




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 #: STP000049-00-BD01 Admitted: 1/6/2014 Rejected: Other:
	Identified: 1/6/2014 Withdrawn: Stricken:

STP000049
July 1, 2013

Nuclear Innovation
North America LLC
4000 Avenue F, Suite A
Bay City, Texas 77414

February 23, 2012
U7-C-NINA-NRC-120014
10 CFR 2.390

U. S. Nuclear Regulatory Commission
Attention: Document Control Desk
One White Flint North
11555 Rockville Pike
Rockville, MD 20852-2738

South Texas Project
Units 3 and 4
Docket Nos. 52-012 and 52-013
Response to Request for Additional Information

This letter provides supplemental responses to Request for Additional Information (RAI) letter Nos. 387 and 388 related to South Texas Project (STP) Units 3 & 4 Combined License Application (COLA) Part 1, General and Financial Information, and Part 2, Tier 2 Appendix 1D, Negation Action Plan. This additional and revised information is provided in response to discussions with NRC staff. Attachments to this letter provide supplemental responses to:

RAI 01-22
RAI 01-24

Attachment 1 to this letter provides a supplemental response to RAI 01-22 relating to foreign, ownership, control or domination (FOCD) issues, and includes revisions to Part 1 Sections 1.2 and 1.5, and Part 2, Tier 2 Appendix 1D, Negation Action Plan. Attachment 2 to this letter provides a supplemental response to RAI 01-24 relating to financial qualification issues, and includes revisions to Part 1 Section 1.3. Attachment 3 is an affidavit requesting that the proprietary information provided in Attachments 4 and 5 and marked as proprietary be withheld from public disclosure in accordance with 10 CFR 2.390. Attachment 4 provides revisions to the proprietary Tables 1.3-1 and 1.3-2 in Part 1. Attachment 5 provides the proprietary summary financial projections which were previously submitted as a supplement to RAI 01-24.

In addition, some of the key FOCD and financial qualifications information contained in the attachments includes the following:

FOCD Highlights:

NINA is owned approximately 90% by NRG Energy, Inc. (NRG Energy), a corporation organized under the laws of the State of Delaware that is publicly traded and widely held in the United States. NRG Energy exercises voting rights over NINA. Toshiba America Nuclear Energy (TANE) currently owns less than 10% of NINA. NINA does not anticipate any material change in its current ownership prior to issuance of the requested licenses. TANE will maintain its ownership of not more than 10% of NINA unless a higher ownership percentage is approved or otherwise authorized in writing by the NRC.

Funding for NINA's current development and licensing activities is being provided primarily through loans from TANE. These additional loans represent a small percentage of the total funding that has been spent and that is anticipated to be spent prior to beginning licensed construction activities. Given its small ownership share and its relatively small contribution to the overall funding for the project prior to issuance of the COLs, TANE is not able to exert direct or indirect control over NINA within the meaning of 10 CFR 50.38 by virtue of its loans to support current activities. Following issuance of the COLs, NINA will assure that at least 50% of the funding for any licensed construction activity is funded from U.S. sources whether through loans or through equity.

If NINA's ownership structure changes following issuance of the COLs, NINA commits that, prior to execution of the documents necessary to implement any proposed change of ownership that, either individually or when combined with prior changes, would result in a change in ownership of greater than 5% of NINA, NINA will provide complete information to the NRC regarding the proposed transaction and seek either an NRC threshold determination that no license transfer approval is required or NRC's prior written consent to a license transfer pursuant to 10 CFR 50.80.

In addition, NINA has implemented the STP 3&4 Negation Action Plan (NAP) to provide requirements and guidance to ensure negation of potential FOCD over the STP 3&4 licenses. The NAP provides that control over nuclear safety or security decisions is exercised by the Chief Executive Officer (CEO) and Chief Nuclear Officer (CNO), who are required to be U.S. citizens.

As the 90% owner of NINA, NRG Energy controls the appointment of the CEO and CNO, and these officers can only be replaced by the vote of the NRG Energy member on the Board of Directors. Additional negation measures would be implemented prior to beginning any licensed construction activity. This includes formation of a Nuclear Advisory Committee to review and advise on FOCD matters including the effectiveness of the NAP, and adoption of corporate governance provisions that formally delegate exclusive decision-making authority over nuclear safety and security matters to a Security Committee of the NINA Board consisting of a majority of independent, U.S. citizen directors whose selection is controlled by the NRG Member Director. Moreover, STP 3&4 will be operated by STPNOC, an independent U.S. company that is controlled by NRG Energy, the City of San Antonio and the City of Austin, Texas.

Any safety issues that might arise would be identified in the licensee's Quality Assurance Program, Corrective Action Program, Employee Concerns Program or multiple other programs and processes that are designed to assure that safety issues are identified and resolved. NRC would also become aware of any such issues through its Inspection Program or Resident Inspector Program.

Financial Qualifications Highlights:

NINA requests that NRC allow the use of a license condition to satisfy the financial qualifications requirements for STP 3&4. The License Condition would require the financial closing of a Project Finance as a condition to beginning any licensed construction activity. In order to close a Project Finance, full funding for construction of the project will need to be secured, including funding to cover contingencies for delays and cost overrun. The financial closing and license condition would also require that certain measures be in place to assure adequate sources of funding to support operations. It is anticipated that funding will be subject to a Department of Energy (DOE) Loan Guarantee. Project Finance principles are captured in DOE Loan Guarantee rules that provide rigorous standards for project feasibility and the creditworthiness of funding commitments. *See, e.g.,* 10 CFR 609.10(d). The DOE regulations embody fundamental principles that accompany any Project Finance, where the lenders require extensive assurance that loans will be repaid.

The NRC staff's verification of compliance with the license condition would be ministerial. The requirement for Project Finance provides reasonable assurance that adequate funds will be available to construct and operate. The NRC staff can verify that the committed funds at closing (loans and equity) meet or exceed the updated cost estimate of the Lenders' Independent Engineer. This would be a "ministerial" verification that the license condition has been satisfied.

Moreover, a Project Finance license condition would serve the fundamental purpose of the financial qualifications requirement, which is to assure that licensed activities are conducted safely. If the project developers are never able to secure funding and achieve a closing of the Project Finance, then the reactor will not be built or operate. No safety issues can arise if the license condition is not satisfied. In addition, if there are any appreciable changes in the project developers after the COL is issued, such changes would be subject to NRC license transfer approval under 10 CFR 50.80. There is therefore no "regulatory gap" where post-COL development efforts could result in changes that are not fully reviewed by the NRC with opportunity for public participation.

* * *

The proposed changes to the COLA will be included in the next COLA revision following NRC acceptance of this response.

When separated from the proprietary material in the attachments, this letter is not proprietary.

There are no commitments in this letter.

If there are any questions regarding this response, please contact me at (361) 972-7136, or Bill Mookhoek at (361) 972-7274.

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

Executed on 2/23/12



Scott Head
Manager, Regulatory Affairs
South Texas Project Units 3 & 4

Attachments

1. RAI 01-22 Supplement 1
2. RAI 01-24 Supplement 2
3. Proprietary Information Affidavit
4. Changes to Part 1 Tables 1.3-1 and 1.3-2 (PROPRIETARY)
5. Summary Financial Projections (PROPRIETARY)

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

(electronic copy)

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RAI 01-22**QUESTION:**

On June 23, 2011, NINA submitted an update to the South Texas Project Units 3 and 4, Combined License Application (COLA) Part 1, General and Financial Information (ML111780305).

On page 1.D 1-4 of Appendix D of this submittal, the applicant stated:

To allow for flexibility regarding NINA's ultimate ownership structure, the NAP assumes that the NINA ownership structure could include having a foreign owner or combination of foreign owners with ownership shares that are substantially greater than 50% but NINA will assure that U. S. owners at all times hold at least 10% of the equity of NINA.

Further, the applicant stated that provisions of the Negation Action Plan, including the Security Subcommittee and Nuclear Advisory Committee would be established prior to pouring any safety related concrete for STP 3&4.

On August 4, 2011 (ML) the applicant submitted its response to the staff's request for additional information pertaining to financial control of NINA.

On page 1 of this submittal, the applicant stated:

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

Section 103d. of the Atomic Energy Act prohibits the NRC from issuing a license to: "an alien or any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation or a foreign government."

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

The NRC Standard Review Plan on Foreign Ownership, Control, or Domination states that if the reviewer concludes that the applicant may be owned, controlled or dominated by foreign interests, the applicant shall submit a negation action plan to assure that the foreign interest can be effectively denied control or domination.

Further the SRP, Section 3.2 states

An applicant is considered to be foreign owned, controlled or dominated whenever a foreign interest has the “power,” direct or indirect, whether or not exercised to direct or decide matters affecting the management or operations of the applicant.

