



**Nuclear Innovation**  
North America LLC  
4000 Avenue F, Suite A  
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January 11, 2012  
U7-C-NINA-NRC-120005  
10 CFR 2.390

U. S. Nuclear Regulatory Commission  
Attention: Document Control Desk  
One White Flint North  
11555 Rockville Pike  
Rockville, MD 20852-2738

South Texas Project  
Units 3 and 4  
Docket Nos. 52-012 and 52-013  
Response to Request for Additional Information

This letter provides a response to Request for Additional Information (RAI) Letter No. 388 related to South Texas Project (STP) Units 3 & 4 Combined License Application (COLA) Part 1, General and Financial Information. The attachments to this letter provide the NINA response to RAI 01-22, a form of support agreement, and the operating agreement of NINA LLC and accompanying proprietary information affidavit.

Attachment 1 provides the responses to each of the questions included in RAI 01-24. Attachment 2 provides a form of Support Agreement as referenced in the RAI response. Attachment 3 is an affidavit requesting that the information provided in Attachment 4 and marked as proprietary be withheld from public disclosure in accordance with 10 CFR 2.390. Attachment 4 submits the "Third Amended and Restated Operating Agreement of Nuclear Innovation North America LLC," dated May 8, 2010, which is entirely proprietary and as such is not provided in a non-proprietary version. When separated from the proprietary material in Attachment 4, this letter is not proprietary.

There are no changes to the COLA required as a result of this response.

There are no commitments in this letter.

DO91  
MRO

If there are any questions regarding this response, please contact me at (361) 972-7136, or Bill Mookhoek at (361) 972-7274.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 11/1/12



Scott Head  
Manager, Regulatory Affairs  
South Texas Project Units 3 & 4

ccc

Attachments:

1. RAI 01-24 Response
2. Form of Support Agreement
3. Proprietary Information Affidavit
4. Third Amended and Restated Operating Agreement of NINA LLC (PROPRIETARY)

cc: w/o attachment except\*  
(paper copy)

(electronic copy)

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**RAI 01-24**

The request for additional information (RAI) is for Part 1, General and Financial Information, Rev. 6 of the combined license application (COLA) for the South Texas Project, Units 3 and 4. 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). The update to the COL application included updated information regarding financial qualifications and ownership interests in STP 3 and 4. In order for the staff to make a determination, provide responses to the following questions.

**Question 1: Bases for Construction Cost Estimate**

Pursuant to Appendix C to Part 50, applicants for a combined license must provide a construction cost estimate and a statement describing the bases from which the construction cost estimate is derived.

**Background**

The 10Q statement for the Shaw Group filed with the Securities and Exchange Commission on June 29, 2011, stated:

On November 29, 2010, we entered into an expanded global strategic partnership with Toshiba via a commercial relationship agreement under which we will have certain exclusive opportunities for providing [Engineering, Procurement, and Construction] EPC services for new Toshiba ABWR nuclear power plants worldwide, except in Japan and Vietnam. As part of the expanded relationship, we assumed the role of EPC contractor for NINA's South Texas Project Expansion, which plans to use Toshiba ABWR technology for two new nuclear units, South Texas Project Units 3 and 4. As part of our \$250 million commitment, on November 29, 2010, we provided NINA with a \$100 million credit facility to assist in financing the development of the South Texas Project Units 3 and 4.

During the three months ended May 31, 2011, NINA asked that we cease the majority of the work relating to individual orders issued under our EPC contract. Additionally, NINA's majority owner [NRG] announced it was withdrawing from further financial participation in that company, and a major municipal utility [CPS Energy] announced it would indefinitely suspend all discussions regarding a potential agreement to purchase the power from the proposed facilities. Given the changes to this project, we reviewed the security supporting the loans outstanding (primarily partially manufactured equipment and other assets) and, due to the uncertainty of realizing value on the security, we impaired the loans granted to the project entities totaling \$48.1 million. We currently do not plan to invest any additional funds in support of this project but continue to work with the other secured creditor to maximize the value of NINA and its assets, including the proposed project.

