


STP 3 & 4**General and Financial Information****Part 1 General and Financial Information****1.0 Introduction**

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Docket #: 05200012105200013 Exhibit #: STP000052-00-BD01 Admitted: 1/6/2014 Rejected: Other:	Identified: 1/6/2014 Withdrawn: Stricken:
--	--	---	--

Effective January 28, 2009, STP 3 & 4 Investments LLC changed its name to Nuclear Innovation North America LLC (NINA), NRG South Texas 3 LLC changed its name to NINA Texas 3 LLC (NINA 3), and NRG South Texas 4 LLC changed its name to NINA Texas 4 LLC (NINA 4).

This Combined License Application (COLA) is submitted by NINA on behalf of itself, the STP Nuclear Operating Company (STPNOC), NINA 3, NINA 4, and the City of San Antonio, Texas, acting by and through the City Public Service Board (CPS Energy), for the construction and operation of two nuclear powered generating plants designated as South Texas Project Units 3 & 4 (STP 3 & 4). In addition, special nuclear material licenses, by-product material licenses, and source material licenses as required for construction and operation are requested. NINA will be 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 allows operation during an interim period under the combined license (COL) under 10 CFR 52.103(c), at which point STPNOC will be the lead licensee responsible for operations.

STP 3 & 4 will each utilize the NRC-Certified Advanced Boiling Water Reactor (ABWR) light water reactor design. This COLA presents descriptions and analyses of the station design, and incorporates by reference Appendix A to 10 CFR Part 52 as required by Section III.B of that Appendix.

The Application has been divided into parts as follows:

Part 1 - General and Financial Information

Part 2 - Final Safety Analysis Report

Part 3 - Environmental Report

Part 4 - Plant-Specific Technical Specifications

Part 5 - Emergency Plan

Part 6 - Site Redress Plan

Part 7 - Generic DCD Departures Report

Part 8 - Security Plans (under separate cover)

Part 9 - Inspections, Tests, Analyses, and Acceptance Criteria (ITAAC)

Part 10 - Proprietary Information

Part 11 - Mitigative Strategies Report 10 CFR 52.80(d)

Two complete COLAs were submitted. One included proprietary and security sensitive information that is subject to a request for withholding from public dissemination. The other has such information redacted and is available for public dissemination.

Subsequent COLA revisions will submit only the COLA Parts impacted by the current revision. The unaffected COLA Parts will remain valid at their last submittal revision level.

Proprietary information shall be marked in the COLA file as follows:

The beginning of the proprietary information shall be marked with the designation '[s#]' and the designation '[e#]' at the end of the proprietary information. The "#" shall be a number between 1 and 7, denoting the reason the information is being requested to be withheld from public disclosure as proprietary. The number designation is in accordance with NRC Regulatory Issue Summary 2004-11: "Supporting Information Associated with Requests for Withholding Proprietary Information."

The number designators indicating the reason the information is being requested to be withheld from public disclosure as proprietary, are as follows:

- (1) The information is considered Security Sensitive. (Short title: Security Sensitive)
- (2) The information reveals the distinguishing aspects of a process (or component, structure, tool, method, etc.) whose use by any of the submitter's competitors, without a license from the submitter, would constitute a competitive economic disadvantage to the submitter. (Short Title: Distinguishing Aspects of a Process)
- (3) The information consists of supporting data, including test data, relative to a process (or component, structure, tool, method, etc.), and the application of the data secures a competitive economic advantage, as described more fully in the affidavit. (Short Title: Supporting Data Relative to a Process)
- (4) Use by a competitor of the information would reduce the competitor's expenditure of resources, or improve its competitive position, in the design, manufacture, shipment, installation, assurance of quality, or licensing of a similar product. (Short Title: Competitive Advantage)
- (5) The information reveals cost or price information, production capacities, budget levels, or commercial strategies of the submitter or customers or suppliers. (Short Title: Financial and Commercial)
- (6) The information reveals aspects of privately funded development plans or programs of commercial value to the submitter or owner of the information. (Short Title: Development Plans)
- (7) The information consists of patentable ideas. (Short Title: Patentable Ideas)

The number will serve as notification to the NRC of the reason the information is being requested to be withheld from public disclosure.

1.1 License Actions Requested

The purpose of this COLA is to obtain NRC approval to construct and operate two nuclear powered generating plants. The plants will be located at the existing South Texas Project Electric Generating Station in Matagorda County, Texas.