An FOCD determination is based on the totality of facts. A foreign entity may exert control due to factors other than voting interests, including financial interests. In order for the staff to complete its review regarding FOCD, provide the following information:

1. Identify who currently provides the primary financial support for NINA.
2. Explain how the negation action plan submitted by the applicant negates FOCD in the following circumstances:
 - a. Where foreign entities provide greater than 50% of the financial support for NINA (either direct or indirect, exercised or not exercised).
 - b. Where foreign entities provide 50% or less of the financial support for NINA (either direct or indirect, exercised or not exercised).
 - c. Where foreign entities hold ownership shares equal to or greater than 50%, whether individually or in aggregate
 - d. Where foreign entities can appoint representatives to the Board of Directors or the management structure
3. Explain how the negation action plan will negate FOCD during the period between license issuance and the establishment of the Security Subcommittee and Nuclear Advisory Committee in each of the circumstances listed above.
4. Explain how the proposed NAP will negate the indirect control or domination through the financial interests held by any foreign owners or investors.

RESPONSE, Supplement 1:

NINA letter U7-C-NINA-NRC-110085 (ML11178A106), dated June 23, 2011, provided an updated Negation Action Plan that relocated information from COLA Part 1 to a standalone Negation Action Plan now set forth in Appendix 1D to Chapter 1 of the Final Safety Analysis Report. NINA letter U7-C-NINA-NRC-110136 (ML11318A014), dated November 8, 2011, provided further enhancements to Appendix 1D, in order to respond to RAI 01-22 and NRC staff comments regarding the Negation Action Plan. This Supplement 1 to NINA’s response to RAI 01-22 provides information in addition to the previous RAI response, which remains valid with the exception of the proposed changes to Appendix 1D, as explained below.

NINA previously had indicated that its Negation Action Plan was designed to include certain flexibility regarding potential future changes in the ownership structure of NINA, which might include majority foreign ownership of NINA. However, NINA has concluded that there is no likelihood that there will be any material change in the ownership structure of NINA prior to issuance of the requested licenses, and that any foreign ownership of NINA will remain at less than 10%. Therefore, there is no current need for the flexibility previously sought by NINA.

The Negation Action Plan has been revised accordingly to reflect the current and continuing governance of NINA, which is owned approximately 90% by NRG Energy, Inc., a publicly traded U.S. company that is not under foreign ownership, control or domination. In addition, NINA commits to seeking either an NRC threshold determination that no license transfer approval is required or NRC's prior written consent to a license transfer pursuant to 10 CFR 50.80 at any time that there is a proposed change of ownership of NINA that either individually or when combined with prior changes would result in a change in ownership of 5% or more of NINA. Finally, the Negation Action Plan has been further enhanced by including a requirement that NINA will assure that at least 50% of the funding for licensed construction activities is funded from U.S. sources whether through loans or through equity.

The changes from Revision 7 of the COLA are shown below in gray highlight, and supersede the markups to the COLA previously submitted with the response to RAI 01-22. Changes to COLA Part 2 Tier 2 Appendix 1D which are different from those submitted with the previous response to RAI 01-22 are indicated by revision bars. Additional changes to Part 1 Sections 1.2 and 1.5 are also provided.

1D Negation Action Plan¹

1D.1 Introduction

- (a) The following Negation Action Plan (the Plan) provides requirements and guidance to ensure negation of potential foreign ownership, control or domination (FOCD) over the South Texas Project, Units 3&4 (STP 3&4) licenses held by Nuclear Innovation North America, LLC (NINA), STP Nuclear Operating Company (STPNOC), NINA Texas 3 LLC (NINA 3), NINA Texas 4 LLC (NINA 4), and the City of San Antonio, Texas, acting by and through the City Public Service Board (CPS Energy). This Plan implements measures to fully negate FOCD with respect to matters involving the nuclear safety, security, and reliability of STP 3&4 throughout the design, construction and operation of STP 3&4. The same measures negate potential foreign influence.
- (b) The Plan describes the controls implemented to assure that the governance of NINA and licensed activities undertaken by NINA, NINA 3, NINA 4, and STPNOC are not subject to FOCD within the meaning of 10 CFR 50.38 and Section 103.d of the Atomic Energy Act of 1954, as amended (Section 103.d of the Act).
- (c) STPNOC is responsible for the operation of STP 3&4. STPNOC is a not for profit Texas corporation that is controlled by a board of four directors, three members of which are appointed by the City of Austin (Austin), CPS Energy, and NRG South Texas LP, an indirect wholly owned subsidiary of NRG Energy, Inc. (NRG Energy). These three directors choose the fourth director, who then also serves as the Chief Executive Officer (CEO) of STPNOC. Austin and CPS Energy are governmental organizations in the State of Texas that are controlled by city councils elected by the citizens of these U.S. cities. NRG Energy is a publicly traded, widely held U.S. corporation, and it is not under FOCD. STPNOC is subject to U.S. control, and it will exercise authority over nuclear safety, security and reliability matters free from any potential for foreign domination or control over its decision making in any area of concern to the NRC under 10 CFR 50.38 and Section 103.d of the Act.
- (d) NINA owns and controls both NINA 3 and NINA 4; it also will exercise control over its other subsidiaries involved in the development of STP 3&4. NINA 3, NINA 4 and CPS Energy own STP 3&4, and these owners are responsible for providing the funding for construction, operation and decommissioning of STP 3&4. Pursuant to arrangements among the owners, the owners have allocated primary responsibility for funding construction activities to

¹ This Negation Action Plan describes the measures to be implemented based upon the planned execution of the Fourth Amended and Restated Operating Agreement of Nuclear Innovation North America, LLC, and the measures described are fully effective only upon such execution. The provisions of Sections 1D.2.2 and 1D.2.4 are to be implemented prior to commencing any licensed construction activity.

NINA 3 and NINA 4. NINA is the lead applicant and lead licensee responsible for design and construction of each unit until the date on which the Commission makes a finding that acceptance criteria are met under 10 CFR 52.103(g) or allowing operation during an interim period under the combined license under 10 CFR 52.103(c), at which point STPNOC will be the lead licensee responsible for operations.

- (e) This Plan has been developed using the guidance provided by the NRC's "Final Standard Review Plan on Foreign Ownership, Control, or Domination," 64 FR 52355 (September 28, 1999) (FOCD SRP). Defense in depth is provided through a number of measures in order to ensure that there is U.S. control over matters relating to nuclear safety, security and reliability, including most significantly the NINA security programs and NINA safety programs, including Quality Assurance. These measures effectively negate the risk that NINA's foreign owned parent company or companies or foreign lenders might exercise control, domination, or influence over matters that are required to be under U.S. control pursuant to the terms of 10 CFR 50.38 and Section 103.d of the Act.
- (f) The negation measures are implemented primarily through the terms of the Fourth Amended and Restated Operating Agreement of Nuclear Innovation North America, LLC (the NINA LLC Agreement). Additional requirements and further details regarding implementation of the negation measures are included in this Plan.
- (g) The terms of the NINA LLC Agreement provide that a Security Subcommittee of the NINA Board will be established not later than the first pouring of any safety related concrete for STP 3&4. The Security Subcommittee has the exclusive right to exercise the Board's authority over the matters that are required to be under U.S. control. The Security Subcommittee is made up of U.S. citizens, the majority of whom must be independent directors, who are not employed by NINA, its subsidiaries, its owners, or any of their affiliates. Until the Security Subcommittee is established, the Chief Executive Officer (CEO) of NINA will perform the functions of the Security Subcommittee, except the right to approve a new CEO. Because the Member Director appointed by NRG Energy controls 90% of the votes on the Board of Directors under the current ownership structure of NINA, the NRG Member Director controls the selection of the independent directors.
- (h) The governance measures implemented for NINA flow through to the actions of NINA 3 and NINA 4, pursuant to requirements imposed through the governance arrangements for these entities and their parent companies. These entities have adopted provisions to assure that the NINA Security Subcommittee exercises ultimate control and direction over matters required to be under U.S. control.

- (i) In addition, NINA will also establish a Nuclear Advisory Committee (NAC), prior to pouring any safety related concrete for STP 3&4. The NAC is made up of a group of independent U.S. citizens who are experienced in national security and nuclear safety matters. It provides an oversight function to advise NINA regarding its ongoing compliance with the FOCD restrictions imposed by U.S. law and NRC regulation. If necessary, the NAC can alert the U.S. Government regarding issues involving potential non-compliance with the applicable requirements.
- (j) NINA's security programs, including its Safeguards Information Program, assure that only authorized persons are provided access to security related information in accordance with applicable program requirements, and this Plan provides measures to assure that interpretation and implementation of those program requirements are administered under U.S. control. NINA does not possess or control access to restricted data or classified national security information.

