d)

/s/ Samuel J. Collins

Samuel J. Collins
48 Deer Run Lane
Swanton, MD 21561
Phone: 301-922-2861
E-mail: scollins606@comcast.net

Executed in Accord with 10 CFR § 2.304(d)

/s/ Robert S. Wood

Robert S. Wood
300 Gunboat Lane
Daniel Island, SC 29492
Phone: (843) 278-0628
E-mail: robertswood@homesc.com

DB1/ 73921482