UNITED STATES OF AMERICA NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of

)

Docket Nos. 52-012-COL 52-013-COL

NUCLEAR INNOVATION NORTH AMERICA LLC)

(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.¹ 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 ("SAMDAs") in Section 7.5S of the STP Units 3 and 4 Environmental Report is erroneous.² 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

¹ 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).

² *Id.* at 30.

in this proceeding by the referenced ABWR design certification rule.³ NINA filed an answer supporting the Motion.⁴ The Board rejected the Motion on February 28, 2011.⁵

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.⁶ 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

³ NRC Staff Motion for Summary Disposition (July 22, 2010).

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

⁵ *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).

⁶ 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).

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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:

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