NINA is not aware of any personnel assigned to NINA (contract personnel, including employees loaned from STPNOC) that are currently maintaining security clearances that would authorize access to restricted data or classified national security information. To the extent that any NINA contract personnel may obtain security clearances in the future or that NINA may hire contract employees that maintain security clearances, such personnel would do so subject to the requirements of security programs controlled by their employer companies and not controlled by NINA. NINA will not interfere with the administration of such programs by other companies, and NINA will require that its personnel comply with all applicable requirements relating to such information.

- (k) Upon acceptance of this Plan, changes to this Plan may only be made upon the recommendation of NINA's CEO or upon the recommendation of STPNOC's CEO, and approval of the NINA Security Subcommittee Committee. However, any proposed change that would result in a decrease in the effectiveness of this Plan will not be implemented without the prior approval of the NRC. This Plan also will be subject to the reporting requirements applicable to the FSAR.
- (l) Certain FOCD negation measures described in this Plan have been implemented in the NINA LLC Agreement, because it provides for the governance of NINA. NINA will provide NRC with 30 days prior written notice before implementing any material changes to the FOCD negation measures in the NINA LLC Agreement.
- (m) NINA's CEO and Chief Nuclear Officer (CNO) have a special role in assuring that the requirements of this Plan are met, because they interact with the NINA Board and its owners, and they oversee the entire STP 3&4 organization. As such, the CEO and CNO have the ability to identify potential FOCD issues involving both direct foreign

owner contact at the Board level and indirect contacts that might be made throughout the organization. The CNO is responsible for the NINA Quality Assurance Program (QA Program) and Safeguards Information Program (SGI program), and as such, the CNO assures U.S. control of these programs. The NINA CEO is responsible for this Plan and may delegate roles and responsibilities to the CNO or other executive management personnel. During STP 3&4 operations, roles and responsibilities for assuring the effective implementation of this Plan may be delegated to the STPNOC CEO and STPNOC executive management team.

1D.2 Governance of Nuclear Innovation North America, LLC

- (a) NINA is a Delaware limited liability company. NINA is currently owned approximately ~~89.5%~~ 90% by NRG Energy and ~~10.5%~~ less than 10% by Toshiba America Nuclear Energy Corporation (Toshiba America Nuclear), a Delaware corporation. Toshiba America Nuclear is a wholly owned subsidiary of Toshiba America, Inc., a Delaware corporation, which is a wholly owned subsidiary of Toshiba Corporation, a Japanese corporation (together, with its U.S. subsidiaries, referred to as the Toshiba Companies). ~~Stone & Webster Inc. (S&W)~~ The Shaw Group Inc., a Louisiana corporation, has the right to acquire an ownership interest in NINA from NRG Energy, which would reduce NRG Energy's interest in NINA. ~~S&W is a wholly owned subsidiary of~~ The Shaw Group Inc., a Louisiana corporation, which is publicly traded on the New York Stock Exchange. The exact percentage of potential ownership by The Shaw Group is variable, but as of January 1, 2012 it is estimated it would be less than 5%.
- (b) ~~The ownership percentages of the owners can change over time based upon S&W exercising their options to acquire ownership interests or based upon equity contributions by the members being made to fund NINA activities in amounts that are disproportionate to the ownership interests of the members. If this occurs, the interests of one or more members may be reduced through dilution, whereas the interests of one or more other members may be increased through accretion. In addition, one or more of the owners may extend credit or otherwise make loans to NINA. However, such credit arrangements would not affect ownership percentages or voting rights under the terms of the NINA LLC Agreement. The Board of Directors of NINA is fully vested with and delegated with authority by the owners ("Members") to conduct the management of the NINA. The Board of Directors operates generally by majority or supermajority vote of the Member Directors, each of whom votes based upon the Member's ownership interests. As such, the NRG Energy Member Director with approximately 90% of the votes holds a majority and supermajority vote to decide most Board matters, including the selection of the CEO and the CNO of NINA, the members of the Security Committee, and the members of the Nuclear Advisory Committee.~~

- (c) ~~To allow for flexibility regarding NINA's ownership structure, this plan assumes that the NINA ownership structure could include having a foreign owner or combination of foreign owners with ownership shares that are substantially greater than 50%, but NINA will assure that U.S. owners at all times hold at least 10% of the equity of NINA. NINA will provide prior notice to the NRC regarding any material changes in NINA's ownership or the ownership of NINA 3 or NINA 4. In any event, the negation measures of this Plan will nevertheless assure U.S. control over matters that are required to be under U.S. control. This will negate the risk of the STP 3&4 licenses being subject to potential FOCD within the meaning of 10 CFR 50.38 and Section 103.d of the Act. Prior to the execution of the documents necessary to implement any proposed change of ownership of NINA that either individually, or when combined with prior changes, would result in a change in ownership greater than 5% of NINA, NINA shall provide complete information to the NRC regarding the proposed transaction and seek either an NRC threshold determination that no license transfer approval is required or NRC's prior written consent to a license transfer pursuant to 10 CFR 50.80.~~
- (d) NINA will assure that at least 50% of the funding for any licensed construction activity is funded from U.S. sources whether through loans or through equity.

1D.2.1 NINA Board of Directors

- (a) The business and affairs of NINA are and will be managed under the direction of a Board of Directors (Board), consisting of member appointed directors (Member Directors) including a director to act as Chairman, and two independent directors, who are selected and appointed by the Member Directors. The Chairman is selected by the Member Directors from among their number. The Chairman presides over the meetings of the Board, and otherwise fulfills the functions of the Chairman. The Chairman, and anyone acting for the Chairman, must be a U.S. citizen.
- (b) The NINA LLC Agreement provides that two independent directors, who must be U.S. citizens, are selected and appointed by the Member Directors. The independent directors are appointed for a one year term, ending January 31 of each calendar year. However, independent directors may be reappointed year after year. These directors are independent because they may not be officers or employees of NINA, any of its subsidiaries, any of its owners, or any of their affiliated companies. The independent directors and their immediate family members may not have a material relationship with NINA, its subsidiaries, or its parent companies, or their affiliates, such as by being an executive officer or employee, by receiving pension benefits or other compensation for prior service, or by being an executive officer of another company that receives significant revenue from NINA or its affiliates. In accordance with generally accepted practices, the independent directors may receive compensation from NINA for their

services as directors.

- (c) If any independent director acquires any material ownership or other economic interest in NINA, its subsidiaries, its owners, or any of their affiliated companies, this will be reported to NINA and to the NRC. It is possible that the independent directors may have investment holdings such as in mutual funds or other similar types of pooled investments that themselves may make a wide range of investments that could include investments in issuances of NINA, its subsidiaries, its owners, or their affiliated companies. Given the impracticality of monitoring and/or limiting such investments, it is NINA's intention that such investments would not be considered "material." Direct holdings in securities, bonds or other issuances of NINA, its subsidiaries, its owners, or their affiliated companies would be considered material and reportable.
- (d) Significantly, the Chairman and the two independent U.S. citizen directors serve on a Security Subcommittee Committee, which has been assigned "exclusive authority" to vote upon and decide for the Board all matters coming before the Board that relate to nuclear safety, security or reliability. In addition, any matter that must be decided under U.S. control can be elevated to the Security Subcommittee Committee, and mechanisms have been established to provide for such matters to be elevated to the Security Subcommittee Committee when necessary. The details of this authority are described further below in Section 2.2 of this Plan.
- (e) The Board as a whole has been delegated authority to decide various matters, notwithstanding any delegations of authority to the CEO and other officers. Ordinarily, the Board as a whole would decide these matters which are listed in Section 5.1(a) of the NINA LLC Agreement. However, this reserved authority is itself subject and subordinate to the exclusive authority of the Security Subcommittee Committee. Thus, if U.S. control must be exercised over a Section 5.1(a) matter, such matter would be decided by the Security Subcommittee Committee. Pursuant to Section 5.1(c) of the NINA LLC Agreement, the Member Directors of NINA vote based upon their Member's ownership percentage of NINA. As such the NRG Energy Member Director casts approximately 90% of the votes and the Toshiba America Nuclear Member Director casts approximately 10% of the votes. Decisions are to be made by majority vote, except:
 - (i) the decisions listed in Section 5.1(d)(i), which require a 66 2/3% vote;
 - (ii) the decisions listed in Section 5.1(d)(ii), which require a 100% vote; and
 - (iii) the limited decisions listed in Section 5.1(d)(iii), which require an affirmative vote by the Toshiba America Nuclear Member Director (such as carrying on business other than that specified

in the NINA LLC Operating Agreement or liquidating or dissolving the company).

Provided, however, that all decision-making by the NINA Board of Directors is subject to the delegated authority to the Security Committee.

- (f) The Board may delegate authority to the CEO and other executive personnel of the company. It also benefits from the advice and oversight of the members of the Nuclear Advisory Committee, who have substantial expertise in national security and nuclear safety matters, the details of which are described further below in Section 2.4 of this Plan.

