




United States Nuclear Regulatory Commission Official Hearing Exhibit	
In the Matter of:	NUCLEAR INNOVATION NORTH AMERICA LLC (South Texas Project Units 3 and 4)
	<b>ASLBP #:</b> 09-885-08-COL-BD01 <b>Docket #:</b> 05200012   05200013 <b>Exhibit #:</b> STP000046-00-BD01 <b>Admitted:</b> 1/6/2014 <b>Rejected:</b> <b>Other:</b>
	<b>Identified:</b> 1/6/2014 <b>Withdrawn:</b> <b>Stricken:</b>

STP000046  
July 1, 2013

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

November 8, 2011  
U7-C-NINA-NRC-110136

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

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

This letter provides a response to Request for Additional Information (RAI) Letter No. 387 related to South Texas Project (STP) Units 3 & 4 Combined License Application (COLA) Part 1, General and Financial Information, and Part 2, Tier 2 Appendix 1D, Negation Action Plan. The attachment to this letter provides the response to RAI 01-22.

The proposed changes to Appendix 1D will be included in the next COLA revision following NRC acceptance of this response.

There are no commitments in this letter.

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

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

Executed on 11/8/11



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

ccc

Attachment: RAI 01-22 Response

STI 33045476

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

(electronic copy)

Director, Office of New Reactors  
U. S. Nuclear Regulatory Commission  
One White Flint North  
11555 Rockville Pike  
Rockville, MD 20852-2738

\*George F. Wunder  
\*Stacy Joseph  
Charles Casto  
U. S. Nuclear Regulatory Commission

Regional Administrator, Region IV  
U. S. Nuclear Regulatory Commission  
611 Ryan Plaza Drive, Suite 400  
Arlington, Texas 76011-8064

Jamey Seely  
Nuclear Innovation North America

Kathy C. Perkins, RN, MBA  
Assistant Commissioner  
Division for Regulatory Services  
Texas Department of State Health Services  
P. O. Box 149347  
Austin, Texas 78714-9347

Richard Peña  
Kevin Pollo  
L. D. Blaylock  
CPS Energy

Alice Hamilton Rogers, P.E.  
Inspection Unit Manager  
Texas Department of State Health Services  
P. O. Box 149347  
Austin, Texas 78714-9347

\*Steven P. Frantz, Esquire  
A. H. Gutterman, Esquire  
Morgan, Lewis & Bockius LLP  
1111 Pennsylvania Ave. NW  
Washington D.C. 20004

\*Stacy Joseph  
Two White Flint North  
11545 Rockville Pike  
Rockville, MD 20852

**RAI 01-22****QUESTION:**

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

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

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

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

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

On page 1 of this submittal, the applicant stated:

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

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

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

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

Further the SRP, Section 3.2 states

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

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

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

**RESPONSE:**

NINA letter U7-C-NINA-NRC-110085, dated June 23, 2011, provided an updated Negation Action Plan that relocated information from COLA Part 1 to a standalone Negation Action Plan now set forth in Appendix 1D to Chapter 1 of the Final Safety Analysis Report. The purpose of the Negation Action Plan is to ensure that foreign persons do not exercise impermissible foreign control over the NRC licensee, in particular that foreign persons do not exercise decision making “control” over nuclear safety and security issues. The NINA Negation Action Plan was designed in accordance with the NRC’s “Final Standard Review Plan on Foreign, Ownership, Control and

Domination,” 64 FR 52355 (Sept. 28, 1999) (“the FOCD SRP”) and NRC precedent involving approval of foreign participation in U.S. reactor projects.

In order to enhance further the provisions of the Negation Action Plan, the attached pages will be substituted for the existing Appendix 1D. The pages show changes since the last submittal to NRC and include various clarifications to assure that the written description adequately captures several intended features of the plan. In addition, the name of the “Security Subcommittee” is changed to “Security Committee” to assure that the use of the term “Subcommittee” in the name is not misconstrued as somehow limiting the authority of this Board Committee.

NRC guidance makes clear that a determination regarding foreign ownership, domination or control is to be based upon the totality of the facts. In reviewing such facts, the Commission has consistently maintained that the limitation on FOCD “should be given an orientation toward safeguarding the national defense and security.” *General Elec. Co. and Southwest Atomic Energy Assoc.* (Southwest Experimental Fast Oxide Reactor (SEFOR)), 3 AEC 99, 100 (1966). This principle was more recently restated in the “Final Standard Review Plan on Foreign, Ownership, Control and Domination,” which provides: “The foreign control determination is to be made with an orientation toward the common defense and security.” 64 FR 52355, 52357 (Sept. 28, 1999) (“the FOCD SRP”). Thus, the FOCD evaluation does not hinge on whether or not a foreign person or entity may exercise influence over or even control certain decisions, *e.g.*, whether or not to continue the project, sale of the project, financial, accounting and tax matters, *etc.* But rather, the evaluation turns on whether a foreign person or entity may exercise control over decisions that implicate the national security interests of the United States, *i.e.*, nuclear security, safety or reliability issues. For example, in *SEFOR* the Commission observed that “[t]he ability to restrict or inhibit compliance with the security or other regulations of AEC, and the capacity to control the use of nuclear fuel and to dispose of special nuclear material generated in the reactor, would be of greatest significance.” 3 AEC at 101. In fact, the Commission indicated that these were “the indicia of control or domination which would have special significance in view of the apparent objective of Section 104(d) to avert any risk to national security that might ensu[e] as a result of alien control of a reactor facility.” 3 AEC at 102.