In support of this objective, NINA requests the following license actions:

- License NINA, pursuant to Section 103 of the Atomic Energy Act of 1954, as amended (the Act), and 10 CFR Part 52 to construct, possess, and use South Texas Project Unit 3 at the designated location in Matagorda County, Texas. It is requested that the license contains a provision that includes the applicable license under 10 CFR Part 70 (including Reporting Criteria of 10 CFR 70) to receive, possess, and use at any time such quantities of source, byproduct and special nuclear material as needed to construct the utilization facility and transition the utilization facility to STPNOC for operation on the date on which the Commission makes a finding that acceptance criteria are met under 10 CFR 52.103(g) or allows operation during an interim period under the combined license under 10 CFR 52.103(c).
- License STPNOC pursuant to Section 103 of the Act and 10 CFR Part 52 to possess, use, and operate South Texas Project Unit 3 at the designated location in Matagorda County, Texas, beginning on the date on which the Commission makes a finding that acceptance criteria are met under 10 CFR 52.103(g) or allows operation during an interim period under the combined license under 10 CFR 52.103 (c). It is requested that the term of the license be for a period of 40 years from the date on which the Commission makes a finding that acceptance criteria are met under 10 CFR 52.103(g) or allows operation during an interim period under the combined license under 10 CFR 52.103(c), and contains a provision that includes the applicable license under 10 CFR Part 70 (including Reporting Criteria of 10 CFR 70) to receive, possess, and use at any time such quantities of source, byproduct, and special nuclear material as needed to operate the utilization facility.
- License NINA 3 and CPS Energy pursuant to Section 103 of the Act and 10 CFR Part 52 to possess South Texas Project Unit 3 and own a 92.375% and a 7.625% undivided interest, respectively, therein, at the designated location in Matagorda County, Texas. It is requested that the term of the license be for a period of 40 years from the date on which the Commission makes a finding that acceptance criteria are met under 10 CFR 52.103(g) or allows operation during an interim period under the combined license under 10 CFR 52.103(c).
- License NINA pursuant to Section 103 of the Act and 10 CFR Part 52 to construct, possess, and use South Texas Project Unit 4 at the designated location in Matagorda County, Texas. It is requested that the license contains a provision that includes the applicable license under 10 CFR Part 70 (including Reporting Criteria of 10 CFR 70) to receive, possess, and use at any time such quantities of source,

byproduct, and special nuclear material as needed to construct the utilization facility and transition the utilization facility to STPNOC for operation on the date on which the Commission makes a finding that acceptance criteria are met under 10 CFR 52.103(g) or allows operation during an interim period under the combined license under 10 CFR 52.103 (c).

- License STPNOC pursuant to Section 103 of the Act and 10 CFR Part 52 to possess, use, and operate South Texas Project Unit 4 at the designated location in Matagorda County, Texas, beginning on the date on which the Commission makes a finding that acceptance criteria are met under 10 CFR 52.103(g) or allows operation during an interim period under the combined license under 10 CFR 52.103(c). It is requested that the term of the license be for a period of 40 years from the date on which the Commission makes a finding that acceptance criteria are met under 10 CFR 52.103(g) or allows operation during an interim period under the combined license under 10 CFR 52.103(c), and contains a provision that includes the applicable license under 10 CFR Part 70 (including Reporting Criteria of 10 CFR 70) to receive, possess, and use at any time such quantities of source, byproduct, and special nuclear material as needed to operate the utilization facility.
- License NINA 4 and CPS Energy pursuant to Section 103 of the Act and 10 CFR Part 52 to possess South Texas Project Unit 4 and own a 92.375% and a 7.625% undivided interest, respectively, therein, at the designated location in Matagorda County, Texas. It is requested that the term of the license be for a period of 40 years from the date on which the Commission makes a finding that acceptance criteria are met under 10 CFR 52.103(g) or allows operation during an interim period under the combined license under 10 CFR 52.103(c).

Pursuant to the license for each facility, NINA will be responsible for meeting all of the requirements of the license, including compliance with the regulations and maintaining all of the programs required by each license (such as quality assurance program, security program, records management, etc.) until responsibility under each license is transitioned to STPNOC on the date on which the Commission makes a finding that acceptance criteria are met under 10 CFR 52.103(g) or allows operation during an interim period under the combined license under 10 CFR 52.103(c). To the extent that STPNOC engages in activities prior to such date in order to prepare for operations, it will do so pursuant to the licenses and NINA's programs, processes and procedures; NINA will be responsible for such activity conducted by STPNOC.

Responsibility under each license, including compliance with the regulations and maintaining all of the programs required by each license, will be completely transitioned to STPNOC on the date for each unit on which the Commission makes a finding that acceptance criteria are met under 10 CFR 52.103(g) or allows operation during an interim period under the combined license under 10 CFR 52.103(c). To the extent that NINA conducts construction activities relating to a facility after responsibility for the license has been transitioned to STPNOC, STPNOC will be the responsible licensee, and NINA will conduct such activities pursuant to STPNOC's programs, processes, and procedures.

