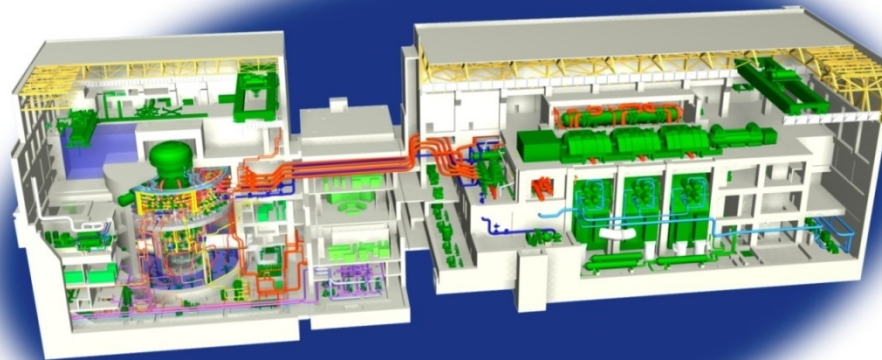


South Texas Project Units 3 & 4 Combined License Application

Draft RAI 6046

Foreign Ownership, Control, or Domination (FOCD)





Agenda

- Introduction/Attendees
- Background
- Project Specific Factors Relevant to FOCD Analysis
- Draft RAI 6046, Questions and Responses
- Next Actions
- Conclusion



Attendees

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NINA CEO

Scott Head

NINA Manager, Regulatory Affairs,
STP 3&4

John Matthews

Morgan Lewis



Desired Outcomes

- Common understanding of purpose of the FOCD restriction and factors that impact the FOCD determination for STP 3&4
- Assure that NINA understands the information being requested by the NRC staff and adequately responds to the RAIs



Background – FOCD

- NRC Guidance makes clear FOCD determination is to be based upon the totality of the 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 position is reaffirmed in the SRP on FOCD
 - “The foreign control determination is to be made with an orientation toward the common defense and security.” 64 FR 52355, 52357 (Sept. 28, 1999).



Background – FOCD

- *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.
 - 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.
- Factors relating to national security interests should be considered and given highest priority



Project Specific Factors that Relate to National Security Interest

- Factor 1 – No Restricted Data
- Factor 2 – No Nonproliferation Risk
- Factor 3 – Pre-Construction Development Activities Do Not Involve Any Compelling National Security Interest
- Factor 4 – Construction Activities Do Not Involve Significant Risk to National Security
- Factor 5 – STPNOC Will Be the Licensed Operator and Exercise Control Over Operations



Factor 1 – No Restricted Data

- There is a National Security interest in Access to Restricted Data
- Restricted Data is classified information
 - Sensitive Nuclear Technology (SNT))
 - Individuals requiring access must have personnel security clearances under 10 CFR Part 95
- Section 1.6 of Part 1 of COLA makes clear that the COLA has no Restricted Data
 - None expected for licensed activity



Factor 1 – No Restricted Data

- But, there is a National Interest in Site Security
- Physical Site Security Issues
 - Will require that individuals maintain personnel security clearances
 - Potential need for Cleared individuals to have access to classified information relating to site security threat
- STP Nuclear Operating Company (STPNOC)
 - STPNOC holds Facility Security Clearance (STP 1&2)
 - STPNOC is subject to finding regarding foreign ownership control or influence (FOCI) and ongoing FOCI compliance
 - 10 CFR 95.17(a)(1)
 - National Industrial Security Program Operating Manual (NISPOM)



Factor 2 – No Nonproliferation Risk

- The nuclear technology for STP 3&4 is being imported from Japan
 - Intellectual property rights of Toshiba
- NINA complies with export requirements for “controlled nuclear information”
 - 10 CFR Part 810
- Two Precedents Involving Restricted Data (RD)
 - URENCO (Claiborne & NM Facility) and Areva (Eagle Rock)
 - 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.
 - ASLB agreed.