It is clear that the principles of *SEFOR* were reaffirmed by the Commission in the FOCD SRP, which cited *SEFOR* as “*General Electric Co.*, 3 AEC at 101” in Section 3.2 of the FOCD SRP. 64 FR at 52358. Moreover, the FOCD SRP states that foreign ownership may be acceptable even where the foreign owner contributes 50% or more of the project costs **and** “participates in the project review, is consulted on policy and cost issues, and is entitled to designate personnel to design and construct the reactor” provided that this foreign role is subject to U.S. control (*i.e.*, “approval and direction” by U.S. participants). Thus, the FOCD SRP provides that it is permissible for foreign owners to have a significant role in a reactor construction project, provided that ultimate decision making authority is under U.S. control. Key negation measures identified in the FOCD SRP include “requiring that only U.S. citizens within the applicant organization be responsible for special nuclear material.”

As such, the FOCD determination should consider various factors that relate to the national security interests of the United States and serve to mitigate risk of impermissible FOCD. The following factors should be considered with respect to the pending application:

**(A). The Pending Application Does Not Involve Restricted Data.** Restricted Data is nuclear technology that is classified, and for which, access must be restricted to individuals who hold personnel security clearances following background investigation and other compliance with the provisions of 10 CFR Part 95. As set forth in Section 1.6 of Part 1 of the pending application, the application does not contain any Restricted Data, and it is not expected that any activities conducted under the licenses would involve restricted data. Notably, operation of the proposed facility will involve physical security issues that will require that certain individuals maintain personnel security clearances. However, these activities will be conducted by STP Nuclear Operating Company (STPNOC) and STPNOC personnel. STPNOC currently holds a facility clearance issued under 10 CFR Part 95. As such, it has undergone foreign ownership, control or influence (FOCI) review, and it is subject to ongoing FOCI compliance requirements. 10 CFR 95.17(a)(1).

**(B). The Pending Application Does Not Involve Nonproliferation Risk.** The nuclear technology for the proposed facility is being imported from Japan, and as such, foreign access to this information does not present any non-proliferation risk. Given the source of the nuclear technology, there is no national security interest in restricting the proposed foreign involvement with respect to the technology being deployed.

In two other examples involving nuclear facilities that are employing nuclear technology that is considered Restricted Data (RD), the NRC staff concluded that additional FOCI mitigation measures “would provide no additional benefit to the National Security of the United States,” because the technology was coming from the foreign countries of the foreign entities involved. *See Areva Enrichment Services, LLC* (Eagle Rock Facility), LBP-11-1, slip op. at 23 (April 28, 2011). In *Eagle Rock*, the NRC staff relied upon prior precedent involving the URENCO Claiborne Facility, and noted that “[t]he information and technology that [would] be classified as [RD] in the United States are already owned and controlled by the European Governments and the foreign-controlled companies associated with URENCO and AREVA.” *Id.* The Atomic Safety and Licensing Board (ASLB) ultimately agreed with the NRC staff that no further mitigation measures were warranted. *Id.* at 36.

NINA will continue to comply with export control requirements that limit transfers of controlled nuclear information to foreign persons. *See, e.g.*, 10 CFR Part 810. However, the exchange of nuclear technology information involved with the proposed licenses (under appropriate existing controls) does not involve any material national security concerns.

**(C). Pre-Construction Development Activities Do Not Involve Any Compelling National Security Interest.** Prior to pouring safety-related concrete, NINA’s activities do not pose any material threat to national security. During this period, NINA will not possess any special nuclear material, and there are no physical security issues relating to the site of South Texas Project (STP) Units 3&4 during the pre-construction period. In any event, the site is part of the



STPNOC owner controlled area, and STPNOC as the operator of STP 1&2 is responsible for physical security issues for the STP site during the pre-construction period.

Nevertheless, the proposed Negation Action Plan provides that NINA's U.S. citizen Chief Executive Officer (CEO) and Chief Nuclear Officer (CNO) will exercise control over any potential issues relating to nuclear security, safety or reliability. In particular, the CNO exercises U.S. control over the NINA Quality Assurance (QA) Program and Safeguards Information (SGI) Program.

**(D). Construction Activities Involve Minimal Risk that Foreign Persons Might Exercise Impermissible FOCD.** Prior to nuclear fuel arriving on-site, there is minimal risk that a foreign person could exercise FOCD over nuclear security, safety or reliability issues. Given that there is no nonproliferation risk relating to the nuclear technology under the circumstances presented here, the only significant national security issue presented is potential use of or diversion of special nuclear material. However, no such material will be on-site throughout most of the construction period, when NINA will be the responsible licensee. Nevertheless, NINA has adopted a robust Negation Action Plan that will assure that independent U.S. citizens will exercise both oversight and control with respect to any concern that might arise where there might be any potential FOCD relating to nuclear safety, security, or reliability concerns.

