

December 14, 2011

Michael M. Gibson, Chair
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Gary S. Arnold
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Randall J. Charbeneau
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

In the Matter of
Nuclear Innovation North America LLC
(South Texas Project, Units 3 & 4)
Docket Nos. 52-012 and 52-013

Dear Administrative Judges:

The Nuclear Regulatory Commission (NRC) staff hereby provides notice to the Atomic and Safety Licensing Board and the parties of the issuance of a determination letter in the South Texas Project, Units 3 and 4, combined license proceeding. The NRC staff has completed its review of Nuclear Innovation North America LLC's (Applicant's) revised application and its responses to questions pertaining to foreign ownership, control, or domination (FOCD). By letter dated December 13, 2011, the NRC staff informed the Applicant that the application does not meet the FOCD requirements of 10 C.F.R. § 50.38. A copy of the determination letter is attached to this notice. The determination letter can also be accessed electronically from the Publicly Available Records System (PARS) component of the NRC's Agencywide Document Access and Management System (ADAMS). The ADAMS accession number for the letter is ML113390176. ADAMS is accessible from the NRC website at <http://www.nrc.gov/reading-rm/adams.html>.

Respectfully submitted,

/signed (electronically) by/

Michael Spencer
Counsel for the NRC Staff
U.S. Nuclear Regulatory Commission
Mail Stop O-15 D21
Washington, DC 20555-0001
(301) 415-4073
Michael.Spencer@nrc.gov

Attachment: as stated

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))	

CERTIFICATE OF SERVICE

I hereby certify that copies of the NRC staff letter dated December 14, 2011, with attachment, have been served upon the following persons by Electronic Information Exchange this 14th day of December 2011:

Administrative Judge	Office of Commission Appellate
Michael M. Gibson	Adjudication
Atomic Safety and Licensing Board Panel	Mail Stop O-16C1
Mail Stop – T-3 F23	U.S. Nuclear Regulatory Commission
U.S. Nuclear Regulatory Commission	Washington, DC 20555-0001
Washington, D.C. 20555-0001	E-mail: OCAAmail@nrc.gov
(E-mail: Michael.Gibson@nrc.gov)	

Administrative Judge	Office of the Secretary
Gary S. Arnold	ATTN: Docketing and Service
Atomic Safety and Licensing Board Panel	Mail Stop: O-16C1
Mail Stop – T-3 F23	U.S. Nuclear Regulatory Commission
U.S. Nuclear Regulatory Commission	Washington, DC 20555-0001
Washington, D.C. 20555-0001	E-mail: HEARINGDOCKET@nrc.gov
(E-mail: Gary.Arnold@nrc.gov)	

Administrative Judge	Robert V. Eye, Esq.
Randall J. Charbeneau	Brett A. Jarmer, Esq.
Atomic Safety and Licensing Board Panel	Counsel for the Intervenors
Mail Stop – T-3 F23	Kauffman & Eye
U.S. Nuclear Regulatory Commission	Suite 202
Washington, D.C. 20555-0001	112 SW 6th Ave.
(E-mail: Randall.Charbeneau@nrc.gov)	Topeka KS 66603
	bob@kauffmaneye.com
	brett@kauffmaneye.com

Steven P. Frantz, Esq.
Stephen J. Burdick, Esq.
Alvin Gutterman, Esq.
John E. Matthews, Esq.
Charles B. Moldenhauer, Esq.
Counsel for the Applicant
Morgan, Lewis & Bockius, LLP
1111 Pennsylvania Ave., NW
Washington, DC 20004
E-mail:
sfrantz@morganlewis.com
sburdick@morganlewis.com
agutterman@morganlewis.com
jmatthews@morganlewis.com
cmoldenhauer@morganlewis.com

Respectfully submitted,

/signed (electronically) by/

Michael Spencer
Counsel for the NRC Staff
U.S. Nuclear Regulatory Commission
Mail Stop O-15 D21
Washington, DC 20555-0001
(301) 415-4073
Michael.Spencer@nrc.gov

Staff Attachment 1

December 13, 2011

Mr. Mark McBurnett, Vice President
Regulatory Affairs
Nuclear Innovation North America, LLC
4000 Avenue F
Bay City, TX 77414

SUBJECT: SOUTH TEXAS PROJECT UNITS 3 AND 4 COMBINED LICENSE APPLICATION
FINANCIAL REVIEW

Dear Mr. McBurnett:

By letter dated September 20, 2007, STP Nuclear Operating Company submitted a combined license application (COLA) for South Texas Project (STP) Units 3 and 4. This application was subsequently docketed and the U.S. Nuclear Regulatory Commission (NRC) staff began its review of the application. As of January 24, 2011, Nuclear Innovation North America LLC (NINA) became the lead applicant for STP Units 3 and 4. As such, NINA assumed responsibility for design, construction and licensing of STP Units 3 and 4.

