

PMSTPCOL PEmails

From: Joseph, Stacy
Sent: Tuesday, September 20, 2011 9:02 AM
To: 'ccchappell@stpegs.com'
Cc: STPCOL
Subject: Foreign ownership RAI
Attachments: RAI 6046.doc

Coley,

Please review the DRAFT Foreign ownership RAI. Please let me know if this RAI (or the general financial RAI) contains any proprietary information.

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From: Joseph, Stacy

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Request for Additional Information No. 6046 Revision 6

South Texas Project Units 3 and 4
South Texas Project Nuclear Operating Co
Docket No. 52-012 and 52-013
SRP Section: 01 - Introduction and Interfaces
Application Section: General Financial

QUESTIONS for Financial, Policy, & Rulemaking Branch (NRR/DPR/PFPB)

01-***

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.