Through formally delegated authority, the Security Committee of the NINA Board, which is dominated by independent U.S. citizen directors, will have authority during construction to decide any issue that might require U.S. control. These directors are required to execute formal certificates acknowledging their special responsibility and duty to the U.S. Government in this respect.

Moreover, there are numerous mechanisms for any issue that might arise to be elevated and brought to the attention of the Security Committee. First, NINA's nuclear personnel will operate in a safety culture which encourages the identification of any issues that might involve any actual or perceived non-compliance or risk of non-compliance. This includes raising issues up the management chain if necessary to achieve an acceptable resolution. 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.

The CEO and CNO of NINA are U.S. citizens and are responsible for the day to day management of activities under the NINA licenses, and they are in position to observe and identify first hand potential FOCD compliance issues that may arise, or to receive input regarding any such concerns from personnel working on the project. Moreover, the CEO and CNO are required to execute formal certificates acknowledging their special responsibility and

duty to the U.S. Government in this respect. 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.

In addition, NINA will implement a Nuclear Advisory Committee (NAC) to provide periodic oversight, including inquiry and investigation whenever needed, in order to assure FOCD compliance. The NAC will meet periodically to discuss FOCD compliance with NINA management, and NAC members can be consulted by telephone if any issues emerge involving FOCD.

These mechanisms all assure that an issue that is required to be under U.S. control would be elevated to the Security Committee, as necessary, and decided under the control of independent U.S. citizens.

**(E). STPNOC Will Be the Licensed Operator and Exercise Control Over Operations.**

STPNOC is a U.S. company that is under U.S. control and holds a facility security clearance that includes ongoing FOCI compliance. STPNOC will be the licensed operator and will have responsibility for both the physical security of STP 3&4 and actual control of nuclear operations. 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 (STP). This Operating Agreement was reviewed by NRC and approved in connection with the transfer of operating responsibility for STP 1&2 to STPNOC. Pursuant to Section 1.7 of the Operating Agreement, the "South Texas Project" is defined as set forth in the Amended and Restated South Texas Project Participation Agreement dated November 17, 1997, which specifically provides in Section 4.31 that the definition "shall also include any Additional Generating Unit located on the South Texas Project site." Copies of these agreements were provided in the Response to Request for Additional Information dated March 30, 2009 (Letter U7-C-STP-NRC-090021).

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 Atomic Energy Act.

NINA's subsidiaries, NINA Texas 3 LLC and NINA Texas 4 LLC ("NINA 3" and "NINA 4"), will be owner licensees. In order to address the roles of NINA 3 and NINA 4 as owners, the Negotiation Action Plan will continue in effect during the period of operations and will assure that, to the extent that an owner might conceivably exercise control or influence involving a nuclear safety, security, or reliability issue, such control could only be exercised by independent U.S. citizens. Through the Security Committee, independent U.S. citizens are delegated authority with respect to any concern that might arise where there might be any potential FOCD relating to nuclear security, safety, or reliability concerns. Similarly, the independent U.S. citizens serving



on the NAC are delegated oversight responsibility to assure ongoing FOCD compliance. In the first instance, STPNOC has clear authority to exercise control over nuclear safety, security and reliability issues. However, if there were some doubt that NINA 3 and NINA 4 as owners might influence such decisions, the matter would be subject to referral for review by the NAC and, if necessary, a decision would be made by the NINA Security Committee to address the issue.

With this background, NINA provides the following response to the RAI.

***1. Identify who currently provides the primary financial support for NINA.***

NINA currently receives its primary financial support through credit provided by Toshiba. Prior to initiating construction (pouring of safety-related concrete), NINA expects to obtain financing using a Project Finance Model. NINA expects that the terms of such a Project Finance will require repayment of the outstanding debt incurred during the development phase.

After financial close of the Project Finance, funding would be provided through loans and equity obligations that would be committed at the Financial Closing for the Project Finance. It is expected that the primary loan for the project would be provided by the U.S. Federal Finance Bank (FFB) with a guarantee from the U.S. Department of Energy. In addition to provisions for certain first lien working capital, the Project Finance also contemplates approximately one-third of the first lien loans to be provided by the Japan Bank for International Cooperation (JBIC), another Japan agency, or commercial banks insured by Nippon Export and Investment Insurance (NEXI).

All of the first lien lenders would have certain creditor rights, but would not have control over any licensed activities. The lenders do not have any authority regarding day-to-day operations. The lenders could not assume any direct or indirect control of licensed activities without an NRC approval granted pursuant to 10 CFR 50.80 authorizing a direct or indirect transfer of control of the licenses.

