

July 29, 2011

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

NRC STAFF'S BRIEF ON APPLICANT'S FILING
RELATED TO THE FOREIGN CONTROL CONTENTION

INTRODUCTION

Pursuant to the direction of the Atomic Safety and Licensing Board (Board) at the Pre-hearing Conference held on July 20, 2011, the staff of the U.S. Nuclear Regulatory Commission (Staff) files this brief to address the foreign entity information contained in the Applicant's, Nuclear Innovation North America LLC's (NINA's), Proposed Update to COLA Part 1 Information (Proposed Update). See Transcript of Pre-Hearing Conference at 1277-80 (July 20, 2011). NINA submitted the Proposed Update to the Staff on June 23, 2011 and notified the Board of the Proposed Update on July 8, 2011.

DISCUSSION

Based on the foreign entity information contained in NINA's Proposed Update, the Staff does not oppose the admissibility of the proposed contention, FC-1.

In contention FC-1, the Intervenor's assert that NINA is "at least 75.3% controlled by a foreign interest" and "positioned to gain a 92.375% ownership interest in both STP 3 and 4" in violation of 42 U.S.C. § 2133(d) and 10 C.F.R. § 50.38. Intervenor's Motion for Leave to File a New Contention Based on Prohibitions against Foreign Control at 7 (May 16, 2011) (Contention FC-1). In the Staff's answer to the Intervenor's contention, the Staff maintained that this assertion is "speculative and should not be admitted as an additional basis because the

Intervenors do not explain how these percentages were calculated, nor do they provide an expert opinion or cite to specific sources to support their method of calculating these percentages.” NRC Staff’s Answer to Intervenors’ Motion for Leave to File a New Contention Based on Prohibitions against Foreign Control at 6 (June 10, 2011). Further, the Staff stated that, “until the Applicant provides supplemental information addressing NRG’s decision, the Intervenors’ assertions regarding ownership percentages are premature and should not be admitted.” *Id.* The Staff also asserted that the proposed contention, “is admissible to the extent it is understood as a contention of omission in that the new ownership arrangement needs to be addressed by the Applicant” and that the contention “may become moot if the Applicant later supplements its Application to address NRG’s decision to withdraw future investment capital.” *Id.* at 5. Finally, the Staff stated that if the contention is rendered moot, “the Intervenors may, at that point, file a new contention regarding the adequacy of the Applicant’s supplemental information.” *Id.* at 6.

In light of the Proposed Update to the application, the Staff withdraws its previous objection to the admission of a portion of contention FC-1. Although the Proposed Update indicates that the current ownership percentages have not yet changed, the Proposed Update suggests that NINA anticipates that future foreign ownership percentages may substantially increase up to 85% indirect foreign ownership of STP 3 & 4.¹ See Proposed Update at 1.0-5, 1.0-7, 1D.1-17 (ML11189A230). This percentage appears to fall within the range the Intervenors asserted in their proposed contention—that NINA is “at least 75.3% controlled by a foreign interest” and “positioned to gain a 92.375% ownership interest in both STP 3 and 4.” See Contention FC-1 at 7. As such, the Intervenors’ assertions no longer appear to be speculative or premature. Also, given the similarity of the percentages, the Staff does not

¹ Section 1.2 of the Proposed Update states that the Negation Action Plan, “provides that NINA will assure that U.S. owners at all times hold at least 10% of the equity of NINA. Taking into account CPS Energy’s 7.625% ownership interests, indirect foreign ownership of STP 3&4 will at all times be less than 85%.” Proposed Update at 1.0-7.

believe it would be necessary for the Intervenors to re-file a new contention regarding the adequacy of the foreign entity information contained in NINA's Proposed Update. See *Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-09-20, 70 NRC 911, 921 (2009). Accordingly, the Staff does not oppose the admissibility of the proposed contention, FC-1.

CONCLUSION

For these reasons, the Staff does not oppose the admissibility of the proposed contention, FC-1.

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/Signed (electronically) by/

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CERTIFICATE OF SERVICE

I hereby certify that copies of the NRC Staff's Brief on Applicant's Filing Related to the Foreign Control Contention, have been served upon the following persons by Electronic Information Exchange this 29th day of July 2011:

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