Revisions have been made to this COLA in Part 1 and in Part 2 Chapters 1, 13, and 17 of the Final Safety Analysis Report, in order to properly reflect the division of responsibility under the licenses as between NINA and STPNOC. Otherwise, throughout the COLA and supplemental information submitted regarding the COLA, all other references to STPNOC should be construed to mean the licensee with primary responsibility for each license, i.e., NINA during design and construction and thereafter STPNOC, unless the context requires otherwise. For example, references to historical actions taken by STPNOC (e.g., “STPNOC performed an analysis of . . .”) reflect such actions. Other references may reflect future actions (e.g., “STPNOC will . . .”) to be taken either by NINA during design and construction or thereafter, by STPNOC. Nevertheless, the applicable licensee with primary responsibility assumes full responsibility under the application and licenses for responsibilities associated with all historical references.

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% by NRG Energy and 10.5% by~~ 90% by the NRG Member of NINA, Texas Genco Holdings, Inc. (Texas Genco), a Texas corporation, and less than 10% by the Toshiba Member of NINA, Toshiba America Nuclear Energy Corporation (Toshiba America Nuclear), a Delaware corporation. NRG Energy, a Delaware corporation, owns 100% of the voting stock of Texas Genco. 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.

~~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.~~ 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.

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.

~~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%. 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 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~~

and 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~~are located 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.

Texas Genco's principal offices are located at:

211 Carnegie Center
Princeton, NJ 08540

The name, address, and citizenship of each director and principal officer of Texas Genco are provided in Table 1.2-6.

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.~~

The offices for NINA 3 and NINA 4, their controlling parent companies, and the Toshiba Companies are located at:

Nuclear Innovation North America LLC
NINA Investments Holdings LLC
NINA Investments LLC
NINA Texas 3 LLC
NINA Texas 4 LLC
~~521 5th Avenue, 30th Floor~~
~~New York, New York 10175~~
and
4000 Avenue F
Bay City, Texas 77414

NRG Energy, Inc.
211 Carnegie Center
Princeton, New Jersey 08540

Toshiba Corporation
1-1, Shibaura 1-chome, Minato-ku,
Tokyo 105-8001, Japan

Toshiba America Nuclear Energy Corporation
3545 Whitehall Park Drive, Suite 500
Charlotte, NC 28273

Toshiba America, Inc.
1251 Avenue of the Americas, Suite 4110
New York, NY 10020

The name, address, and citizenship of each of the directors and officers of NINA 3 and NINA 4 are provided in Table 1.2-3.

City Public Service Board of the City of San Antonio

CPS Energy is a Texas municipal utility and an independent Board of the City of San Antonio. The City of San Antonio, Texas acquired its electric and gas utilities in 1942 from the American Light and Traction Company, which had been ordered by the federal government to sell properties under provisions of the Holding Company Act of 1935. Today, CPS Energy is the nation's largest municipally owned energy company providing both natural gas and electric service, serving more than 700,000 electric customers and approximately 320,000 natural gas customers in and around the seventh largest city in the United States. CPS Energy has earned the highest financial rating of any municipal gas and electric system in the nation.

The offices for CPS Energy are located at:

CPS Energy
145 Navarro
San Antonio, Texas 78205

CPS Energy
PO Box 1771
San Antonio, Texas
78296

The name, address, and citizenship of each of the trustees and senior executive team members of CPS Energy are provided in Table 1.2-4.

STP Nuclear Operating Company

Pursuant to an Operating Agreement between the participants of STP 1 & 2, STPNOC is responsible for the licensing, operation, maintenance, modification, decontamination, and decommissioning of STP 1 & 2, and STPNOC will have the same responsibility for STP 3&4 after responsibility under each license is transitioned to STPNOC on the date on which the Commission makes a finding that acceptance criteria are met under 10 CFR 52.103(g) or allows operation during an interim period under the combined license under 10 CFR 52.103(c). The participants of STP 1 & 2 are liable for payments that are chargeable to STP 1 & 2 in proportion to each of the

participant's respective undivided ownership interest in STP 1 & 2. During commercial operation, the participants in STP 3 & 4 will be liable for payments chargeable to STP 3 & 4 in proportion to each of the participant's respective undivided ownership interest in STP 3 & 4. Common facilities charges are shared by the STP 1 & 2 and STP 3 & 4 participants. STPNOC will operate STP 3 & 4 pursuant to terms of the existing Operating Agreement. STPNOC is a Texas non-profit corporation.