***2. Explain how the negation action plan submitted by the applicant negates FOCD in the following circumstances:***

- a. Where foreign entities provide greater than 50% of the financial support for NINA (either direct or indirect, exercised or not exercised).***
- b. Where foreign entities provide 50% or less of the financial support for NINA (either direct or indirect, exercised or not exercised).***
- c. Where foreign entities hold ownership shares equal to or greater than 50%, whether individually or in aggregate***
- d. Where foreign entities can appoint representatives to the Board of Directors or the management structure***

Each scenario described above does not change the effectiveness of the Negation Action Plan, which is designed to negate impermissible foreign control regardless of the foreign ownership or financial support provided. Thus, without regard to the circumstances

presented in: 2(a) and 2(b) the amount of financial support provided by foreign persons; 2(c) the ownership percentage of NINA held by foreign persons; or 2(d) the ability of foreign persons to appoint representatives to the NINA Board or designate individuals to serve in the management structure, the proposed Negation Action Plan assures that there will be U.S. control over nuclear safety, security and reliability matters within the meaning of 10 CFR 50.38 and Section 103.d of the Atomic Energy Act. If a foreign person attempted to exercise control or influence over a matter that must be under U.S. control, numerous mechanisms exist to assure that such a matter would be elevated within the company, either to thwart any potential foreign control or influence over the matter, or ultimately to elevate the matter for decision by the Security Committee, which would decide the matter through control that is exercised by independent U.S. citizen directors.

**3. *Explain how the negation action plan will negate FOCD during the period between license issuance and the establishment of the Security Subcommittee and Nuclear Advisory Committee in each of the circumstances listed above.***

As described in greater detail above with respect to national security factors (A), (B) and (C), during the pre-construction development phase of the project, there is little or no activity that could affect national security. Nevertheless, the Negation Action Plan provides that U.S. control will be exercised by the U.S. citizen CEO and CNO over any matter that might arise that is required to be under U.S. control. In particular, the CNO, Mark McBurnett (a U.S. citizen), exercises control over the NINA QA and SGI Programs.

As explained in the Negation Action Plan, NINA's CEO and CNO have a special role in assuring that the requirements of the Plan are met, because they interact with the NINA Board and its owners, and they oversee the entire STP 3&4 organization. Accordingly, 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 CEO assures that U.S. control is maintained over nuclear safety, security and reliability issues. *See* Negation Action Plan at Section 1D.1(m).

Significantly, if any person involved in the STP 3&4 project has a FOCD concern, the 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). *See* Negation Action Plan at Section 1D.2.2(f). If the matter is resolved without being referred to the Security Committee, any person may contact any member of the Security Committee directly, and any member of the Security Committee can require that a Special Meeting be held to address the issue.

During pre-construction and afterwards, 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 ultimate management authority over such programs. *See* Negation Action Plan at Section 1D.2.3(c).

In addition, the CNO ensures U.S. control and oversight of nuclear safety issues through control of the QA Program. 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. *See* Negation Action Plan at Section 1D.2.3(d).

As explained in the Negation Action Plan, the Security Committee and Nuclear Advisory Committee will be in place prior to construction.

**4. *Explain how the proposed NAP will negate the indirect control or domination through the financial interests held by any foreign owners or investors.***

As described in greater detail above with respect to national security factors (A), (B) and (D), during the construction phase of the project, there is very little activity that could affect national security. As described in greater detail above with respect to national security factors (A), (B) and (E), the period of operations presents issues relating to physical security and the use and disposition of special nuclear material. However, these activities will be undertaken by STPNOC, a company that is under U.S. control, which will exercise exclusive control over plant operations pursuant to firm contractual requirements and authorization from the STP owners.

Throughout the period of construction, when NINA is the responsible licensee, and throughout the period of operations, with NINA 3 and NINA 4 holding licenses as owners, the proposed Negation Action Plan assures that there will be U.S. control over nuclear safety, security and reliability matters within the meaning of 10 CFR 50.38 and Section 103.d of the Atomic Energy Act. In addition, STPNOC will control physical protection of the STP 3&4 site prior to nuclear fuel arriving on-site. As described in the response to Question 2 above, the Negation Action Plan will negate impermissible foreign control regardless of the foreign ownership or financial support provided.

In addition to the Negation Action Plan, the dynamics of NINA's planned Project Finance structure will negate further the ability of foreign persons to exercise impermissible control over licensed activities throughout the construction phase. NINA expects to obtain loan commitments from lenders and equity commitments from its parent companies prior to beginning construction. Under the terms of the anticipated Project Finance, lenders (without

regard to whether they are foreign or domestic) are constrained to the rights afforded under the various loan documents. The lenders could not take possession of the project or exercise any control over licensed activity without first obtaining NRC approval pursuant to 10 CFR 50.80. Moreover, parent companies (without regard to whether they are foreign or domestic) will be constrained by their equity commitments and obligations to the lenders under the terms of the Project Finance. Thus, NINA expects to have committed funding for the project, which further mitigates the potential for various types of potential financial influence. Any potential for FOCD is mitigated by the delegated authority of the Security Committee, which has ultimate authority to make all decisions affecting nuclear safety and security. In addition, the oversight of the NAC and duties of the CEO and CNO assure that the authority of the Security Committee will not be circumvented.

As a result of this response, COLA Part 2, Tier 2 Chapter 1, Appendix 1D Negation Action Plan will be revised as shown on the following pages. Changes from COLA Revision 6 are indicated in gray highlight.