1D.2.2 Security Subcommittee Committee

- (a) The NINA LLC Agreement provides for a broad delegation of exclusive authority to the Security Subcommittee Committee, in order to assure that the U.S. citizen directors, including the Security Subcommittee Committee's majority of independent directors, have the ultimate authority to make the corporate decisions for NINA regarding: (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. In other words, the Security Committee itself has the authority to decide that a matter must be decided by the Security Committee. The Board and Security Subcommittee Committee delegate authority over the day to day management of the affairs of NINA to its executive personnel. However, as discussed further below, the NINA governance is structured to ensure that the required U.S. control over matters of safety, security and reliability is not circumvented by having such issues decided without consultation with and oversight by the Security Subcommittee Committee, whenever necessary.
- (b) Section 5.1(e) of the NINA LLC Agreement provides that the Security Subcommittee Committee has and shall exercise the exclusive authority of the Board to vote and decide the following matters:
- (A) Any matter that, in view of U.S. laws or regulations, requires or makes it reasonably necessary to assure U.S. control;
 - (B) Any matter relating to nuclear safety, security or reliability, including, but not limited to, the following matters:
 - (1) Implementation or compliance with any NRC generic letter, bulletin, order, confirmatory order or similar

requirement issued by the NRC;

- (2) Prevention or mitigation of a nuclear event or incident or the unauthorized release of radioactive material;
 - (3) Placement or restoration of the plant in a safe condition following any nuclear event or incident;
 - (4) Compliance with the Atomic Energy Act of 1954 (as in effect from time to time), the Energy Reorganization Act of 1974 (as in effect from time to time), or any NRC rule;
 - (5) The obtaining of, or compliance with, a specific license issued by the NRC and its technical specifications;
 - (6) Conformance with a specific Final Safety Analysis Report, or other licensing basis document; and
 - (7) 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;
- (C) Any other issue reasonably determined by a majority of the members of the Security Subcommittee Committee in office, in their prudent exercise of discretion, to be an exigent nuclear safety, security or reliability issue; and
- (D) Appointment of any successor CEO of the Company and, if one is appointed, Chief Nuclear Officer of the Company, in each case as nominated by the Board.
- (c) The provisions of Section 5.1(e)(ii)(C) make clear that this broad authority includes the authority for the Security Subcommittee Committee to decide that a matter involves an issue that must be decided under U.S. control and therefore must be brought before and decided by the Security Subcommittee Committee.
- (d) In order to assure that control would be exercised by U.S. citizens who are independent from any foreign entities, Section 5.1(e)(iii) of the NINA LLC Agreement provides that the attendance and participation of the two independent U.S. citizen directors is required to constitute the required quorum for the Security Subcommittee Committee to conduct business.
- (e) The ordinary affairs of NINA are managed day to day by the company's executive personnel and managers and supervisors. The Board and the Security Subcommittee Committee have delegated authority to the company's executive personnel, but such delegation is subject to limitations

including the ultimate authority of the Board and the Security Subcommittee to make decisions for NINA when necessary. In order to assure that such day to day issues do not fall subject to FOCD in a way that would circumvent the intended U.S. control and authority of the Security Subcommittee, the NINA LLC Agreement provides for a variety of mechanisms by which such issues could be raised and put before the Security Subcommittee, if necessary. Section 5.1.(e)(iv) of the NINA LLC Agreement provides that a Special Meeting of the Security Subcommittee shall be conducted where a request is made that a matter be considered by the Security Subcommittee. Such a request (requiring a Special Meeting for consideration of the matter) may be made by: (A) the CEO; (B) any member of the Security Subcommittee; (C) the NAC; or (D) the Board. The Security Subcommittee is required to promptly resolve any issues referred in this manner.

(f) Thus, if a circumstance were to arise where an officer or manager had questions about potential foreign control, domination or influence over a matter, the issue could simply be raised within the NINA organization for further review and consideration. Ultimately, the CEO would be in a position to assess whether the matter was being properly decided free from any inappropriate foreign control, domination or influence, or if the concern should be referred so that the matter would be brought before the Security Subcommittee. The CEO's role in this regard is described further below in Section 2.3. In any event, any person involved in the licensing, design, construction or operation of STP 3&4 (or STP 1&2) may raise a concern regarding any potential FOCD issue. Such a concern may be raised in any manner in which a safety concern may be raised (e.g., supervisor, manager, Corrective Action Program, Employee Concerns Program, or NRC). 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.

(g) In order to underscore the special role undertaken by the Security Subcommittee, the NINA LLC Agreement provides that each member execute a certificate acknowledging the protective measures undertaken by NINA, as reflected in this Plan. The certificate provides as follows:

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.

As noted in Section 1.D.2.2(a) of this Plan above, Section 5.1(e) of the NINA LLC Agreement provides for U.S. control over the nuclear safety, security, and reliability issues that are required to be under U.S. control. Thus, this Certificate assures the U.S. Government that each individual has responsibility for compliance with these requirements.

- (h) In order to underscore the special role of the CEO and CNO in assisting the Security Subcommittee Committee, the NINA LLC Agreement provides that the CEO and CNO execute a certificate acknowledging the protective measures undertaken by NINA, as reflected in this Plan. The certificate provides as follows:

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 Section 103 of the Atomic Energy Act of 1954, as amended.

I further acknowledge that I have a special role to assist in assuring that the Security Subcommittee Committee is able to fulfill its responsibilities in accordance with Section 5.1(e) of the Agreement, and acknowledge that the United States Government has placed its reliance on me as a United States citizen to exercise my best efforts to refer matters for consideration by the Security Subcommittee Committee, as necessary and appropriate, so that the Security Subcommittee Committee can 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 the 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.

- (i) Until the Security Subcommittee Committee is established, the CEO will

perform the functions of the Security Subcommittee Committee, except the authority to approve a new CEO. In order to underscore the interim role of the CEO in performing the functions of the Security Subcommittee Committee, the NINA LLC Agreement provides that the CEO execute a certificate acknowledging the protective measures undertaken by NINA, as reflected in this Plan. The certificate provides as follows:

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 Section 103 of the Atomic Energy Act of 1954, as amended. In particular, until the two (2) independent Directors are appointed to form the Security Subcommittee Committee, the Chief Executive shall exercise the authority of the Security Subcommittee Committee, except for the authority provided for in Section 5.1(d)(ii)(D) which shall be exercised by the Chairman.

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.

- (j) The Security Committee has 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 3&4.

1D.2.3 Executive Personnel of NINA

- (a) The CEO of NINA is nominated by the Board, but both NRG Energy, and the Chief Financial Officer is nominated by Toshiba America Nuclear Energy. Given the approximately 90% ownership of NINA by NRG Energy, the NRG Energy Member of the Board of Directors controls the selection of all other officers of NINA. Both the CEO and CNO Chief Nuclear Officer (CNO) of NINA, if one is appointed, must be approved by the Security Subcommittee Committee in accordance with Section 5.1(f) of the NINA LLC Agreement. The NINA CEO, and anyone acting for the NINA CEO, must be a U.S. citizen. The NINA CNO, if one is appointed, also must be a U.S. citizen.
- (b) Section 5.2 of the NINA LLC Agreement provides that, subject to the control

of the Board, the CEO and other Executive Personnel shall "have such authority and perform such duties as the Board may delegate to them." To the extent authority regarding the affairs of NINA is further delegated by the Board to the CEO and other executive personnel, the CEO assures that U.S. control is maintained over nuclear safety, security and reliability issues.

- (c) NINA programs governing security issues, safeguards information, or access to security information are overseen by U.S. citizen managers who report to the CEO. Access and participation in these programs by foreign persons would be permitted only in full compliance with all program requirements. Oversight of these programs and determinations regarding such requirements are and will be subject to U.S. authority and control, because the CEO exercises management authority over such programs, subject only to the ultimate authority of the Security Subcommittee Committee.
- (d) In addition, the CNO Vice President, Oversight and Regulatory Affairs (VP Oversight) ensures U.S. control and oversight of nuclear safety issues through control of the Quality Assurance (QA) Program. The VP Oversight reports directly to and is responsible to the CEO. Through QA audits NINA assures that contractors and subcontractors to it and its subsidiaries conduct nuclear safety related activities in accordance with the QA Program, without regard to whether such activities are undertaken by U.S. citizens or by foreign persons, and without regard to whether such activities are performed within the United States or in another country. The requirements of the QA Program assure that all activities are performed consistent with U.S. requirements imposed upon a licensee or applicant for a license. The QA Program also governs activities internal to NINA and its subsidiaries or affiliates. As such, overall control of the QA Program and imposition of QA Program requirements as required by U.S. law and regulation assures that ultimate U.S. control over nuclear safety is maintained without regard to where activities are performed or who performs them.
- (e) In the event that any foreign control, domination or influence may be exercised with the potential to disrupt this U.S. control over nuclear safety, security and reliability issues, the NINA CEO would assure U.S. control by taking one or more of the following actions: (1) raising the U.S. control issue with the foreign persons involved and resolving the matter to the satisfaction of the CEO; (2) consulting with the NAC to obtain advice regarding whether or not U.S. control is required and, if so, regarding the appropriate options to consider for resolving the matter consistent with the requirements of the U.S. government; and (3) referring the matter for resolution by the Security Subcommittee Committee. If a matter is referred to the Security Subcommittee Committee by the NAC or the CEO, Section 5.1(e)(iv) of the NINA LLC Agreement requires that the Security Committee conduct a Special Meeting special meeting to consider the matter. It is expected that the Security Subcommittee Committee would first decide

whether or not the matter is one that must be decided under U.S. control and, if so, the Security Subcommittee Committee would vote and decide the matter for the NINA Board.