In order for the staff to determine the reasonableness of the construction cost estimate, provide an updated estimate of construction costs and identify the bases for the estimate to meet the requirements of Appendix C to Part 50.

An Engineering, Construction and Procurement contract that includes an updated construction cost estimate may be an acceptable form of supporting documentation to provide a basis for the construction cost estimate and allow the staff to evaluate its reasonableness.

Given the impairment of the Shaw Group's loans to the project entities, provide updated information regarding the current status of the EPC. If the fixed price EPC agreement has not been finalized, please provide the schedule for implementing the fixed price EPC.

**RESPONSE to Question 1:**

NINA 3 and NINA 4 are responsible for 100% of the remaining costs of construction for STP 3&4, and as such, NINA 3 and NINA 4 are providing information to demonstrate reasonable assurance of their ability to obtain the funds necessary to cover 100% of the remaining estimated construction costs and related fuel cycle costs. By letter dated October 5, 2011 (U7-C-NINA-NRC-110121), NINA submitted an updated Table 1.3-2, which provides a reasonable construction cost estimate that meets the requirements of Appendix C to Part 50. This estimate was based upon the cost estimates developed in connection with the existing engineering procurement and construction agreement for the project, and this estimate was used in the draft Term Sheet (as of February 9, 2011) for a conditional loan guarantee to be issued by the Department of Energy (DOE) that was submitted as Attachment 3 to the October 5, 2011 letter. The estimate included all anticipated uses of funds, including various contingencies, that were required in connection with the proposed Project Finance with a DOE Loan Guarantee.

On November 29, 2010, STP Nuclear Operating Company (STPNOC), acting as Agent for NINA Texas 3 LLC (NINA 3) and NINA Texas 4 LLC (NINA 4), entered into the "South Texas Project Units 3 & 4 Amended and Restated Master Engineering, Procurement & Construction Agreement" (EPC Agreement) with a consortium formed by Toshiba America Nuclear Energy Corporation (TANE) and Stone & Webster Inc., as the Contractor for the construction of South Texas Project Units 3 & 4 (STP 3&4). Stone & Webster Inc. is a subsidiary of The Shaw Group Inc. (Shaw). Following execution of this EPC Agreement, Nuclear Innovation North America LLC (NINA) assumed STPNOC's role with respect to construction under the EPC Agreement, and NINA currently administers the rights of NINA 3 and NINA 4 under the agreement. The EPC Agreement remains in place, and it can be made available for inspection by the NRC staff.

The terms of the EPC Agreement with respect to pricing are complex. However, they can be generally characterized as including an initial phase called the "Open Book Process" (which includes development and engineering) and the major construction phase with a "Fixed Price," which would be entered after the issuance of "Full Notice to Proceed" (FNTP) for each unit. The terms for reaching the Fixed Price were finalized in the EPC Agreement, and these detailed terms remain in place embodied in Section 2.14 and other related provisions of the EPC Agreement. However, no FNTP will be issued except in connection with the "Financial Closing" of a

“Project Finance” for STP 3&4, whereby NINA 3 and NINA 4 will have put in place committed funding that is adequate to cover completion of construction for each unit and related fuel cycle costs, based upon updated cost estimates that include various contingencies. Thus, the fixed price terms of the EPC ultimately relate to a Financial Closing of a Project Finance.

NINA proposes that a Financial Closing of a Project Finance would be required to satisfy a proposed License Condition prior to commencing licensed construction activity (excepting only construction activity authorized by an NRC exemption).

**Supplemental Response Regarding Proposed License Condition to Address Availability of Funds for Updated Construction Estimate:**

The fundamental issue facing any applicant attempting to demonstrate financial qualifications (FQ) for a merchant plant (Merchant Developer) is that a Merchant Developer simply will not have a committed source of funds for the project, including loans, credit arrangements, funded equity, and committed equity, until it enters into a Financial Closing of a Project Finance. However, having all necessary licenses and permits for the project, including most importantly the COLs issued by NRC, will be a prerequisite to meeting the requirements of a Project Finance. Because of this “Catch-22,” the only reasonable solution is to develop an appropriate License Condition so that the COLs can be issued that are required for the financing, but construction cannot commence until the financing is completed.

