

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**BEFORE THE COMMISSION**

In the Matter of	)	
	)	Docket Nos. 52-012-COL
NUCLEAR INNOVATION NORTH AMERICA LLC	)	52-013-COL
	)	
(South Texas Project Units 3 and 4)	)	March 24, 2011
	)	

**NUCLEAR INNOVATION NORTH AMERICA LLC'S ANSWER  
TO NRC STAFF APPEAL OF LBP-11-07**

Pursuant to 10 C.F.R. § 2.341(b)(3), Nuclear Innovation North America LLC (“NINA”), applicant in the above-captioned proceeding, hereby submits this Answer to the Nuclear Regulatory Commission (“NRC”) Staff’s March 15, 2011 “NRC Staff Petition for Review of the Licensing Board’s Decision in LBP-11-07 Denying the NRC Staff Motion for Summary Disposition.”

On July 2, 2010, the Atomic Safety and Licensing Board (“Board”) admitted Contention CL-2 in this proceeding.<sup>1</sup> Contention CL-2 alleges under the National Environmental Policy Act that NINA’s estimation of replacement power costs in the evaluation of severe accident mitigation design alternatives (“SAMDA”) in Section 7.5S of the STP Units 3 and 4 Environmental Report is erroneous.<sup>2</sup> The NRC Staff filed its Motion for Summary Disposition of Contention CL-2 (“Motion”) on July 22, 2010, demonstrating that summary disposition of Contention CL-2 is warranted because all environmental issues regarding SAMDAs are resolved

---

<sup>1</sup> *S. Tex. Project Nuclear Operating Co.* (South Texas Project Units 3 & 4), LBP-10-14, 72 NRC \_\_\_, slip op. at 24-33 (July 2, 2010).

<sup>2</sup> *Id.* at 30.

in this proceeding by the referenced ABWR design certification rule.<sup>3</sup> NINA filed an answer supporting the Motion.<sup>4</sup> The Board rejected the Motion on February 28, 2011.<sup>5</sup>

In its Petition for Review, the NRC Staff argued that LBP-11-07 should be reversed because the decision makes necessary legal conclusions without governing precedent, is contrary to established law, and raises important questions of law and policy.<sup>6</sup> NINA agrees that LBP-11-07 should be reversed and Contention CL-2 should be dismissed.

Respectfully submitted,

*Signed (electronically) by Stephen J. Burdick*

Steven P. Frantz  
John E. Matthews  
Stephen J. Burdick  
Morgan, Lewis & Bockius LLP  
1111 Pennsylvania Avenue, NW  
Washington, DC 20004  
Phone: 202-739-3000  
Fax: 202-739-3001  
E-mail: sburdick@morganlewis.com

*Counsel for Nuclear Innovation North America LLC*

Dated this 24th day of March 2011

---

<sup>3</sup> NRC Staff Motion for Summary Disposition (July 22, 2010).

<sup>4</sup> STP Nuclear Operating Company's Answer Supporting the NRC Staff Motion for Summary Disposition of Contention CL-2 (July 29, 2010).

<sup>5</sup> *Nuclear Innovation North America LLC* (South Texas Project Units 3 and 4), LBP-11-07, 73 NRC \_\_\_, slip op. at 21-26 (Feb. 28, 2011).

<sup>6</sup> NRC Staff Petition for Review of the Licensing Board's Decision in LBP-11-07 Denying the NRC Staff Motion for Summary Disposition, at 1 (Mar. 15, 2011).

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**BEFORE THE COMMISSION**

In the Matter of )		
NUCLEAR INNOVATION NORTH AMERICA LLC )		Docket Nos. 52-012-COL
(South Texas Project Units 3 and 4) )		52-013-COL
		March 24, 2011

**CERTIFICATE OF SERVICE**

I hereby certify that on March 24, 2011 a copy of “Nuclear Innovation North America LLC’s Answer to NRC Staff Appeal of LBP-11-07” was served by the Electronic Information Exchange on the following recipients:

Administrative Judge  
Michael M. Gibson, Chair  
Atomic Safety and Licensing Board Panel  
Mail Stop T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
E-mail: mmg3@nrc.gov

Administrative Judge  
Dr. Gary S. Arnold  
Atomic Safety and Licensing Board Panel  
Mail Stop T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
E-mail: gxa1@nrc.gov

Administrative Judge  
Dr. Randall J. Charbeneau  
Atomic Safety and Licensing Board Panel  
Mail Stop T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
E-mail: Randall.Charbeneau@nrc.gov

Office of the Secretary  
U.S. Nuclear Regulatory Commission  
Rulemakings and Adjudications Staff  
Washington, DC 20555-0001  
E-mail: hearingdocket@nrc.gov

Sara Kirkwood  
Michael Spencer  
Anthony Wilson  
Jody Martin  
Office of the General Counsel  
U.S. Nuclear Regulatory Commission  
Mail Stop O-15D21  
Washington, DC 20555-0001  
E-mail: Sara.Kirkwood@nrc.gov  
Michael.Spencer@nrc.gov  
Anthony.Wilson@nrc.gov  
Jody.Martin@nrc.gov

Office of Commission Appellate Adjudication  
U.S. Nuclear Regulatory Commission  
Mail Stop: O-16C1  
Washington, DC 20555-0001  
E-mail: ocaamail@nrc.gov

Robert V. Eye  
Brett A. Jarmer  
Counsel for the Intervenors  
Kauffman & Eye  
112 SW 6th Ave., Suite 202  
Topeka, KS 66603  
E-mail: bob@kauffmaneye.com  
brett@kauffmaneye.com

*Signed (electronically) by Stephen J. Burdick*

Stephen J. Burdick  
Morgan, Lewis & Bockius LLP  
1111 Pennsylvania Avenue, NW  
Washington, DC 20004  
Phone: 202-739-3000  
Fax: 202-739-3001  
E-mail: sburdick@morganlewis.com

*Counsel for Nuclear Innovation North America LLC*