The offices for STPNOC are located at:

STP Nuclear Operating Company
4000 Avenue F
Bay City, Texas 77414

The name, address, and citizenship of each of the directors and officers of STPNOC are provided in Table 1.2-5

Regulatory Agencies with Jurisdiction over Rates and Services

Retail Service Rates:

Under the Texas Public Utility Regulatory Act (PURA), significant original jurisdiction over the rates, services, and operations of "electric utilities" is vested in the Public Utility Commission of Texas (PUCT). In this context, "electric utility" means an electric investor-owned utility. Since the electric deregulation aspects of PURA became effective on January 1, 2002, the PUCT's jurisdiction over electric investor-owned utility (IOU) companies primarily encompasses only the transmission and distribution functions.

The PUCT has jurisdiction over the electric market in the Electric Reliability Council of Texas (ERCOT) region. That authority is focused on wholesale and retail market oversight, customer protection rules, utility (delivery) ratemaking and oversight, reliability compliance, and matters related to the transition to the competitive market, such as oversight of nuclear decommissioning trusts of existing nuclear plants in ERCOT. Traditional retail ratemaking for much of the ERCOT region has been replaced with a "customer choice" model where retail rates are established in a competitive market, subject to PUCT customer protection rules. Likewise, the wholesale electric market pricing is set by competitive processes (under the market oversight of the PUCT and a Wholesale Market Monitor selected by the PUCT), both through bilateral power agreements and as part of ERCOT ancillary service auctions. The ERCOT corporate organization serves as the independent system operator responsible for transmission system open access, energy scheduling and accounting, transmission control area management, system planning, and support of the competitive retail market and financial settlement of the wholesale market. Municipal utilities, including CPS Energy, and electric cooperatives have authority to acquire energy and set retail rates under their own authority and may choose to be exempt from the competitive market.

PURA generally excludes municipally-owned utilities (Municipal Utilities), such as CPS Energy, from PUCT jurisdiction, although the PUCT has jurisdiction over electric

wholesale transmission rates. Under the PURA, a municipal governing body or the body vested with the power to manage and operate a Municipal Utility such as CPS Energy has exclusive jurisdiction to set rates applicable to all services provided by the Municipal Utility with the exception of electric wholesale transmission activities and rates. Unless and until the City Council and Board choose to opt-in to electric retail competition, CPS Energy retail service electric rates are subject to appellate, but not original rate regulatory jurisdiction by the PUCT in areas that CPS Energy serves outside the San Antonio City limits. To date, no such appeal to the PUCT of CPS Energy retail electric rates has ever been filed. CPS Energy is not subject to the annual PUCT gross receipts fee payable by electric utilities.

Transmission Access and Related Rate Regulation:

ERCOT manages the flow of electric power to approximately 20 million Texas customers, representing 85 percent of the state's electric load and 75 percent of the Texas land area. As the independent system operator for the region, ERCOT schedules power on an electric grid that connects 38,000 miles of high-voltage transmission lines and more than 500 generation units. ERCOT also manages financial settlements for the competitive wholesale bulk-power market and administers customer switching for 5.9 million Texans in competitive choice areas. ERCOT is a membership-based nonprofit corporation, governed by a board of directors and subject to oversight by the PUCT and the Texas Legislature. ERCOT's members include retail consumers, investor- and municipal-owned electric utilities, rural electric cooperatives, river authorities, independent generators, power marketers and retail electric providers.

Pursuant to amendments made by the Texas Legislature in 1995 to the PURA (PURA95), Municipal Utilities, including CPS Energy, became subject to the regulatory jurisdiction of the PUCT for transmission of wholesale energy. PURA95 requires the PUCT to establish open access transmission on the interconnected Texas grid for all utilities, co-generators, power marketers, independent power producers and other transmission customers.

The 1999 Texas Legislature amended the PURA95 to expressly authorize rate authority over Municipal Utilities for wholesale transmission and to require that the postage stamp method be used exclusively for pricing wholesale transmission transactions. The PUCT in late 1999 amended its transmission rule to incorporate fully the postage stamp pricing method which sets the price for transmission at the system average for ERCOT. CPS Energy's wholesale open access transmission charges are set out in tariffs filed at the PUCT, and are based on its transmission cost of service approved by the PUCT, representing CPS Energy's input to the calculation of the statewide postage stamp pricing method. The PUCT's rule, consistent with provisions in PURA §35.005(b), also provides that the PUCT may require construction or enlargement of transmission facilities in order to facilitate wholesale transmission service.

The offices for PUCT and ERCOT are located at:

Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326

Electric Reliability Council of Texas
7620 Metro Center Drive
Austin, Texas 78744

Trade and News Publications

Table 1.2-67 provides a list of trade and news publications that would be appropriate to provide reasonable notice of the application to those municipalities, private utilities, public bodies, and cooperatives that might have a potential interest in the facility.