## 1D Negation Action Plan<sup>1</sup>

### 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. 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

---

<sup>1</sup> 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 of the NINA Board will be established not later than the first pouring of any safety related concrete for STP 3&4. The Security Subcommittee has the exclusive right to exercise the Board's authority over the matters that are required to be under U.S. control. The Security Subcommittee is made up of U.S. citizens, the majority of whom must be independent directors, who are not employed by NINA, its subsidiaries, its owners, or any of their affiliates. Until the Security Subcommittee is established, the Chief Executive Officer (CEO) of NINA will perform the functions of the Security Subcommittee, except the right to approve a new CEO.
- (h) The governance measures implemented for NINA flow through to the actions of NINA 3 and NINA 4, pursuant to requirements imposed through the governance arrangements for these entities and their parent companies. These entities have adopted provisions to assure that the NINA Security Subcommittee exercises ultimate control and direction over matters required to be under U.S. control.
- (i) In addition, NINA will also establish a Nuclear Advisory Committee (NAC), prior to pouring any safety related concrete for STP 3&4. The

NAC is made up of a group of independent U.S. citizens who are experienced in national security and nuclear safety matters. It provides an oversight function to advise NINA regarding its ongoing compliance with the FOCD restrictions imposed by U.S. law and NRC regulation. If necessary, the NAC can alert the U.S. Government regarding issues involving potential non-compliance with the applicable requirements.

- (j) NINA's security programs, including its Safeguards Information Program, assure that only authorized persons are provided access to security related information in accordance with applicable program requirements, and this Plan provides measures to assure that interpretation and implementation of those program requirements are administered under U.S. control. NINA does not possess or control access to restricted data or classified national security information. NINA is not aware of any personnel assigned to NINA (contract personnel, including employees loaned from STPNOC) that are currently maintaining security clearances that would authorize access to restricted data or classified national security information. To the extent that any NINA contract personnel may obtain security clearances in the future or that NINA may hire contract employees that maintain security clearances, such personnel would do so subject to the requirements of security programs controlled by their employer companies and not controlled by NINA. NINA will not interfere with the administration of such programs by other companies, and NINA will require that its personnel comply with all applicable requirements relating to such information.
- (k) Upon acceptance of this Plan, changes to this Plan may only be made upon the recommendation of NINA's CEO or upon the recommendation of STPNOC's CEO, and approval of the NINA Security Subcommittee Committee. However, any proposed change that would result in a decrease in the effectiveness of this Plan will not be implemented without the prior approval of the NRC. This Plan also will be subject to the reporting requirements applicable to the FSAR.
- (l) Certain FOCD negation measures described in this Plan have been implemented in the NINA LLC Agreement, because it provides for the governance of NINA. NINA will provide NRC with 30 days prior written notice before implementing any material changes to the FOCD negation measures in the NINA LLC Agreement.
- (m) NINA's CEO and Chief Nuclear Officer (CNO) have a special role in assuring that the requirements of this Plan are met, because they interact with the NINA Board and its owners, and they oversee the entire STP 3&4 organization. As such, the CEO and CNO have the ability to identify potential FOCD issues involving both direct foreign owner contact at the Board level and indirect contacts that might be made throughout the organization. The CNO is responsible for the

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

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

- (a) NINA is a Delaware limited liability company. NINA is ~~currently~~ owned ~~approximately 89.5%~~ by NRG Energy and ~~10.5%~~ by Toshiba America Nuclear Energy Corporation (Toshiba America Nuclear), a Delaware corporation. Toshiba America Nuclear is a wholly owned subsidiary of Toshiba America, Inc., a Delaware corporation, which is a wholly owned subsidiary of Toshiba Corporation, a Japanese corporation (together, with its U.S. subsidiaries, referred to as the Toshiba Companies). Stone & Webster Inc. (S&W), 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.
- (b) The ownership percentages of the owners can change over time based upon S&W exercising their options to acquire ownership interests or based upon equity contributions by the members being made to fund NINA activities in amounts that are disproportionate to the ownership interests of the members. If this occurs, the interests of one or more members may be reduced through dilution, whereas the interests of one or more other members may be increased through accretion. In addition, one or more of the owners may extend credit or otherwise make loans to NINA. However, such ~~credit~~ arrangements would not affect ownership percentages or voting rights under the terms of the NINA LLC Agreement.
- (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. ~~This would include notice of any change in ownership involving five percent or more of the ownership, including any incremental changes of less than five percent that reach a total of five percent or more in the aggregate. The CNO will maintain a "Statement of Ownership of Nuclear Innovation North America LLC" that will list the owners of NINA and their approximate percentage ownership. In any event, the~~

negation measures of this Plan will nevertheless assure U.S. control over matters that are required to be under U.S. control. This will negate the risk of the STP 3&4 licenses being subject to potential FOCD within the meaning of 10 CFR 50.38 and Section 103.d of the Act.