In order to establish that Financial Closing of a Project Finance is a prerequisite to commencing construction under the requested licenses for STP 3&4 (excepting only construction activity authorized by an NRC exemption), NINA proposes the following potential license conditions for consideration by the NRC staff to be included in each license as an “FQ License Condition”:

ALTERNATIVE FQ LICENSE CONDITION 1 (Conditional DOE Loan Guarantee for Project Finance):

NINA 3 and NINA 4 are financially qualified based upon the following license condition being met prior to commencing construction authorized by the license:

*Excepting only construction otherwise authorized by an exemption granted by the NRC, construction pursuant to this license shall not commence before issuance of a Conditional Loan Guarantee Commitment Term Sheet that has been executed and approved by the U.S. Department of Energy and submitted to NRC within 30 days after execution.*

ALTERNATIVE FQ LICENSE CONDITION 2 (Project Finance):

NINA 3 and NINA 4 are financially qualified based upon the following license condition being met prior to commencing construction authorized by the license:

*Excepting only construction otherwise authorized by an exemption granted by the NRC, construction pursuant to this license shall not commence before funding is fully committed at a Financial Closing with Lenders in connection with a Project Finance for STP 3&4. At least 30 days prior to the Financial Closing, the Licensee shall make available for NRC inspection, draft copies of documents to be executed at the Financial Closing of the Project Finance that demonstrate the following:*

- 1. The Lenders' Independent Engineer has provided an updated estimate of the Total Project Costs; and*
- 2. Funding totaling not less than the amount of Total Project Costs estimated by the Lenders' Independent Engineer shall have been funded or will be made available through: (1) equity; and/or (2) loans committed by a government institution of the United States and/or one or more Qualified Financial Institution.*

*For purposes of the foregoing, a Qualified Financial Institution must have a senior, unsecured and unenhanced credit rating of A2 or higher by Moody's and A or better by Standard & Poor's (S&P).*

The proposed FQ License Condition is intended to impose a requirement that final Financial Closing of a Project Finance would be a prerequisite to the licensed activity. This provides reasonable assurance of the ability to fund completion of construction, including a broad range of contingencies and potential variables in two ways. First, no construction will begin until the License Condition is satisfied. Second, as a practical matter, the Lenders will not go to Financial Closing unless the licensee has satisfied stringent financial requirements to assure the viability of the project, and its ability to generate revenue to pay off the loans. This provides an additional level of protection to assure that NINA 3 and NINA 4 will be fully qualified financially before construction can begin. Under the FQ License Condition, construction cannot commence unless and until NINA could prove the financial viability of the project to the Lenders, including the U.S. Government through the DOE Loan Guarantee Program (as applicable).

The expectations of Lenders for a Project Finance involving a commercial nuclear generation project are embodied in the DOE regulations governing its Loan Guarantee Program for advanced nuclear reactors. *See, e.g.*, 10 CFR 609.10. DOE's guidance in this area provides useful insights that are relevant to demonstrating the acceptability of the proposed FQ License Condition. In promulgating its rules for issuance of loan guarantees for nuclear projects, DOE was tasked with meeting various statutory requirements to protect the interests of the United States Government as a loan guarantor. Thus, the DOE regulations embody principles of finance and prudent lending practices that are designed to protect Lenders that are involved in issuing loans for large infrastructure projects using the Project Finance Model. The ability of a Merchant Developer (such as NINA) to satisfy the requirements for a loan guarantee (or Financial Closing of any other form of Project Finance) demonstrates a high level of assurance that the developer has possession of or the ability to obtain the funds necessary to cover the completion of construction for each unit and related fuel cycle costs.