1.3 Financial Qualifications

NINA 3 and NINA 4

As of January 31, 2010, the owners (NINA 3, NINA 4, and CPS Energy) had incurred expenditures of approximately \$706 million developing STP 3 & 4, and funding for these costs has already been committed to the project. CPS Energy has completely funded its entire share of the costs incurred through January 31, 2010. The remaining funding for the construction of STP 3 will be provided by NINA 3, and the remaining funding for the construction of STP 4 will be provided by NINA 4.

On March 1, 2010, the owners reached an agreement whereby CPS Energy has reduced its ownership interest in the project to 7.625%, and NINA 3 and NINA 4 will be responsible for arranging for the financing and equity contributions necessary to complete development and construction of STP 3 & 4. CPS Energy is not responsible for any further funding obligations until commercial operation. As such, NINA 3 and NINA 4 demonstrate herein that, upon meeting certain conditions, there is reasonable likelihood that they will have sources for funding 100% of the remaining costs during construction.

~~Table 1.3-1 provides a summary of project costs for STP 3 & 4 as estimated by NINA-3. Table 1.3-2 provides the projected source of funds. Under the terms of the settlement agreement, NINA 3 and NINA 4 are expected to make certain payments to CPS Energy in the future. As such, CPS Energy's projected "net" contribution toward construction is reflected as a source of funds in Table 1.3-2, rather than an amount equal to 50% of the costs incurred through January 31, 2010. NINA 3 and NINA 4 expect to obtain a Department of Energy (DOE) Loan Guarantee to provide funding for the estimated costs in Table 1.3-1. The anticipated terms of such a Loan Guarantee and prerequisites for a financial closing for such a Loan Guarantee are set forth in detail in the draft Term Sheet for DOE conditional loan guarantee commitment dated February 9, 2011. These conditions require that a complex package of equity commitments, reserve funds, and credit facilities (including working capital) be obtained and put in place prior to financial closing, consistent with the source of funds in Table 1.3-2. Thus, NINA 3 and NINA 4 are financially qualified based upon the~~

10 CFR 50.75(e)(1)(ii)(A), because it is a municipality that establishes its own rates and is able to recover its cost of service allocable to decommissioning. In accordance with the requirements of 10 CFR 50.75(e)(1)(ii), CPS Energy will set aside funds periodically, no less frequently than annually, in a trust fund account segregated from its assets and outside its administrative control and in which the total amount of funds will be sufficient to fund decommissioning at the time permanent cessation of operations is expected.

In accordance with the terms of 10 CFR 50.75(e)(1)(vi), NINA 3 and NINA 4 will provide decommissioning funding assurance for their proportionate obligations for decommissioning based upon their percentage interests of 92.375% in each unit as described in Section 1.1 above using the external sinking fund method consistent with the provisions of 10 CFR 50.75(e)(1)(ii), except that NINA 3 and NINA 4 will not ordinarily collect funding from ratepayers. In accordance with the requirements of 10 CFR 50.75(e)(1)(ii), NINA 3 and NINA 4 will set aside funds periodically, no less frequently than annually, in a trust fund account segregated from their assets and outside of their administrative control and in which the total amount of funds will be sufficient to fund decommissioning at the time permanent cessation of operations is expected. However, the funds periodically set aside are expected to be generated from sales of power. Although NINA 3 and NINA 4 will not ordinarily collect funds from ratepayers as required by 10 CFR 50.75(e)(1)(ii)(A), exclusive reliance on this mechanism should be acceptable, because Texas Law provides a mechanism whereby NINA 3 and NINA 4 can elect to set aside funds under the jurisdiction and oversight of the PUCT, and pursuant to this mechanism, Texas law provides that ratepayers would be obligated to fund the total cost of decommissioning in the event that NINA 3 and NINA 4 fail to periodically set aside funds as planned. Tex. Util. Code Ann. § 39.206 (Vernon 1998 and Supp. 2007); P.U.C. Subst. R. 25.304. Thus, if NINA 3 and NINA 4 do not provide periodic funding from their own revenues, Texas Law would provide for a mechanism for funding decommissioning that does meet the requirements of 10 CFR 50.75(e)(1)(ii)(A).

A Decommissioning Report and certifications are provided in Table 1.4-1 consistent with the requirements of 10 CFR 50.75(b) and 10 CFR 50.75(e)(3).

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.

1.6 Restricted Data and Classified National Security Information

The COLA for STP 3 & 4 does not contain any Restricted Data or other Classified National Security Information, nor does it result in any change in access to any Restricted Data or Classified National Security Information. In addition, it is not expected that activities conducted in accordance with the proposed combined license will involve such information. In compliance with Section 145(a) of the Act and 10 CFR 50.37, the applicants agree that they will not permit any individual to have access to, or any facility to possess, Restricted Data or Classified National Security Information until the individual and/or facility has been approved for such access under the provisions of 10 CFR Part 25 and/or 10 CFR Part 95.