- (f) NINA is not aware of any NINA personnel who currently maintain security clearances with the U.S. government, authorizing their access to classified national security information. It is possible that, in the future, NINA may retain services from contract personnel who obtain or maintain security clearances. However, any such security clearances would be maintained through other companies, which maintain and control their programs to assure compliance with applicable U.S. security requirements and restrict access to such information to only those persons who have been specifically cleared by the U.S. government. The actions of the personnel involved and possession and control of such classified information would be controlled by such other companies and their applicable programs. These programs would not be controlled by NINA, but rather the companies that control these programs would be subject to ongoing oversight by the U.S. government regarding control of these programs free from foreign control, domination or influence. NINA will assure that its personnel comply with all applicable requirements, and it will not provide any directions to its personnel that conflict with their applicable obligations to other companies and their programs regarding such classified information.
- (g) In the future, if it becomes necessary or desirable for NINA to maintain its own independent Facility Security Clearance for purposes of governing security clearances to be issued to NINA personnel, NINA would undergo appropriate security reviews prior to being given control (as a corporation) over restricted data or classified national security information. NINA would comply with the requirements of the National Industrial Security Operating Manual, DoD 5220.22-M (February 28, 2006), including the specific applicable requirements relating to foreign ownership, control and influence (FOCI) and submission of the required "Certificate Regarding Foreign Interests" using Standard Form 328 (SF 328). Currently, however, NINA does not exercise any control over access to restricted data or classified national security information.

1D.2.4 Nuclear Advisory Committee

- (a) NINA has provided for a Nuclear Advisory Committee ("NAC") pursuant to Section 5.1(f) of the NINA LLC Agreement. The NAC will be established prior to any pouring of safety related concrete for STP 3&4. The NAC members serve in a non-voting capacity to provide transparency to the NRC and other U.S. governmental authorities regarding FOCD matters impacting NINA. The NAC members serve two year terms and may be reappointed by the Board. Since NRG Energy owns approximately 90% of NINA, the NRG Energy Member of the Board controls the selection and reappointment of the members of the NAC. In addition to routine advice to NINA and/or STPNOC (e.g., during operations), the NAC members prepare an annual report to the Board advising on whether NINA is subject to FOCD and whether the Security Subcommittee Committee has been

able to exercise its decision-making authority. The NAC also advises whether additional measures should be taken to ensure that NINA and its subsidiaries are in compliance with U.S. laws and regulations regarding FOCD. ~~These reports are available for inspection by~~ The CNO shall assure that copies of these reports are submitted to the U.S. Nuclear Regulatory Commission.

- (b) NINA will adopt a Charter for the NAC, and the Charter itself will be reviewed from time to time to include revisions and improvements upon the advice of the NAC. The principal purposes of the NAC are to:
- Provide transparency to the U.S. Nuclear Regulatory Commission and other U.S. government authorities regarding the implementation of the provisions of Section 5.1(e) of the NINA LLC Agreement providing for authority of the Security ~~Subcommittee~~ Committee over certain matters in order to protect against and negate the potential for any foreign ownership, control or domination of NINA within the within the meaning of 10 CFR 50.38 and Section 103.d of the Act. This includes not only NINA's activities as the licensee responsible for construction, but also the activities of NINA 3 and NINA 4 as owner licensees, including the role of NINA 3 and NINA 4 with respect to the activities of STPNOC as the operating licensee.
 - Advise and make recommendations to the Board whether measures additional to those already in place should be taken to ensure that:
(i) NINA is in compliance with U.S. laws and regulations regarding foreign ownership, control, domination or influence including those related to non-proliferation and fuel cycle matters, and (ii) action by a foreign government or foreign corporation could not adversely affect or interfere with the reliable and safe operations of the nuclear assets of NINA, its subsidiaries, and affiliates ("(i)" and "(ii)" collectively, the "FOCD Matters"), and to provide reports and supporting documentation to the Board relating to such FOCD Matters on at least an annual basis, no later than November 30 of each year. A copy of this report is also provided to the CEO of STPNOC.
- (c) The NAC provides ongoing independent assessment of FOCD matters and provides advice to the CEO and the Board regarding FOCD matters. The NAC is available for consultations with the NINA CEO, the STPNOC CEO, or the NINA Security ~~Subcommittee~~ Committee members at any time. However, the NAC also conducts regularly scheduled meetings not less frequently than quarterly. On an ongoing basis, the NAC will report any concerns regarding FOCD matters to the CEO and Security Committee in a timely manner.
- (d) The NAC members ~~will be~~ are selected based upon their having substantial expertise in security and nuclear safety matters and ability to serve as a valuable resource to NINA and its senior management in assuring compliance with FOCD requirements.

1D.2.5 NINA's Role as Licensee Responsible for Design and Construction

- (a) NINA will be the licensee responsible for the design and construction of STP 3 & 4, which will be owned by CPS, NINA 3, and NINA 4. NINA 3 and NINA 4 are entities that are and will be owned and controlled by NINA through its intermediary holding company subsidiaries.
- (b) NINA will perform its role pursuant to a licensing, design and construction services agreement with NINA 3 and NINA 4. The licensing, design and construction services agreement will clearly delineate NINA's authority with respect to design and construction, the authority of NINA 3 and NINA 4 with respect to financial decisions, and the obligation of NINA 3 and NINA 4 to pay for the costs of construction. Significantly, these terms will make clear that NINA, as the licensee responsible for design and construction, will have sole authority to make all decisions and to take all actions necessary or useful, with respect to, *inter alia*, the following:

Any matter relating to nuclear safety, security or reliability, including, but not limited to, the following matters:

- (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 or restoration of the plant in a safe condition following any nuclear event or incident;
 - (iv) Compliance with the Atomic Energy Act of 1954 (as in effect from time to time), the Energy Reorganization Act of 1974 (as in effect from time to time), 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, control of special nuclear material, administration of access to controlled security information, and compliance with government clearance requirements regarding access to Restricted Data.
- (c) The above list of matters over which NINA will have sole authority has been formulated in the context of operating reactors, and therefore, some of the above matters may not have full applicability to the construction of STP 3&4. However, the full range of matters is included so as to assure

clarity as to NINA's authority as the licensee organization singularly responsible for direction of the design and construction of the proposed plant until such authority is transitioned to STPNOC.

- (d) In order to provide greater visibility to management regarding FOCD issues, and the capability of trending FOCD issues, the Corrective Action Program will include a code for identifying any issue that involves potential FOCD concerns.

1D.3 Governance of STP Nuclear Operating Company

1D.3.1 STPNOC Board of Directors

- (a) STPNOC is a not for profit Texas corporation that is controlled by a board of four directors, three members of which are appointed by the Austin, CPS Energy, and NRG South Texas LP, an indirect wholly owned subsidiary of NRG Energy. These three directors choose the fourth director, who then also serves as the CEO of STPNOC. Austin and CPS Energy are governmental organizations in the State of Texas that are controlled by city councils elected by the citizens of these U.S. cities. NRG Energy is a publicly traded, widely held U.S. corporation, and it is not under FOCD.
- (b) Pursuant to Article VI of STPNOC's Restated Articles of Incorporation, Austin, CPS Energy and NRG South Texas LP appoint the three "Participant Directors" of STPNOC. Notably, NRG South Texas LP is the successor to "Texas Genco LP," which is the entity named in the Restated Articles of Incorporation dated April 27, 2005. The three Participant Directors elect a fourth CEO/Director by a unanimous vote of all three. As such, all of the STPNOC directors currently are U.S. citizens appointed by organizations that are under U.S. control. The STPNOC directors control STPNOC pursuant to Article V of the Restated Articles of Incorporation, which provides that STPNOC "is to have no members," i.e., it has no owners, but rather "its affairs are managed by a Board of Directors."
- (c) STPNOC is subject to U.S. control, and it will exercise authority over nuclear safety and security matters free from any potential for foreign domination or control over its decision making in any area of concern to the NRC under 10 CFR 50.38 and Section 103.d of the Act. In particular, STPNOC is and will remain free from any foreign control or domination with regard to security matters, and STPNOC is subject to ongoing U.S. government oversight regarding foreign ownership, control or influence.
- (d) STPNOC maintains a Facility Security Clearance, and it has individual employees who maintain U.S. government security clearances. In connection with ongoing oversight of these security clearances, STPNOC periodically updates a "Certificate Regarding Foreign Interests" using Standard Form 328 (SF 328), which provides for disclosures regarding potential foreign ownership, control or influence.