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

#### 1D.2.2 Security Subcommittee Committee

- (a) The NINA LLC Agreement provides for a broad delegation of exclusive authority to the Security Subcommittee Committee, in order to assure that the U.S. citizen directors, including the Security Subcommittee Committee's majority of independent directors, have the ultimate authority to make the corporate decisions for NINA regarding: (1) any matter that is to be brought before the Board, where U.S. legal and regulatory requirements direct that the matter must be decided under U.S. control; or (2) any matter that ordinarily might be decided by corporate officers, but where there is a concern that decision making regarding the matter may be subject to foreign control or influence, and U.S. legal and regulatory requirements direct that the matter must be decided under U.S. control. In other words, the Security Committee itself has the authority to decide that a matter must be decided by the Security Committee. The Board and Security Subcommittee Committee delegate authority over the day to day management of the affairs of NINA to its executive personnel. However, as discussed further below, the NINA governance is structured to ensure that the required U.S. control over matters of safety, security and reliability is not circumvented by having such issues decided without consultation with and oversight by the Security Subcommittee Committee, whenever necessary.



- (b) Section 5.1(e) of the NINA LLC Agreement provides that the Security Subcommittee Committee has and shall exercise the exclusive authority of the Board to vote and decide the following matters:
- (A) Any matter that, in view of U.S. laws or regulations, requires or makes it reasonably necessary to assure U.S. control;
  - (B) Any matter relating to nuclear safety, security or reliability, including, but not limited to, the following matters:
    - (1) Implementation or compliance with any NRC generic letter, bulletin, order, confirmatory order or similar requirement issued by the NRC;
    - (2) Prevention or mitigation of a nuclear event or incident or the unauthorized release of radioactive material;
    - (3) Placement or restoration of the plant in a safe condition following any nuclear event or incident;
    - (4) Compliance with the Atomic Energy Act of 1954 (as in effect from time to time), the Energy Reorganization Act of 1974 (as in effect from time to time), or any NRC rule;
    - (5) The obtaining of, or compliance with, a specific license issued by the NRC and its technical specifications;
    - (6) Conformance with a specific Final Safety Analysis Report, or other licensing basis document; and
    - (7) Implementation of security plans and procedures, control of security information, control of special nuclear material, administration of access to controlled security information, and compliance with government clearance requirements regarding access to restricted data;
  - (C) Any other issue reasonably determined by a majority of the members of the Security Subcommittee Committee in office, in their prudent exercise of discretion, to be an exigent nuclear safety, security or reliability issue; and
  - (D) Appointment of any successor CEO of the Company and, if one is appointed, Chief Nuclear Officer of the Company, in each case as nominated by the Board.
- (c) The provisions of Section 5.1(e)(ii)(C) make clear that this broad authority includes the authority for the Security Subcommittee Committee to decide that a matter involves an issue that must be decided under U.S. control and therefore must be brought before and decided by the Security Subcommittee Committee.

- (d) In order to assure that control would be exercised by U.S. citizens who are independent from any foreign entities, Section 5.1(e)(iii) of the NINA LLC Agreement provides that the attendance and participation of the two independent U.S. citizen directors is required to constitute the required quorum for the Security Subcommittee Committee to conduct business.
- (e) The ordinary affairs of NINA are managed day to day by the company's executive personnel and managers and supervisors. The Board and the Security Subcommittee Committee have delegated authority to the company's executive personnel, but such delegation is subject to limitations including the ultimate authority of the Board and the Security Subcommittee 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.
- (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 and CNO execute a certificate acknowledging the protective measures undertaken by NINA, as reflected in this Plan. The certificate provides as follows:

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

I further acknowledge that I have a special role to assist in assuring that the Security Subcommittee Committee is able to fulfill its responsibilities in accordance with Section 5.1(e) of the Agreement, and acknowledge that the United States Government has placed its reliance on me as a United States citizen to exercise my best efforts to refer matters for consideration by the Security Subcommittee Committee, as necessary and appropriate, so that the Security Subcommittee Committee can exercise all of the responsibilities provided for in Section 5.1(e) of the Agreement; to assure that members of the NINA Board of Directors, the officers of NINA, and the employees of NINA comply with the provisions of the Section 5.1(e) of the Agreement; and to assure that the Nuclear Regulatory Commission is advised of any violation of, attempt to violate, or attempt to circumvent any of the provisions of Section 5.1(e) of the Agreement, of which I am aware.

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

By execution of this Certificate, I acknowledge the protective measures that have been taken by Nuclear Innovation North America LLC (NINA) through adoption and implementation of the provisions of Section 5.1(e) of its Fourth Amended and Restated Limited Liability Company Agreement ("Agreement"), in order to protect against and negate the potential of any foreign ownership, control or domination of NINA within the meaning of Section 103 of the Atomic Energy Act of 1954, as amended. In particular, until the two (2) independent Directors are appointed to form the Security Subcommittee Committee, the Chief Executive shall exercise the authority of the Security Subcommittee Committee, except for the authority provided for in Section 5.1(d)(ii)(D) which shall be exercised by the Chairman.

I further acknowledge that the United States Government has placed its reliance on me as a United States citizen to exercise all of the responsibilities provided for in Section 5.1(e) of the Agreement; to assure that members of the NINA Board of Directors, the officers of NINA, and the employees of NINA comply with the provisions of Section 5.1(e) of the Agreement; and to assure that the Nuclear Regulatory Commission is

advised of any violation of, attempt to violate, or attempt to circumvent any of the provisions of Section 5.1(e) of the Agreement, of which I am aware.

