

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](mailto: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  
Michael M. Gibson  
Atomic Safety and Licensing Board Panel  
Mail Stop – T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001  
(E-mail: Michael.Gibson@nrc.gov)

Office of Commission Appellate  
Adjudication  
Mail Stop O-16C1  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
E-mail:OCAAMail@nrc.gov

Administrative Judge  
Gary S. Arnold  
Atomic Safety and Licensing Board Panel  
Mail Stop – T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001  
(E-mail: Gary.Arnold@nrc.gov)

Office of the Secretary  
ATTN: Docketing and Service  
Mail Stop: O-16C1  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
E-mail: HEARINGDOCKET@nrc.gov

Administrative Judge  
Randall J. Charbeneau  
Atomic Safety and Licensing Board Panel  
Mail Stop – T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001  
(E-mail: Randall.Charbeneau@nrc.gov)

Robert V. Eye, Esq.  
Brett A. Jarmer, Esq.  
Counsel for the Intervenors  
Kauffman & Eye  
Suite 202  
112 SW 6th Ave.  
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

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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/*

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Division of New Reactor Licensing  
Office of New Reactors

Docket Nos.: 52-012  
52-013

cc: See next page

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NRO-002

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

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)