Table 1.2-1 Officers and Directors of Nuclear Innovation North America LLC

Nuclear Innovation North America LLC

~~521 Fifth Avenue, 30th Floor~~ 4000 Avenue F, Suite A~~New York, NY 10175~~ Bay City, TX 77414

Contact Name	Position / Title	Citizenship
Officers		
Seely, Jamey	President and CEO	United States
McBurnett, Mark	<u>Chief Executive Officer and</u> Chief Nuclear Officer	United States
Chung, Bruce	Chief Financial Officer	United States
Directors		
Crane, David <u>Wilson, Denise</u>	Manager	United States
Murphy, Drew	Alternate Manager	United States
Igarashi, Yasuharu <u>Okamura, Kiyoshi</u>	Manager	Japan
Sakamoto, Hiroshi	Alternate Manager	Japan

Table 1.2-2 Officers and Directors of NRG Energy, Inc.

NRG Energy, Inc.
211 Carnegie Center
Princeton, NJ 08540

Contact Name	Position / Title	Citizenship
Officers		
Crane, David	President and CEO <u>Chief Executive Officer</u>	United States
Schade, Christian S. <u>Andrews, Kirkland</u>	Executive Vice President and Chief Financial Officer	United States
Baliff, Jonathan <u>Murphy, J. Andrew</u>	Executive Vice President, Strategy <u>and M&A</u>	United States
Murphy, J. Andrew <u>Davis, Lee</u>	Executive <u>Senior</u> Vice President and President, Northeast Region	United States
Ragan, John	Executive Vice President and President, Texas <u>Gulf Coast</u> Region	United States
Baudier, Jeff <u>Few, Jason</u>	Senior <u>Executive</u> Vice President, <u>Chief Customer Officer</u> , and President, South-Central Region <u>Reliant Energy</u>	United States
Hoffmann, Steve <u>Doyle, Thomas</u>	Senior <u>Executive</u> Vice President, <u>NRG Energy, Chief Executive Officer, NRG Solar</u> , and President, West Region	United States
Ingoldsby, Jim <u>Stark, Ron</u>	Senior Vice President and Chief Accounting Officer	United States
Wilson, Denise	Executive Vice President and Chief Administrative Officer <u>President, Alternative Energy Services</u>	United States
Bramnick, Michael <u>Helfer, Patti</u>	Senior Vice President and General Counsel <u>Chief Administrative Officer</u>	United States
Gutierrez, Mauricio	Executive Vice President and Chief Operating Officer	Mexico
<u>Barnes, Steve</u>	<u>President, Energy Plus Holdings</u>	<u>United States</u>
<u>Steffes, James</u>	<u>President, Green Mountain Energy Company</u>	<u>United States</u>
Directors		
Caldwell, Kirbyjon H.	Director	United States
Chlebowski, John	Director	United States
Coben, Lawrence	Director	United States
Cosgrove, Howard	Chairman and Director	United States
Crane, David	Director, President and CEO <u>Chief Executive Officer</u>	United States
Cropper, Stephen	Director	United States
Hantke, William	Director	United States
Hobby, Paul	Director	United States
Luterman, Gerald	Director	United States
McGinty, Kathleen	Director	United States
Schaumburg, Anne	Director	United States

Table 1.2-2 Officers and Directors of NRG Energy, Inc. (Continued)

**NRG Energy, Inc.
211 Carnegie Center
Princeton, NJ 08540**

Contact Name	Position / Title	Citizenship
Tate, Herbert	Director	United States
Weidemeyer, Thomas	Director	United States
Young, Walter	Director	United States

Table 1.2-3 ~~Directors and Officers~~ Officers and Directors of NINA Texas 3 LLC, NINA Texas 4 LLC, and their Parent Companies

Nuclear Innovation North America Investments LLC

NINA Texas 3 LLC

NINA Texas 4 LLC

~~521 Fifth Avenue, 30th Floor~~ 4000 Avenue F, Suite A

~~New York, NY 10175~~ Bay City, TX 77414

Name	Position	Citizenship
Seely, Jamey	President and CEO	United States
McBurnett, Mark	<u>Chief Executive Officer and</u> Chief Nuclear Officer	United States
Chung, Bruce	Chief Financial Officer	United States