The Financial Closing of the Project Finance will require payment of the credit subsidy costs, disposition of any project debt incurred prior to the Financial Closing, and satisfaction of numerous other conditions that provide the Lenders for the Project Finance assurance that the construction of STP 3&4 will be completed, and operations of STP 3&4 will commence under conditions where revenues will be generated from the project by NINA 3 and NINA 4 that are adequate to cover both (a) all of the costs of operation and (b) debt service. This includes the Lenders reliance on the EPC agreement terms relating to the Fixed Price and the Contractors' obligations under the terms of the EPC Agreement. As such, the act of completing the Financial Closing for the Project Finance provides reasonable assurance that NINA 3 and NINA 4 will obtain the funds necessary to cover estimated construction costs and related fuel cycle costs, as well as various contingencies. *See, e.g.*, 10 CFR 609.10(d)(8) (requiring that "[t]he amount of the loan guaranteed, when combined with other funds committed to the project, will be sufficient to carry out the project, including adequate contingency funds").

The estimated construction costs will be required to be updated contemporaneously with the commencement of construction under the STP 3&4 licenses in order to complete the Financial Closing. For example, under the terms of a DOE conditional loan guarantee, a Lenders' Independent Engineer will be required to further update and validate the construction cost estimate in connection with any Financial Closing. Thus, the proposed FQ License Condition

provides a further basis for assuring that the construction cost estimate is reasonable at the same time that the source of funds is obtained to cover the estimated construction costs and related fuel cycle costs.

**Supplemental Response Regarding Financing Arrangements During the Development of the STP 3&4 Project (Pre-Construction):**

On November 29, 2010, NINA and its subsidiaries entered into Credit Agreements and an Intercreditor Agreement with TANE and Shaw. Under the terms of the “Amended and Restated Credit Agreement” with TANE effective November 29, 2010, TANE extended \$500 million in credit to NINA and its subsidiaries and acquired certain liens and security rights with respect to NINA and its subsidiaries. The current Maturity Date under the TANE credit agreement is February 24, 2012. However, NINA expects this date to be extended. In any event, it has always been intended that the loans under this agreement would be paid off prior to or in connection with the Financial Closing of a Project Finance. This will be necessary in order for the project Lenders to establish first lien rights with respect to the Lenders’ security interests in the project assets. *See, e.g.*, 10 CFR 609.10(d)(10) (borrower must pledge project assets); 10 CFR 609.10(d)(13) (guaranteed debt cannot be subordinate to other debt); 10 CFR 609.10(d)(16) (Lenders must take action to perfect and maintain liens); & 10 CFR 609.10(d)(22) (collateral, collateral priorities, and voting rights among creditors must be reasonable and protect the interests of the United States). As such, NINA does not intend to rely upon the TANE credit arrangements for purposes of establishing its financial qualifications to support issuance of the licenses for STP 3&4, because they are not intended to continue to exist, and will not continue to exist, for purposes of conducting the licensed construction activity.

Under the terms of the Credit Agreement with Shaw dated as of November 29, 2010, Shaw extended \$100 million in credit (“Tranche A”). The Tranche A Maturity Date currently extends until November 29, 2013, and the Credit Agreement remains in place, notwithstanding Shaw’s determination for accounting purposes to impair the loans granted under the Credit Agreement. Under the terms of Section 4.01(a) of the Credit Agreement, the loan obligations to Shaw would be discharged at or around financial close through a conversion into equity membership interests in NINA. As such, NINA does not intend to rely upon the Shaw credit arrangements for purposes of establishing its financial qualifications to support issuance of the licenses for STP 3&4, because they are not intended to continue to exist, and will not continue to exist, for purposes of conducting the licensed construction activity. As previously described in Part 1 of the COLA, under the terms of the credit arrangements, Shaw may acquire a small equity interest in NINA. Based upon current loan balances, this Shaw ownership interest would be less than 5% of NINA.

**Question 2: Sources of funds for Operation: Purchase Power Agreements**

Pursuant to 10 CFR 50.33(f)(2), “ the applicant shall submit information that demonstrates that the applicant possesses or has reasonable assurance of obtaining the funds necessary to cover estimated operation costs for the period of the license...and shall indicate the source(s) of funds to cover these costs.”