By letter dated June 23, 2011, NINA submitted revised General and Financial Information including a revised foreign ownership Negation Action Plan. This revised General and Financial Information was included as Part 1 of Revision 6 to the COLA which NINA submitted on August 30, 2011. Under the revised Negation Action Plan Toshiba Corp. (Toshiba) could acquire up to 90 percent ownership of NINA, thereby obtaining an 85 percent ownership interest in STP Units 3 and 4. Your revised General and Financial Information also states that NRG Energy will not invest additional capital in the development of the new units. By letters dated July 13, 2011, and October 13, 2011, the staff issued requests for additional information (RAIs) 379 and 387, respectively. These RAIs contained questions regarding your foreign ownership Negation Action Plan. By letters dated August 4, 2011, and November 8, 2011, NINA responded to RAIs 379 and 387, respectively.

The NRC staff has completed its review of NINA's foreign ownership Negation Action Plan and of the responses to RAIs 379 and 387. The staff has determined that NINA's application does not meet the requirements of 10 CFR 50.38. The staff has determined that: (1) Revision 6 to NINA's COLA would allow Toshiba to acquire up to 90 percent ownership of NINA, thereby obtaining an 85 percent ownership interest in STP Units 3 and 4; (2) since NRG Energy will not be investing additional capital in the project there is reason to believe that most of the financing going forward will be from Toshiba; (3) Toshiba is a foreign corporation; (4) Toshiba has the power to exercise ownership, control, or domination over NINA; and (5) the Negation Action Plan submitted by NINA does not negate the foreign ownership, control or domination issues discussed above. Until these issues are resolved, the staff is suspending its review of the foreign ownership section of your application. If requested, NRC staff will support a public meeting with NINA to discuss the results of its review.

M. McBurnett

- 2 -

While NINA considers its options to move forward, the review of the remaining portions of the COL application will continue, as appropriate; however, a license will not be issued until the requirements of 10 CFR 50.38 are met. If you would like to discuss any of the issues in this letter, please contact the lead project manager, George Wunder at (301) 415-1494.

Sincerely,

/RA/

David B. Matthews, Director
Division of New Reactor Licensing
Office of New Reactors

Docket Nos.: 52-012
52-013

cc: See next page

M. McBurnett

- 2 -

While NINA considers its options to move forward, the review of the remaining portions of the COL application will continue, as appropriate; however, a license will not be issued until the requirements of 10 CFR 50.38 are met. If you would like to discuss any of the issues in this letter, please contact the lead project manager, George Wunder at (301) 415-1494.

Sincerely,

/RA/

David B. Matthews, Director
Division of New Reactor Licensing
Office of New Reactors

Docket Nos.: 52-012
52-013

cc: See next page

DISTRIBUTION:
PUBLIC
BWR R/F
RidsNroOd
GWunder, NRO
SJoseph, NRO
RidsNroDser

N_DNRL_BWR
SGreen, NRO
RidsEdoMailCenter
RJenkins, NRO
RidsNroDnrl
RidsOgcMailCenter

ADAMS Accession No.: ML113390176

NRO-002

OFFICE	PM:DNRL/LB3	LA:DNRL/LB3	PM:DNRL/LB3	BC:DNRL/LB3	NRR/DIRS/IFAIB
NAME	SJoseph	SGreen	GWunder	RJenkins	ASimmons
DATE	12/05/2011	12/05/2011	12/05/2011	12/06/2011	12/06/2011
OFFICE	NRR/DIRS/IFAIB	OGC	D:DNRL		
NAME	CRegan	MSpencer	DMatthews		
DATE	12/06/2011	12/08/2011	12/12/2011		

OFFICIAL RECORD COPY

COL - STP Nuclear - South Texas Mailing List
cc:

(Revised 11/02/2011)

Certrec Corporation
4150 International Plaza, Suite 820
Fort Worth, TX 76109

Mr. Brian Almon
Public Utility Commission
William B. Travis Building
PO Box 13326
1701 North Congress Avenue
Austin, TX 78701-3326

Ms. Michele Boyd
Legislative Director
Energy Program
Public Citizens Critical Mass Energy
and Environmental Program
215 Pennsylvania Avenue, SE
Washington, DC 20003

Mr. Ed Halpin
President & CEO
STP Nuclear Operating Company
P.O. Box 289
Wadsworth, TX 77483

Mr. Scott Head
Manager, Regulatory Affairs
STP Units 3 & 4
Nuclear Innovation North America, LLC
4000 Avenue F
Bay City, TX 76109

Ms. Susan M. Jablonski
Office of Permitting, Remediation
and Registration
Texas Comm. on Env. Quality
MC-122
P.O. Box 13087
Austin, TX 78711-3087

Judge
Matagorda County
Matagorda County Courthouse
1700 Seventh Street
Bay City, TX 77414