- (j) The Security Committee has the authority to conduct audits to ensure that there is no inappropriate foreign control. This includes the authority to obtain direct access to any employee or contractor personnel involved in the licensing, design, construction and/or operation of STP 3&4.

### 1D.2.3 Executive Personnel of NINA

- (a) The CEO of NINA is nominated by the Board, but both the CEO and CNO ~~Chief Nuclear Officer (CNO)~~ of NINA, ~~if one is appointed~~, must be approved by the Security ~~Subcommittee~~ Committee in accordance with Section 5.1(f) of the NINA LLC Agreement. The NINA CEO, and anyone acting for the NINA CEO, must be a U.S. citizen. The NINA CNO, ~~if one is appointed~~, also must be a U.S. citizen.
- (b) Section 5.2 of the NINA LLC Agreement provides that, subject to the control of the Board, the CEO and other Executive Personnel shall "have such authority and perform such duties as the Board may delegate to them." To the extent authority regarding the affairs of NINA is further delegated by the Board to the CEO and other executive personnel, the CEO assures that U.S. control is maintained over nuclear safety, security and reliability issues.
- (c) NINA programs governing security issues, safeguards information, or access to security information are overseen by U.S. citizen managers who report to the CEO. Access and participation in these programs by foreign persons would be permitted only in full compliance with all program requirements. Oversight of these programs and determinations regarding such requirements are and will be subject to U.S. authority and control, because the CEO exercises management authority over such programs, subject only to the ultimate authority of the Security ~~Subcommittee~~ Committee.
- (d) In addition, the ~~CNO Vice President, Oversight and Regulatory Affairs (VP Oversight)~~ ensures U.S. control and oversight of nuclear safety issues through control of the Quality Assurance (QA) Program. The VP Oversight reports directly to and is responsible to the CEO. Through QA audits NINA assures that contractors and subcontractors to it and its subsidiaries conduct nuclear safety related activities in accordance with the QA Program, without regard to whether such activities are undertaken by U.S. citizens or by foreign persons, and without regard to whether such activities are performed within the United States or in another country. The requirements of the QA Program assure that all activities are performed consistent with U.S. requirements imposed upon a licensee or applicant for a license. The



QA Program also governs activities internal to NINA and its subsidiaries or affiliates. As such, overall control of the QA Program and imposition of QA Program requirements as required by U.S. law and regulation assures that ultimate U.S. control over nuclear safety is maintained without regard to where activities are performed or who performs them.

- (e) In the event that any foreign control, domination or influence may be exercised with the potential to disrupt this U.S. control over nuclear safety, security and reliability issues, the NINA CEO would assure U.S. control by taking one or more of the following actions: (1) raising the U.S. control issue with the foreign persons involved and resolving the matter to the satisfaction of the CEO; (2) consulting with the NAC to obtain advice regarding whether or not U.S. control is required and, if so, regarding the appropriate options to consider for resolving the matter consistent with the requirements of the U.S. government; and (3) referring the matter for resolution by the Security Subcommittee Committee. If a matter is referred to the Security Subcommittee Committee by the NAC or the CEO, Section 5.1(e)(iv) of the NINA LLC Agreement requires that the Security Committee conduct a Special Meeting special meeting to consider the matter. It is expected that the Security Subcommittee Committee would first decide whether or not the matter is one that must be decided under U.S. control and, if so, the Security Subcommittee Committee would vote and decide the matter for the NINA Board.
- (f) NINA is not aware of any NINA personnel who currently maintain security clearances with the U.S. government, authorizing their access to classified national security information. It is possible that, in the future, NINA may retain services from contract personnel who obtain or maintain security clearances. However, any such security clearances would be maintained through other companies, which maintain and control their programs to assure compliance with applicable U.S. security requirements and restrict access to such information to only those persons who have been specifically cleared by the U.S. government. The actions of the personnel involved and possession and control of such classified information would be controlled by such other companies and their applicable programs. These programs would not be controlled by NINA, but rather the companies that control these programs would be subject to ongoing oversight by the U.S. government regarding control of these programs free from foreign control, domination or influence. NINA will assure that its personnel comply with all applicable requirements, and it will not provide any directions to its personnel that conflict with their applicable obligations to other companies and their programs regarding such classified information.
- (g) In the future, if it becomes necessary or desirable for NINA to maintain its own independent Facility Security Clearance for purposes of

governing security clearances to be issued to NINA personnel, NINA would undergo appropriate security reviews prior to being given control (as a corporation) over restricted data or classified national security information. NINA would comply with the requirements of the National Industrial Security Operating Manual, DoD 5220.22-M (February 28, 2006), including the specific applicable requirements relating to foreign ownership, control and influence (FOCI) and submission of the required "Certificate Regarding Foreign Interests" using Standard Form 328 (SF 328). Currently, however, NINA does not exercise any control over access to restricted data or classified national security information.