Table 1.2-4 Trustees and Senior Executive Team of CPS Energy

**City Public Service Board of San Antonio, Texas
(CPS Energy)
P.O. Box 1771
San Antonio, Texas 78296**

Name	Position	Citizenship
Howard, Derrick	Chair, Board of Trustees	US
Guevara, Homer	Vice Chair, Trustee	US
Chavez, Nora W.	Trustee	US
Kelley, Edward	Trustee	US
Castro, Julian	Mayor; ex-officio Trustee	US
Beneby, Doyle	President and CEO	US
Shellman, Carolyn E.	Exec VP; Gen Counsel	US
Gold-Williams, Paula Y.	Exec VP; CFO	US
LeBlanc-Burley, Jelynn	Exec VP	US
Eugster, Cris	Exec VP	US
Peña, Richard	Senior VP	US
Kotara, Michael <u>Herbst, David</u>	Senior VP, <u>Interim</u>	US
James, Frederick A.	Senior VP	US

Table 1.2-5 ~~Directors and Officers~~ Officers and Directors of STP Nuclear Operating Company

STP Nuclear Operating Company			
Name	Position	Citizenship	Address
Mele, Cheryl	Director	US	721 Barton Springs Road Austin, TX 78704
Ragan, John	Director	US	1201 Fannin Houston, TX 77002
Peña, Richard	Director	US	145 Navarro San Antonio, TX 78205
Halpin, Ed <u>Richards, Kevin</u>	President & CEO, Chairman of the Board	US	PO Box 289 Wadsworth, TX 77483
Meier, Mike	VP and Assistant to the President & CEO	US	PO Box 289 Wadsworth, TX 77483
Powell, Tim	VP Technical Support & Oversight , <u>Generation</u>	US	PO Box 289 Wadsworth, TX 77483
Rencurrel, Dave	Senior VP <u>Chief Nuclear Officer</u>	US	PO Box 289 Wadsworth, TX 77483
Richards, Kevin	Senior VP	US	PO Box 289 Wadsworth, TX 77483
John Crenshaw	VP, New Plant Deployment and Special Projects , <u>Outages, & IT</u>	US	PO Box 289 Wadsworth, TX 77483
Nemeth, Peter	Board Secretary	US	1401 McKinney Street Suite 1700 Houston, TX 77010

Table 1.2-6 Officers and Directors of Texas Genco

Texas Genco Holdings, Inc.
211 Carnegie Center
Princeton, NJ 08540

<u>Name</u>	<u>Position / Title</u>	<u>Citizenship</u>
<u>Officers</u>		
<u>Banskota, Arun</u>	<u>Vice President</u>	<u>United States</u>
<u>Martin, Sherrie</u>	<u>Vice President and Controller</u>	<u>United States</u>
<u>O'Hara, Christopher</u>	<u>Vice President and Secretary</u>	<u>United States</u>
<u>Ragan, John</u>	<u>President</u>	<u>United States</u>
<u>Sotos, Christopher S.</u>	<u>Vice President and Treasurer</u>	<u>United States</u>
<u>Directors</u>		
<u>O'Hara, Christopher</u>	<u>Director</u>	<u>United States</u>
<u>Ragan, John</u>	<u>Director</u>	<u>United States</u>