- (e) The SF 328 includes various questions regarding a range of potential areas of foreign influence, including debt, foreign source income, foreign directors and executive personnel, contracts and agreements with foreigners, *etc.* Material changes to answers to any questions in the SF 328 are reported to NRC in accordance with 10 CFR 95.17(a)(1). Submittals to U.S. government security officials include the Department of Energy's forms identifying owners, officers, directors and executive personnel (OODEPs), and their citizenship. These OODEPs are submitted and periodically updated for STPNOC, as well as Austin, CPS Energy and the NRG Energy entities in the chain of control of NRG South Texas LP. Austin, CPS Energy and NRG South Texas LP do not "own" STPNOC, but they are treated like owners in connection with the government's security reviews, because they have the right to appoint the STPNOC Participant Directors.
- (f) Notably, neither NINA 3 nor NINA 4 has any rights regarding the appointment of the directors of STPNOC. If NINA 3 and/or NINA 4 acquired rights regarding appointment of directors in connection with their ownership interest in STP 3&4, any such rights would be subject to NRC notice and review requirements, *e.g.*, RIS 2000-01. Moreover, to the extent that NINA, NINA 3 and/or NINA 4 might be in a position to control or influence the STPNOC Board, their role with respect to nuclear safety, security or reliability matters is circumscribed by the negation measures described in Section 2.0 of this Plan, including the authority of the Security Subcommittee Committee and the oversight of the Nuclear Advisory Committee to assure that potential FOCD is negated.

1D.3.2 South Texas Project Owners Committee and Operating Agreement

- (a) The owner licensees for STP 3&4 (CPS Energy, NINA 3, and NINA 4) are members of the South Texas Project Owners Committee, and they have certain rights and decision making authority regarding financial and other matters pursuant to the terms of the Amended and Restated Participation Agreement effective November 17, 1997 (the "Participation Agreement"). As owners of South Texas Project, Units 1 and 2 (STP 1&2), Austin, CPS Energy and NRG South Texas LP are also members of the Owners Committee. Austin, CPS Energy and NRG South Texas LP have certain rights and decision making authority as part of the Owners Committee regarding both STP 1&2 matters and matters common to STP 1&2 and STP 3&4.
- (b) The matters to be addressed by the Owners Committee are specified in Section 9.3 of the Participation Agreement, which provides for certain administrative oversight of the South Texas Project by the Owners Committee. To the extent that NINA, NINA 3 and/or NINA 4 may be in a position to indirectly control or influence STPNOC through the participation of NINA 3 and/or NINA 4 in the Owners' Committee, their role with respect to nuclear safety, security or reliability matters is circumscribed by the negation measures described in Section 2.0 of this Plan, including the authority of the Security Subcommittee Committee and the oversight of the NAC to assure that potential FOCD is negated. Thus, if the Owners

Committee were to make decisions influencing or implicating nuclear safety, security or reliability issues, then the rights of NINA 3 and/or NINA 4 as part of the Owners Committee would be exercised under U.S. control as provided for in Section 2.0 of this Plan. Moreover, under the terms of the Operating Agreement described further below, STPNOC itself has specific authority that would negate such influence.

- (c) Significantly, STPNOC is to be the licensee responsible for operation pursuant to the STP 3&4 licenses. STPNOC has entered into the South Texas Project Operating Agreement dated effective November 17, 1997 (the "Operating Agreement"), and this Operating Agreement governs the terms of its operation of all nuclear generating units at the South Texas Project. Pursuant to the terms of Section 2.1 of the Operating Agreement, STPNOC is granted all requisite authority to exercise its responsibilities as the operating licensee, including having "sole authority" in order "to make all decisions to protect public health and safety as required by the Operating Licenses and applicable laws and regulations and as are necessary to comply with applicable laws and regulations." These provisions assure STPNOC control, and therefore "U.S. control," over nuclear safety, security and reliability matters within the meaning of 10 CFR 50.38 and Section 103.d of the Act.
- (d) As such, throughout the operation of STP 3&4, STPNOC will have sole responsibility with respect to matters involving nuclear safety, security or reliability, including compliance with all NRC nuclear safety and security requirements (STPNOC's "Sole Authority"). This includes denying unauthorized persons access to security information and assuring compliance with U.S. government requirements governing access to restricted data.

1D.4 Summary

- (a) This Plan includes a robust set of mechanisms that provide defense in depth to assure that NINA and its licensee subsidiaries, as well as STPNOC, are governed through U.S. control over nuclear safety, security and reliability matters, so that no such entity either is or is expected in the future to be under FOCD within the meaning of 10 CFR 50.38 and Section 103.d of the Act. Under the terms of the NINA LLC Agreement, the ultimate decision making authority of NINA regarding nuclear safety, security and reliability matters has been delegated to the Security Subcommittee, which itself is controlled by independent U.S. citizen directors.
- (b) STP 3&4 will be operated by STPNOC, a company that is under U.S. control. In addition, STP 3&4 will be owned 7.625% by CPS Energy, and 92.375% by NINA. NINA will assure that it is at all times at least 10% owned by U.S. owners. As such, indirect foreign ownership of STP 3&4 will at all times be less than 85%. NRG Energy owns approximately 90% of NINA, which under the NINA governance gives the NRG Energy member on the NINA Board of Directors both a majority and supermajority of the

votes for matters decided by the NINA Board, including the selection of independent Directors and the NINA CEO and CNO. The NINA CEO and CNO are required to be U.S. citizens who assure that U.S. control is exercised over the management of NINA.

- (c) Recognizing that day to day decision making is delegated to executive personnel, the Plan contemplates that a U.S. citizen CEO of NINA will assure U.S. control over matters that require U.S. control. The Plan includes a requirement that the CEO acknowledge a special duty to the U.S. government. In addition, the appointment of any successor CEO must be approved by the Security Subcommittee Committee, which provides additional assurance that the CEO will function as part of the team of U.S. citizens exercising a special duty to the U.S. government to assure compliance with respect to FOCD matters. Significantly, the CEO has access to the expert advice and resources of the NAC and has been given specific authority to refer a matter to the Security Subcommittee Committee, requiring that the Security Subcommittee Committee consider the matter in a Special Meeting. In addition, 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. This assures that even though matters may be delegated to executive personnel, influence over delegated matters cannot be used to circumvent the requirement for U.S. control and the ultimate authority of the Security Subcommittee Committee.
- (d) In addition, STPNOC will be the licensee responsible for the operation of STP 3&4. STPNOC is a U.S. company that is under U.S. control. Operation of STP 3&4 is subject to the Sole Authority of STPNOC, as necessary to assure that such operation is not subject to FOCD within the meaning of 10 CFR 50.38 and Section 103.d of the Act. To the extent that NINA, NINA 3 and/or NINA 4 might be able to exercise control or influence over STPNOC, the potential for foreign control, domination or influence over STPNOC regarding nuclear safety, security or reliability matters is mitigated by the negation measures described in Section 2.0 of this Plan.
- (e) Notably, Section 3.2(2) of the Standard Review Plan on Foreign, Ownership, Control and Domination specifically provides that further consideration is to be given to "whether the applicant is seeking authority to operate the reactor." STPNOC is the entity to be licensed as the operator, and its role as a U.S. controlled entity that will be responsible for nuclear safety and security throughout the operating life of STP 3&4 should be given great weight in evaluating FOCD issues.
- (f) Finally, the NAC will perform an ongoing monitoring function to assess FOCD issues and surface any potential concerns regarding FOCD matters. In addition, the expert resources of the NAC provide a pathway for continuous enhancement and improvement of the mechanisms to assure

that any potential inappropriate FOCD is negated. This ongoing role provides further assurance that the required U.S. control of NINA and of the NRC licenses is maintained consistent with the provisions of 10 CFR 50.38 and Section 103.d of the Act.

1D.5 Implementing Documents

1D.5.1 South Texas Project, Unit 3&4, Negation Action Plan, Rev. 0, dated June 2011.

1D.5.2 South Texas Project, Units 3&4, COLA Part 1, Section 1.5

1D.5.3 Fourth Amended and Restated Operating Agreement of Nuclear Innovation North America, LLC

1D.5.4 Certificates of Independent Directors and CEO

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Changes to Revision 7 of COLA are indicated in gray highlight.