#### 1D.2.4 Nuclear Advisory Committee

- (a) NINA has provided for a Nuclear Advisory Committee ("NAC") pursuant to Section 5.1(f) of the NINA LLC Agreement. The NAC will be established prior to any pouring of safety related concrete for STP 3&4. The NAC members serve in a non-voting capacity to provide transparency to the NRC and other U.S. governmental authorities regarding FOCD matters impacting NINA. The NAC members serve two year terms and may be reappointed by the Board. 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.
- (d) The NAC members ~~will be~~ are selected based upon their having substantial expertise in security and nuclear safety matters and ability to serve as a valuable resource to NINA and its senior management in assuring compliance with FOCD requirements.

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

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

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

- (i) Implementation or compliance with any NRC generic letter, bulletin, order, confirmatory order or similar requirement issued by the NRC;

- (ii) Prevention or mitigation of a nuclear event or incident or the unauthorized release of radioactive material;
  - (iii) Placement or restoration of the plant in a safe condition following any nuclear event or incident;
  - (iv) Compliance with the Atomic Energy Act of 1954 (as in effect from time to time), the Energy Reorganization Act of 1974 (as in effect from time to time), or any NRC rule;
  - (v) The obtaining of, or compliance with, a specific license issued by the NRC and its technical specifications;
  - (vi) Conformance with a specific Final Safety Analysis Report, or other licensing basis document; and
  - (vii) Implementation of security plans and procedures, control of security information, control of special nuclear material, administration of access to controlled security information, and compliance with government clearance requirements regarding access to Restricted Data.
- (c) The above list of matters over which NINA will have sole authority has been formulated in the context of operating reactors, and therefore, some of the above matters may not have full applicability to the construction of STP 3&4. However, the full range of matters is included so as to assure clarity as to NINA's authority as the licensee organization singularly responsible for direction of the design and construction of the proposed plant until such authority is transitioned to STPNOC.
- (d) In order to provide greater visibility to management regarding FOCD issues, and the capability of trending FOCD issues, the Corrective Action Program will include a code for identifying any issue that involves potential FOCD concerns.

### 1D.3 Governance of STP Nuclear Operating Company

#### 1D.3.1 STPNOC Board of Directors

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

- (b) Pursuant to Article VI of STPNOC's Restated Articles of Incorporation, Austin, CPS Energy and NRG South Texas LP appoint the three "Participant Directors" of STPNOC. Notably, NRG South Texas LP is the successor to "Texas Genco LP," which is the entity named in the Restated Articles of Incorporation dated April 27, 2005. The three Participant Directors elect a fourth CEO/Director by a unanimous vote of all three. As such, all of the STPNOC directors currently are U.S. citizens appointed by organizations that are under U.S. control. The STPNOC directors control STPNOC pursuant to Article V of the Restated Articles of Incorporation, which provides that STPNOC "is to have no members," i.e., it has no owners, but rather "its affairs are managed by a Board of Directors."
- (c) STPNOC is subject to U.S. control, and it will exercise authority over nuclear safety and security matters free from any potential for foreign domination or control over its decision making in any area of concern to the NRC under 10 CFR 50.38 and Section 103.d of the Act. In particular, STPNOC is and will remain free from any foreign control or domination with regard to security matters, and STPNOC is subject to ongoing U.S. government oversight regarding foreign ownership, control or influence.
- (d) STPNOC maintains a Facility Security Clearance, and it has individual employees who maintain U.S. government security clearances. In connection with ongoing oversight of these security clearances, STPNOC periodically updates a "Certificate Regarding Foreign Interests" using Standard Form 328 (SF 328), which provides for disclosures regarding potential foreign ownership, control or influence.
- (e) The SF 328 includes various questions regarding a range of potential areas of foreign influence, including debt, foreign source income, foreign directors and executive personnel, contracts and agreements with foreigners, *etc.* Material changes to answers to any questions in the SF 328 are reported to NRC in accordance with 10 CFR 95.17(a)(1). Submittals to U.S. government security officials include the Department of Energy's forms identifying owners, officers, directors and executive personnel (OODEPs), and their citizenship. These OODEPs are submitted and periodically updated for STPNOC, as well as Austin, CPS Energy and the NRG Energy entities in the chain of control of NRG South Texas LP. Austin, CPS Energy and NRG South Texas LP do not "own" STPNOC, but they are treated like owners in connection with the government's security reviews, because they have the right to appoint the STPNOC Participant Directors.
- (f) Notably, neither NINA 3 nor NINA 4 has any rights regarding the appointment of the directors of STPNOC. If NINA 3 and/or NINA 4 acquired rights regarding appointment of directors in connection with their ownership interest in STP 3&4, any such rights would be subject to NRC notice and review requirements, *e.g.*, RIS 2000-01. Moreover,



to the extent that NINA, NINA 3 and/or NINA 4 might be in a position to control or influence the STPNOC Board, their role with respect to nuclear safety, security or reliability matters is circumscribed by the negation measures described in Section 2.0 of this Plan, including the authority of the Security Subcommittee and the oversight of the Nuclear Advisory Committee to assure that potential FOCD is negated.

### **1D.3.2 SouthTexas 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 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%.
- (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**

**1D.5.5 Statement of Ownership of Nuclear Innovation North America LLC**