Pursuant to 10 CFR 50.33(f)(5), “The Commission may request an established entity or newly-formed entity to submit additional or more detailed information respecting its financial arrangements and status of funds if the Commission considers this information appropriate. This may include information regarding a licensee’s ability to continue the conduct of the activities authorized by the license and to decommission the facility.

Per NUREG-1577, information on the sources of funds should include any long-term contracts that the applicant has for the plant, contracts or other arrangements with relevant transmission or grid reliability authorities.

**Background**

Purchase Power Agreements that provide supporting documentation for revenue and cost projections, and a basis for the operation cost estimates, may serve as the basis for the staff’s evaluation of the applicant’s ability to obtain the funds necessary to continue to conduct the licensed activities and to decommission the facility. Identification of a buyer committed to purchasing electrical output of South Texas 3 and 4 at a specific price is an indication of project viability.

Provide PPAs or binding Memorandums of Understanding, including the terms and conditions of the purchase power agreement, the term of PPA and whether or not the counterparty/offtaker is Investment Grade.

On March 21, 2011 CPS Energy issued a press release stating that it was indefinitely suspending all discussions with NRG regarding a purchase power agreement (PPA) for power from the proposed South Texas Units 3 and 4.

Given the withdrawal of CPS Energy’s commitment to purchase power from the proposed STP Units 3 and 4, provide updated, detailed information that demonstrates your possession of, or reasonable assurance of obtaining, the funds necessary to cover estimated operation costs for the period of the license and the source(s) of funds to cover these costs, and your ability to continue the conduct of the activities authorized by the license and to decommission the facility.

Provide the basis of CPS Energy’s decision to withdraw its commitment to purchase power from STP Units 3 and 4. Has any other purchaser provided a formal intent to purchase power under contract? What was the value of the PPA withdrawn, and the duration and quantity of output it would have purchased? How much of the decommissioning funding was planned to derive from the suspended PPA?

**RESPONSE to Question 2:**

CPS Energy is an applicant for licenses to own undivided ownership interests of 7.625% in each of the STP 3&4 units. As such, it will be entitled to 7.625% of the electric output of STP 3&4, and it will be responsible for 7.625% of the operating and maintenance costs for STP 3&4 and decommissioning funding assurance for 7.625% of STP 3&4. CPS Energy is an “electric utility,” and it is presumptively considered financially qualified for its ownership interests pursuant to 10 CFR 50.33(f). It will provide decommissioning funding assurance using the external sinking fund method in accordance with the terms of 10 CFR 50.75(e)(1)(ii). Any discussions with CPS Energy regarding power purchase agreements (PPAs) would not relate to CPS Energy’s entitlement to 7.625% of electric output from STP 3&4, but rather would relate to the possibility of CPS Energy purchasing additional electric output from the NINA 3 and/or NINA 4 shares of STP 3&4.

NINA 3 and NINA 4 are responsible for establishing their financial qualifications to hold undivided ownership interests of 92.375% in each of STP 3&4, respectively. This includes establishing reasonable assurance of the ability to generate adequate revenue to cover the operating and maintenance (O&M) costs for 92.375% of STP 3&4 and decommissioning funding assurance for 92.375% of STP 3&4. The Financial Closing of a Project Finance, which would be required under the FQ License Condition prior to conducting licensed construction activity (except activity authorized by an NRC exemption), provides reasonable assurance that NINA 3 and NINA 4 will have adequate revenue to cover their O&M costs, because a positive conclusion regarding the ability to fund both O&M costs and debt service will be a pre-requisite to the Financial Closing. *See, e.g.*, 10 CFR 609.10(d)(9) (requiring that as a condition to issuance of a loan guarantee there must be “reasonable prospect of repayment by Borrower of the principal and interest” for all project debt, *i.e.*, the project revenue must be sufficient to not only pay O&M costs required to generate revenue, but also to make debt payments).