M. A. McBurnett
Senior VP, Oversight & Regulatory Affairs
Nuclear Innovation North America, LLC
4000 Avenue F
Bay City, TX 77414

Bill Mookhoek
Licensing Supervisor
STP Units 3 and 4
4000 Avenue F
Bay City, TX 77414

Mr. Peter G. Nemeth
Crain, Caton & James, P.C.
P.O. Box 289
Mail Code: N5005
Wadsworth, TX 77483

Mr. Terry Parks
Chief Inspector
Texas Department of Licensing
and Regulation
Boiler Division
P.O. Box 12157
Austin, TX 78711

Kathy C. Perkins, RN, MBA
Assistant Commissioner
Division for Regulatory Services
Texas Department of State Health Services
P.O. Box 149347
Austin, Texas 78714-9347

Policy Director
Environmental and Natural Resources
P. O. Box 12428
Austin, TX 78711-3189

COL - STP Nuclear - South Texas Mailing List

Mr. Frank M. Quinn
8 Oak Avenue
Gaithersburg, MD 20877-2705

Regional Administrator
Region IV
U.S. Nuclear Regulatory Commission
611 Ryan Plaza Drive
Suite 400
Arlington, TX 76011-8064

Alice Hamilton Rogers, PE
Inspections Unit Manager
Texas Department of State Health Services
P.O. Box 149347
Austin, Texas 78714-9347

Ms. Jamey Seely
President & CEO
Nuclear Innovation North America, LLC
400 Avenue F, Suite A
Bay City, TX 77414

Mr. Robert E. Sweeney
IBEX ESI
4641 Montgomery Avenue
Suite 350
Bethesda, MD 20814

COL - STP Nuclear - South Texas Mailing List

Email

APH@NEI.org (Adrian Heymer)
awc@nei.org (Anne W. Cottingham)
BrinkmCB@westinghouse.com (Charles Brinkman)
cindyrae_52@yahoo.com
cwaltman@roe.com (C. Waltman)
david.lewis@pillsburylaw.com (David Lewis)
Derinda.Bailey@chguernsey.com (Derinda Bailey)
donald.woodlan@luminant.com (Donald Woodlan)
dwuokko@tane.toshiba.com (Dale Wuokko)
ed.burns@earthlink.net (Ed Burns)
eliza.seedcoalition@gmail.com (Elza Brown)
erg-xl@cox.net (Eddie R. Grant)
gzinke@entergy.com (George Alan Zinke)
jerald.head@ge.com (Jerald G. Head)
jim.riccio@wdc.greenpeace.org (James Riccio)
Joseph_Hegner@dom.com (Joseph Hegner)
junichi_uchiyama@mnes-us.com (Junichi Uchiyama)
kdrichards@stpegs.com (Kevin Richards)
KSutton@morganlewis.com (Kathryn M. Sutton)
kwaugh@impact-net.org (Kenneth O. Waugh)
lchandler@morganlewis.com (Lawrence J. Chandler)
ldblaylock@cpsenergy.com (Larry Blaylock)
louis.eichenberger@ge.com (Louis Eichenberger)
Marc.Brooks@dhs.gov (Marc Brooks)
maria.webb@pillsburylaw.com (Maria Webb)
mark.beaumont@wsms.com (Mark Beaumont)
Mark.Crisp@chguernsey.com (Mark Crisp)
matias.travieso-diaz@pillsburylaw.com (Matias Travieso-Diaz)
maurerbf@westinghouse.com (Brad Maurer)
media@nei.org (Scott Peterson)
MSF@nei.org (Marvin Fertel)
nirsnet@nirs.org (Michael Mariotte)
Nuclaw@mindspring.com (Robert Temple)
patriciaL.campbell@ge.com (Patricia L. Campbell)
Paul@beyondnuclear.org (Paul Gunter)
pbessette@morganlewis.com (Paul Bessette)
pshastings@duke-energy.com (Peter Hastings)
RJB@NEI.org (Russell Bell)
Rschrauder@tane.toshiba.com (Robert Schrauder)
sabinski@suddenlink.net (Steve A. Bennett)
sandra.sloan@areva.com (Sandra Sloan)
sfrantz@morganlewis.com (Stephen P. Frantz)
smhead@stpegs.com (Scott Head)
stephan.moen@ge.com (Stephan Moen)

COL - STP Nuclear - South Texas Mailing List

Tansel.Selekler@nuclear.energy.gov (Tansel Selekler)

tom.miller@hq.doe.gov (Tom Miller)
Vanessa.quinn@dhs.gov (Vanessa Quinn)
Wanda.K.Marshall@dom.com (Wanda K. Marshall)
wayne.marquino@ge.com (Wayne Marquino)
wemookhoek@stpegs.com (Bill Mookhoek)