Conforming changes to Part 1 Section 1.2, General Information, are shown below:

1.2 General Information

The applicants for STP 3 & 4 are NINA 3, NINA 4, CPS Energy, STPNOC and NINA as described in the requested license actions above. Effective as of January 24, 2011, NINA became the applicant with overall responsibility for the COLA, including design and quality activities conducted prior to issuance of the requested licenses. The required general information for the applicants is provided below separated by applicant.

Nuclear Innovation North America LLC

NINA is a company whose focus is to market and promote ABWR nuclear technology, and to develop and construct ABWR nuclear power generation facilities in the U.S. NINA has assumed responsibility for the design and construction of STP 3 & 4, and it has organized itself for this purpose by transitioning the previously existing STPNOC organization responsible for the development of STP 3 & 4 from STPNOC to NINA. This transition includes the programs, processes and procedures developed by STPNOC for STP 3 & 4.

NINA is a Delaware limited liability company that was formed in February 2008 by NRG Energy, Inc. (NRG Energy). On February 29, 2008, Toshiba Corporation (Toshiba) entered into agreements with NRG Energy to invest up to \$300 million in NINA in return initially for 12% of the membership interests, with NRG Energy owning the remaining 88%. The ownership interests are subject to change based upon ongoing capital contributions by the members. The parties closed on the joint venture transaction on May 1, 2008.

NINA is currently owned approximately 89.5 90% by NRG Energy and 10.5% by Toshiba America Nuclear Energy Corporation (Toshiba America Nuclear), a Delaware corporation. Toshiba America Nuclear is a wholly owned subsidiary of Toshiba America, Inc., a Delaware corporation, which is a wholly owned subsidiary of Toshiba Corporation, a Japanese corporation (together, with its U.S. subsidiaries, referred to as the Toshiba Companies). The existing ownership structure of these companies is reflected in Figure 1.1-1.

In addition, NINA has entered into certain agreements with Stone & Webster Inc. (S&W), a Louisiana corporation, whereby S&W has the right to acquire an ownership interest in NINA from NRG Energy, which would reduce NRG Energy's interest in NINA. S&W is a wholly owned subsidiary of The Shaw Group Inc., a Louisiana corporation, which is publicly traded on the New York Stock Exchange.

Nevertheless, NINA has secured funding through loans to NINA for its current development and licensing activities from Toshiba America Nuclear. NINA does not anticipate any material change in its current ownership prior to issuance of the requested licenses, and Toshiba America Nuclear will maintain its ownership of not more than 10% unless a higher ownership percentage is approved or otherwise authorized in writing by the NRC. Following issuance of the COLs, NINA will assure

that any loans procured exclusively from foreign sources may only be used for purposes of project development and maintaining the licenses. NINA will assure that at least 50% of the funding for any licensed construction activity is funded from U.S. sources whether through loans or through equity.

The ownership percentages held by each of the members of NINA can change over time based upon S&W exercising its option to acquire ownership interests or based upon equity contributions by the members being made to fund NINA activities in amounts that are disproportionate to the ownership interests of the members. For example, if Toshiba were to fund NINA activities with equity contributions and NRG Energy did not contribute its proportionate share, Toshiba's total ownership interest in NINA would increase through accretion and NRG Energy's total ownership interest in NINA would be reduced through dilution. However, if funding is provided through loans to NINA, the ownership percentages do not change.

In a Press Release issued on April 19, 2011, NRG announced that "while it will cooperate with and support its current partners and any prospective future partners in attempting to develop STP 3&4 successfully, NRG will not invest additional capital in the STP development effort." Thus, the ownership percentages among the NINA owners may change in the future. It is routine for there to be periodic, indeed daily, changes in the ownership of publicly traded holding companies that own subsidiary companies that hold NRC licenses. Therefore, the fact that there may be changes in the ownership of NINA from time to time is consistent with current NRC practice, which accepts the practical reality that there are routine minor changes in the ownership of the holding companies for existing reactor licensees throughout the United States, without any need for NRC action or routine notices to NRC regarding these changes in ownership. However, because NINA is owned by multiple parent holding companies that are themselves publicly traded, NINA plans to keep the NRC informed regarding the ownership percentages of each such parent holding company. If there are any material changes in the ownership percentages among the current owners, e.g., 5% or more variance from the ownership percentages previously described in the COLA, NINA will notify the NRC in a timely manner and identify the change in the next update to the COLA. If any material new investors join in the ownership of NINA, NINA will also notify NRC of such owners, and the investors will be identified in the next update to the COLA.

After issuance of the COL, any changes in the ownership of NINA may require prior review by the NRC under NRC's existing regulations. NRC review may be required for purposes of either: (1) obtaining prior written consent of the NRC pursuant to 10 CFR 50.80, if such changes involve a direct or indirect transfer of control of any NINA license; or (2) obtaining a threshold determination by the NRC that no such approval is required.

NINA will assure that, prior to execution of the documents necessary to implement any proposed change of ownership of NINA that, either individually or when combined with prior changes, would result in a change in ownership of 5% or more of NINA, NINA will provide complete information to the NRC regarding the proposed transaction and seek either an NRC threshold determination that no license transfer approval is required or NRC's prior written consent to a license transfer pursuant to 10 CFR 50.80.

In addition, material changes in the foreign ownership of NINA will be reported to NRC in accordance with NRC's Regulatory Information Summary 2000-01, "Changes Concerning Foreign Ownership, Control, or Domination of Nuclear Reactor Licensees" (Feb. 1, 2000). Foreign ownership issues are addressed in Section 1.5 of this Part 1 and in the Negation Action Plan (NAP) provided as Appendix 1D of Final Safety Analysis Report Chapter 1. Section 2.0(c) of the NAP, provides that NINA will assure that U.S. owners at all times hold at least 10% of the equity of NINA. Taking into account CPS Energy's 7.625% ownership interests, indirect foreign ownership of STP 3&4 will at all times be less than 85%.

In a May 5, 2011 Form 10 Q filing with the Securities and Exchange Commission, NRG stated as follows:

NRG evaluated its investment in NINA for impairment. As part of this process, NRG evaluated the contractual rights and economic interests held by the various stakeholders in NINA, and concluded that **while it continues to hold majority legal ownership**, NRG ceased to have a controlling financial interest in NINA at the end of the first quarter of 2011. Consequently, NRG deconsolidated NINA as of March 31, 2011, in accordance with ASC-810, Consolidation, or ASC 810.

(Emphasis added.) The phrase "ceased to have a controlling financial interest" relates to financial accounting standards, and NRG's conclusion that it would deconsolidate its financial interests in NINA as of March 31, 2011, for purposes of NRG's accounting treatment, which has impacts on NRG's consolidated balance sheet. However, NRG continues to have a controlling legal ownership interest in NINA, and it will continue to exercise control over nuclear safety and security matters, *i.e.*, control of NINA within the meaning of Section 103.d of the Act and 10 CFR 50.38, until such time as the earlier of either: (1) the implementation of the NAP described in Section 1.5 below; or (2) the occurrence of NINA ownership changes that amount to a change in control of NINA for purposes of 10 CFR 50.80 (if such regulation were to apply, *i.e.*, after issuance of a license), but which in any event will be subject to the implementation of the NAP as described in Section 1.5 below.

NINA's principal offices are located at:

521 Fifth Avenue, 30th Floor
New York, NY 10175

NINA's STP 3 & 4 organization that is focused on the design and construction of STP 3 & 4 and coordination with STPNOC for the operation of STP 3 & 4 maintains offices at:

4000 Avenue F
Bay City, Texas 77414

The name, address, and citizenship of each director and principal officer of NINA are provided in Table 1.2-1.

NRG Energy, Inc.

NRG Energy is a wholesale power generation company with a significant presence in major competitive power markets in the United States. NRG Energy is engaged in the ownership, development, construction and operation of power generation facilities, the transacting in and trading of fuel and transportation services, and the trading of energy, capacity and related products in the United States and select international markets. As of December 31, 2009, NRG Energy had a total global generation portfolio of 187 active operating fossil fuel and nuclear generation units, at 44 power generation plants, with an aggregate generation capacity of approximately 24,115 MW, and approximately 400 MW under construction which includes partner interests of 200 MW. In addition to its fossil fuel plant ownership, NRG Energy has ownership interests in operating renewable facilities with an aggregate generation capacity of 365 MW, consisting of three wind farms representing an aggregate generation capacity of 345 MW (which includes partner interest of 75 MW) and a solar facility with an aggregate generation capacity of 20 MW.