Previously, NINA had entered into certain Memoranda of Understanding (MOUs) with counterparties that had expressed an interest in negotiating PPAs for off-take from STP 3&4. However, neither CPS Energy nor any other counterparty that had entered into PPA discussions with NINA ever made any firm “commitment” to enter into a PPA. NINA has not anticipated that it would be able to obtain any firm PPA commitments prior to obtaining a conditional loan guarantee commitment from DOE. Because NINA does not anticipate obtaining a conditional loan guarantee commitment from DOE prior to issuance of the requested licenses for STP 3&4, it does not anticipate entering into any firm PPA arrangements prior to issuance of the licenses. Therefore, NINA 3 and NINA 4 do not intend to rely upon any PPA arrangements for purposes of the NRC staff’s financial qualifications review.

When NINA does enter into PPAs for STP 3&4 off-take, it does not intend to rely upon any PPA for purposes of providing decommissioning funding assurance using the PPA method contemplated by 10 CFR 50.75(e)(1)(v). Rather, NINA 3 and NINA 4 intend to provide decommissioning funding assurance for 92.375% of STP 3&4 using the method described in Section 1.4 of Part 1 of the COLA, whereby they will elect to participate in a decommissioning

funding assurance program for new nuclear plants authorized by Texas Law. Texas Law provides for a ratepayer backstop, if NINA 3 and NINA 4 elect to set aside funds under the program, which is administered under the jurisdiction and oversight of the Public Utility Commission of Texas (PUCT). Pursuant to this mechanism, Texas Law provides that ratepayers would be obligated to fund the total cost of decommissioning through a mechanism to be established by the PUCT, in the event that NINA 3 and NINA 4 fail to periodically set aside funds as planned and as required by the Texas program. Tex. Util. Code Ann. § 39.206 (Vernon 1998 and Supp. 2007); P.U.C. Subst. R. 25.304.

The funding for NINA 3 and NINA 4 to meet their obligations under the Texas decommissioning funding assurance program will be generated through sales of electricity, which may include revenue derived from long term contracts such as PPAs. However, NINA 3 and NINA 4 would provide funding for their 92.375% interests pursuant to the Texas program and subject to PUCT oversight, without regard to the source of revenue and without regard to any changes in ownership of NINA, or any of their other parent companies that may occur in the future.

**Question 3: Additional Financial Agreements**

Pursuant to 10 CFR 50.33(f)(5), “The Commission may request an established entity or newly-formed entity to submit additional or more detailed information respecting its financial arrangements and status of funds if the Commission considers this information appropriate. This may include information regarding a licensee’s ability to continue the conduct of the activities authorized by the license and to decommission the facility.”

Please indicate the (1) sources of funds currently available, (2) credit rating of each source of funds, and (3) total amounts required to address the following:

Construction cost overruns, including delays in procurement, construction, or testing, staffing issues or delays in financing, or unanticipated supply interruptions.

Default Contributions or additional equity contributions which may be required in the case of default of one of the parties. State the amount to be provided.

Funding for a 12 month debt service reserve equal to principal and interest payments due or expected to be due under any loan agreement.

Additional equity contributions or letters of credit to be drawn in the event of a shortfall in debt service payments. Credit Subsidy Costs or any fees related to obtaining any debt instrument or loan.

Due to the fact that NINA does not have investment grade credit rating, indicate the source of funds to pay expenses for up to one year of potential outage costs.

Does NINA anticipate any changes to its decommissioning funding method based on the creditworthiness of new investors? If there are multiple owners, how will the decommissioning funding obligations be allocated among the owners?

How will changes in the proposed terms of the transaction impact the amount of the credit subsidy cost for any future DOE loan guarantee?

What is the total of funds required in addition to the construction cost estimate, including, but not limited to, the costs and contingencies listed above, to meet all financing conditions?