Factor 3 – Pre-Construction Development Activities Do Not Involve Any Compelling National Security Interest

- During “Pre-Construction” phase (Development), there is no special nuclear material on site and no site security issues
- Nevertheless, Negation Action Plan provides for CEO and CNO to exercise U.S. Control whenever required
 - CNO controls QA and SGI Programs
 - Interim Certificate Acknowledging Special Duty to U.S. Government



Factor 4 – Construction Activities Do Not Involve Significant Risk to National Security

- With no nonproliferation risk, the only significant national security issue presented is potential use of or diversion of special nuclear material
 - No risk prior to Nuclear Fuel arriving on-site
 - STPNOC will control protected area prior to arrival of Nuclear Fuel
- QA and SGI Programs are Under U.S. control
 - In addition, robust Negation Action Plan requires implementation of NINA governance measures that assure both control and oversight is exercised by independent U.S. citizens
 - Required by plan and implemented in NINA LLC Agreement
 - Organic governance document that is superior to Board Resolution



Factor 4 – Construction Activities Do Not Involve Significant Risk to National Security

- Robust Negation Action Plan provides the actions necessary negate the effects of FOCD with defense-in-depth
 - FOCD is negated throughout construction, as well as the operating life of STP 3&4
- Independent U.S. citizens exercise both oversight and control regarding any concern involving FOCD of nuclear safety, security or reliability
 - Security Subcommittee
 - Majority independent U.S. citizen directors
 - Certificate acknowledging special duty to U.S. Government
 - Nuclear Advisory Committee
 - Independent U.S. citizens
 - Safety Culture: All Personnel Raise Any Safety or Compliance Concern
 - Multiple avenues for raising concerns, including chain of command, Employee Concerns Program, Nuclear Advisory Committee, or directly to NRC
 - Role of CEO and CNO
 - NRC Construction Inspection Program
 - NRC Resident Inspectors



Factor 5 – STPNOC Will Be the Licensed Operator and Exercise Control Over Operations

- STPNOC is a U.S. company that is under U.S. control
 - Holds a Facility Security Clearance that includes ongoing FOCl compliance per 10 CFR 95.17(a)(1)
- 1997 Operating Agreement applies to STP 3&4
 - Same agreement governs STP 1&2
 - Section 1.7 of the Operating Agreement defines “South Texas Project” (STP) as defined in 1997 Amended and Restated STP Participation Agreement
 - Section 4.31 of Participation Agreement provides that the definition of STP “shall also include any Additional Generating Unit located on the South Texas Project site.”
 - Under Section 2.1 of Operating Agreement STPNOC has "sole authority" over operations
 - Exclusive authority "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.”
- Negation Action Plan Continues for NINA 3 and NINA 4
 - “Owner Licensees”
 - Defense in depth even though owners do not have control

RAI Questions and Responses

■ Draft RAI 6046

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.

- ***The current funding for development is provided through credit facilities from Toshiba***
- ***Construction funding will be provided through Project Finance (Debt & Equity)***
 - *Requires that all loans from the development period be repaid in connection with Financial Close*
- ***First Lien Debt & Equity***
 - *Approximately two-thirds of first lien debt from U.S. Federal Finance Bank (FFB) with DOE Loan guarantee*
 - *Approximately one-third of first lien debt provided by Japan Bank for International Cooperation (JBIC), another Japan agency, or commercial banks insured by Nippon Export and Investment Insurance (NEXI)*
 - *Equity must be funded (construction account) or committed with Owners' Equity Security Package*



RAI Questions and Responses

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

(Continued)

- ***All lenders involved in the Project Finance will have only specified creditor rights approved in connection with DOE Loan Guarantee Program***
 - ***Lenders have no authority regarding day-to-day operations***
- ***Any changes in direct or indirect control of licensed activities would be subject to the pre-approval requirements of 10 CFR 50.80***



RAI Questions and Responses

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
- ***The answer is the same without regard to the variations described above:***
 - ***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.***
 - ***There are numerous mechanisms (defense-in-depth) to elevate any issue to Security Subcommittee***
 - ***Majority independent U.S. citizen directors.***

RAI Questions and Responses

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.

- ***Full implementation of Negation Action Plan must occur prior to safety-related construction***
- ***As per Factors 1-3, there is little or no activity during the development phase (pre-construction) that could affect national security***
- ***Negation Action Plan provides for U.S. citizen CEO and CNO to exercise the required U.S. control***
 - ***Interim Certificates executed by CEO regarding “special duty” to the U.S. Government***
 - ***QA and SGI Programs are controlled by Mark McBurnett (CNO)***



RAI Questions and Responses

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

- ***During Construction, activities do not involve significant risk to national security***

- ☐ ***NINA has a robust Negation Action Plan to negate FOCD concerns throughout the period of construction***
- ☐ ***STPNOC will control physical security of the STP 3&4 site before Nuclear Fuel arrives on-site***

- ***During Operation, “U.S. Control” will be exercised by STPNOC***

- ☐ ***In addition, NINA has a robust Negation Action Plan to negate FOCD concerns throughout the period of operation***

RAI 6046 - Conclusion

Questions and Comments