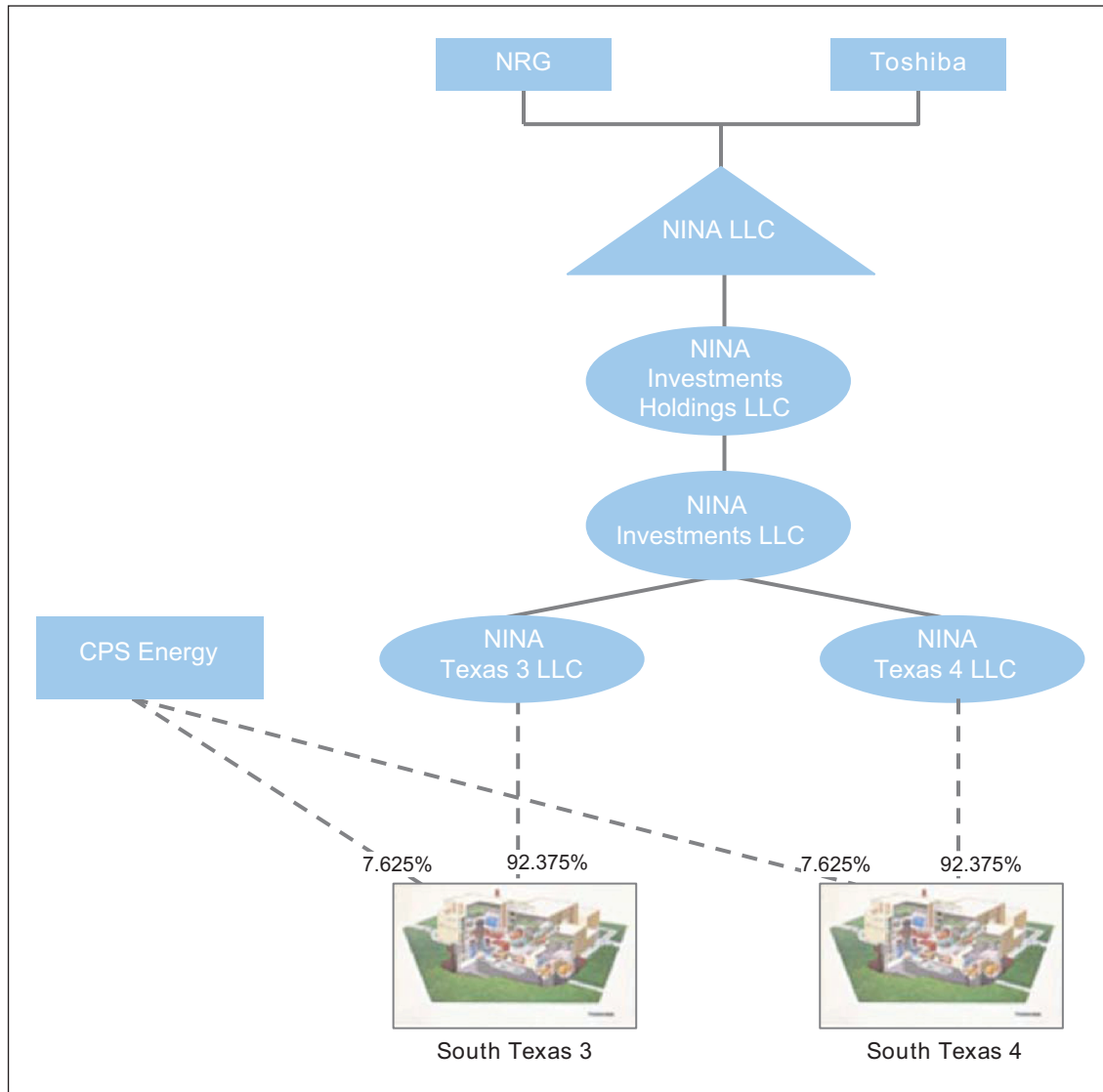


Figure 1.1-1 South Texas Units 3 and 4 Corporate Ownership Structure

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

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.

responsibility for funding construction activities to 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~~Committee 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~~Committee 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~~Committee 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~~Committee is established, the Chief Executive Officer (CEO) of NINA will perform the functions of the Security ~~Subcommittee~~Committee, 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 SubcommitteeCommittee 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 SubcommitteeCommittee. 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 the NRG Energy Member (NRG Member) of NINA, Texas Genco Holdings, Inc. (Texas Genco), a Texas corporation, and ~~10.5%~~less than 10% by the Toshiba Member of NINA, Toshiba America Nuclear Energy Corporation (Toshiba America Nuclear), a Delaware corporation. NRG Energy, A Delaware corporation, owns 100% of the voting stock of Texas Genco. 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 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 FOGD 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 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 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 SubcommitteeCommittee 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 SubcommitteeCommittee 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 SubcommitteeCommittee 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~~Committee 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~~Committee, the NINA LLC Agreement provides for a variety of mechanisms by which such issues could be raised and put before the Security ~~Subcommittee~~Committee, if necessary. Section 5.1.(e)(iv) of the NINA LLC Agreement provides that a Special Meeting of the Security ~~Subcommittee~~Committee shall be conducted where a request is made that a matter be considered by the Security ~~Subcommittee~~Committee. 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~~Committee; (C) the NAC; or (D) the Board. The Security Committee 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~~Committee. 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 Committee, 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 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 SubcommitteeCommittee 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 SubcommitteeCommittee, as necessary and appropriate, so that the Security SubcommitteeCommittee 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 SubcommitteeCommittee is established, the CEO will perform the functions of the Security SubcommitteeCommittee, 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 SubcommitteeCommittee, 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 LLCC (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 SubcommitteeCommittee, the Chief Executive shall exercise the authority of the Security SubcommitteeCommittee, 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. If a matter is referred to the Security Subcommittee by the NAC or the CEO, Section 5.1(e)(iv) of the NINA LLC Agreement requires that the Security Subcommittee conduct a special meeting to consider the matter. It is expected that the Security Subcommittee would first decide whether or not the matter is one that must be decided under U.S. control and, if so, the Security Subcommittee 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 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.

- (e) NINA will assure that the United States Department of Energy, or other agency of the U.S. Government, will either guarantee the loans or loan the funding for at least 50% of the construction funding to be provided through loans. In addition, NINA will assure that U.S. sources will provide at least 50% of the total funding expended to complete construction, whether from loans or from equity contributions.

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 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 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~~Committee, 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