NRG Energy is incorporated in the State of Delaware and was formed in 1992 as the non utility subsidiary of Northern States Power Company, which was itself merged into New Century Energies, Inc. to form Xcel Energy, Inc., in 2000. NRG Energy is no longer affiliated with Northern States Power or Xcel Energy, Inc. NRG Energy is a wholesale power generation company that is publicly owned and traded on the New York Stock Exchange. It primarily engages in the ownership and operation of power generation facilities, the transacting in and trading of fuel and transportation services, and the marketing and trading of energy, capacity and related products in the United States and internationally. NRG Energy has a diverse portfolio of electric generation facilities in terms of geography, fuel type, and dispatch levels. In the Texas deregulated electricity market, NINA 3 and NINA 4 will sell their portions of the electrical energy produced at STP to the general ERCOT market described below.

NRG Energy's principal offices are located at:

211 Carnegie Center
Princeton, NJ 08540

The name, address, and citizenship of each director and principal officer of NRG Energy are provided in Table 1.2-2.

NINA Texas 3 LLC and NINA Texas 4 LLC

NINA 3 and NINA 4 are limited liability companies organized under the laws of the State of Delaware, and they operate in the state of Texas. NINA 3 and NINA 4 are wholly owned subsidiaries of NINA Investments LLC, a limited liability company organized under the laws of the State of Delaware, which in turn is a wholly owned subsidiary of NINA Investments Holdings LLC (NINA Holdings), a limited liability company organized under the laws of the State of Delaware, and a wholly owned subsidiary of NINA. Through its wholly owned subsidiaries, NINA owns 100% of NINA 3 and NINA 4.

It is anticipated that there may be additional equity investors in NINA and/or its subsidiaries prior to beginning construction under the COL. If additional foreign or domestic investors agree to participate in the ownership of NINA 3 and NINA 4, any such investors will be subject to a foreign ownership control and domination Negation Action Plan as described in greater detail in Section 1.5 below.

Conforming changes to Part 1 Section 1.5, Foreign Ownership Restrictions, are shown below:

1.5 Foreign Ownership Restrictions

CPS Energy

CPS Energy is a Texas municipal utility and an independent Board of the City of San Antonio. CPS Energy is neither owned, controlled, nor dominated by an alien, foreign corporation or foreign government.

NRG Energy

Section 13(d) of the Securities Exchange Act of 1934, as amended, 15 U.S.C. 78m(d), requires that a person or entity that owns or controls more than 5% of the securities of a company must file notice with the Securities and Exchange Commission (SEC). Based upon filings with the SEC, as of June 30, 2010, the only alien, foreign corporation, or foreign government that NRG Energy is aware of that holds more than 5% of the securities of NRG Energy is Orbis Investment Management, which is located in the United Kingdom and holds 15,435,027 shares of NRG Energy (which equates to an approximate ownership of 6%).

The directors and executive officers of NRG Energy are United States citizens, except for one executive officer. The one executive officer with foreign citizenship will not be able to exercise control over NRG Energy. As such, neither NRG Energy, nor the subsidiaries that it controls are owned, controlled, or dominated by any alien, foreign corporation, or foreign government.

NINA, NINA 3 and NINA 4

NINA is owned approximately 90% by NRG Energy, and NRG Energy exercises voting control over NINA. NINA does not anticipate any material change in its current ownership prior to issuance of the requested licenses. Toshiba America Nuclear will not own more than 10% unless a higher ownership percentage is approved or otherwise authorized in writing by the NRC.

Funding for NINA's current development and licensing activities is being provided primarily through loans from Toshiba America Nuclear. These additional loans represent a small percentage of the total funding that has been spent and that is anticipated to be spent prior to beginning licensed construction activities. Given its small ownership share and its relatively small contribution to the overall funding for the project prior to issuance of the COLs, Toshiba America Nuclear is not able to exert direct or indirect control over NINA within the meaning of 10 CFR 50.38 by virtue of its loans to support current activities. Following issuance of the COLs, NINA will assure that at least 50% of the

funding for any licensed construction activity is funded from U.S. sources whether through loans or through equity.

If NINA's ownership structure changes following issuance of the COLs, NINA commits that, prior to execution of the documents necessary to implement any proposed change of ownership of NINA that, either individually or when combined with prior changes, would result in a change in ownership of 5% or more of NINA, NINA will provide complete information to the NRC regarding the proposed transaction and seek either an NRC threshold determination that no license transfer approval is required or the NRC's prior written consent to a license transfer pursuant to 10 CFR 50.80.

In addition, NINA has implemented the STP 3&4 Negation Action Plan (NAP) to provide requirements and guidance to ensure negation of potential foreign ownership, control or domination (FOCD) over the STP 3&4 licenses. The NAP currently provides that control over nuclear safety or security decisions is exercised by the Chief Executive Officer (CEO) and Chief Nuclear Officer (CNO), who are required by the NAP to be U.S. citizens. As the 90% owner of NINA, NRG Energy controls the appointment of the CEO and CNO, and they can only be replaced by the vote of the NRG Energy member on the NINA Board of Directors. Additional negation measures would be implemented prior to beginning any licensed construction activity. This includes formation of a Nuclear Advisory Committee to review and advise on FOCD matters including the effectiveness of the NAP, and adoption of corporate governance provisions that formally delegate exclusive decision-making authority over nuclear safety and security matters to a Security Committee of the NINA Board consisting of a majority of independent, U.S. citizen directors whose selection is controlled by the NRG Member Director. Moreover, STP 3&4 will be operated by STPNOC, an independent U.S. company that is controlled by NRG Energy, the City of San Antonio and the City of Austin, Texas.

~~NINA has implemented the STP 3&4 Negation Action Plan (NAP) to provide requirements and guidance to ensure negation of potential foreign ownership, control or domination (FOCD) over the STP 3&4 licenses held by NINA, NINA 3, NINA 4 and CPS Energy. To allow for flexibility regarding NINA's ultimate ownership structure, the NAP assumes that the NINA ownership structure could include having a foreign owner or combination of foreign owners with ownership shares that are substantially greater than 50%, but NINA will assure that U. S. owners at all times hold at least 10% of the equity of NINA.~~ The measures undertaken in the NAP provide the basis to conclude that NINA, NINA 3 and NINA 4 will not be owned, dominated, or controlled by foreign interests within the meaning of the Atomic Energy Act, and that issuance of a COL would not be inimical to the common defense and security. The NAP is provided as Appendix 1D of Final Safety Analysis Report Chapter 1, and implements measures to fully negate FOCD with respect to matters involving the nuclear safety, security, and reliability of STP 3&4 throughout the design, construction and operation of STP 3&4. The NAP describes the controls implemented to assure that the governance of NINA and the licensed activities undertaken by NINA, NINA 3 and NINA 4 are not subject to FOCD within the meaning 10 CFR 50.38 and Section 103.d of the Atomic Energy Act of 1954, as amended (Section 103.d of the Act).

The NAP was developed using the guidance provided by the NRC's "Final Standard

Review Plan on Foreign Ownership, Control, or Domination," 64 FR 52355 (September 28, 1999) (FOCD SRP). Defense-in-depth is provided through a number of measures in order to assure that there is U.S. control over matters relating to nuclear safety, security and reliability, including most significantly the security programs and safety programs, including Quality Assurance. These measures effectively negate the risk that the foreign owned parent companies might exercise control, domination, or influence over matters that are required to be under U.S. control pursuant to the terms of 10 CFR 50.38 and Section 103.d of the Act.

STPNOC

STPNOC is a not for profit Texas corporation that is controlled by a board of four directors, three members of which are appointed by the City of Austin (Austin), CPS Energy, and NRG South Texas LP, an indirect wholly owned subsidiary of NRG Energy. These three directors choose the fourth director, who then also serves as the Chief Executive Officer. Austin and CPS Energy are governmental organizations in the State of Texas that are controlled by city councils elected by the citizens of these U.S. cities. NRG Energy is a publicly traded, widely held U.S. corporation, and it is not under FOCD.

Pursuant to Article VI of STPNOC's Restated Articles of Incorporation, Austin, CPS Energy and NRG South Texas LP appoint the three "Participant Directors" of STPNOC. Notably, NRG South Texas LP is the successor to "Texas Genco LP," which is the entity named in the Restated Articles of Incorporation dated April 27, 2005. The three Participant Directors elect a fourth CEO/Director by a unanimous vote of all three. As such, all of the STPNOC directors currently are U.S. citizens appointed by organizations that are under U.S. control. The STPNOC directors control STPNOC pursuant to Article V of the Restated Articles of Incorporation, which provides that STPNOC "is to have no members," i.e., it has no owners, but rather "its affairs are managed by a Board of Directors."

STPNOC is subject to U.S. control, and it will exercise authority over nuclear safety, security, and reliability matters free from any potential for foreign domination or control over its decision making in any area of concern to the NRC under the Atomic Energy Act of 1954, as amended. The NAP provides further information regarding STPNOC and the reasons that STPNOC is and will remain free from any foreign control or domination with regard to nuclear safety, security or reliability matters.