**RESPONSE to Question 3:**

NINA 3 and NINA 4 do not currently possess any source of funds for the total amounts required to address the items identified above. However, NINA 3 and NINA 4 believe that the proposed FQ License Condition provides for reasonable assurance that they will obtain funding for these items through a variety of creditworthy sources after licenses are issued for STP 3&4. After the licenses are issued, NINA plans to obtain a DOE Loan Guarantee and make appropriate arrangements in order to achieve a Financial Closing of a Project Finance, which would require

that adequate funds are either funded for the project (*e.g.*, payment of equity through contributions to the project, payment of administrative costs and credit subsidy costs, payment or other disposition of project debt incurred prior to the Financial Closing, payments or credit facilities for debt reserves) or committed from creditworthy sources (*e.g.*, loans, parent company commitments, credit facilities, *etc.*). The funding and commitments provided will be required to be adequate to cover not only expected construction costs, but also construction cost overruns, unanticipated delays, debt service, default contingencies, and any other contingencies.

As discussed above in Response to Question 1, the proposed FQ License Condition provides reasonable assurance that NINA 3 and NINA 4 will possess the requisite funds and funding commitments prior to beginning construction, including contingencies. *See, e.g.*, 10 CFR 609.10(d)(8) (requiring that “[t]he amount of the loan guaranteed, when combined with other funds committed to the project, will be sufficient to carry out the project, including adequate contingency funds”).

Credit subsidy costs and fees are required to be paid in connection with issuance of the loan guarantee, which means that actual payment would be made for these costs prior to beginning construction. *See, e.g.*, 10 CFR 609.10(d)(15)&(16) (requiring payment of fees and credit subsidy costs). Because these costs and fees must be paid at the Financial Closing of the Project Finance, satisfaction of the FQ License Condition would require that funding for these items had already been provided.

In addition, project debt that is accumulated prior to the Financial Closing of the Project Finance would have to be extinguished prior to such closing, either through actual payment of the debt (*e.g.*, payments are made by parent companies or through new debt that is taken into account in the Project Finance) or through conversion to equity. This is necessary so the Lenders in a Project Finance can take a first lien security interest in the project. *See, e.g.*, 10 CFR 609.10(d)(10) (borrower must pledge project assets); 10 CFR 609.10(d)(13) (guaranteed debt cannot be subordinate to other debt); 10 CFR 609.10(d)(16) (Lenders must take action to perfect and maintain liens); and 10 CFR 609.10(d)(22) (collateral, collateral priorities, and voting rights among creditors must be reasonable and protect the interests of the United States).

*The following responds to the specific question: “Due to the fact that NINA does not have investment grade credit rating, indicate the source of funds to pay expenses for up to one year of potential outage costs.”*

NRC’s “Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance,” NUREG-1577, Rev. 1 (February 1999), provides that if an applicant for an operating license does not have an investment grade credit rating:

[T]he reviewer will also consider other relevant financial information (*i.e.*, information on cash or cash equivalents that would be sufficient to pay fixed operating costs during an outage of at least 6 months, the amount of decommissioning funds collected or guaranteed for the plant in relation to the current estimated decommissioning cost, and any other relevant factors).

NINA 3 and NINA 4 do not have investment grade credit ratings, and therefore, they plan to assure that they have an adequate source of funds sufficient to pay the estimated fixed operating costs during an outage of approximately one year (well in excess of the 6 months provided for in the NRC's guidance) by entering into one or more Support Agreement(s) with its parent holding companies, e.g., NRG Energy, Inc., TANE and/or Shaw, in the total amount of at least \$300 million. A "Form of" Support Agreement is provided as Attachment 2.

*The following responds to the specific question: "Does NINA anticipate any changes to its decommissioning funding method based on the creditworthiness of new investors? If there are multiple owners, how will the decommissioning funding obligations be allocated among the owners?"*

NINA does not anticipate any changes in its current ownership structure (approximately 90% ownership by NRG and approximately 10% ownership by TANE) prior to issuance of the requested licenses for STP 3&4. NINA is requesting issuance of the COLS based upon this ownership structure. It is impossible to predict the future arrangements that may be made to support development of STP 3&4. However, future business decisions will need to be made in order for the project to move forward. If there is no business decision to proceed under the existing or a new ownership structure, no construction could commence, because the NRC staff would never be able to verify that the FQ License Condition has been satisfied.

NINA recognizes that the successful Financial Closing of a Project Finance and satisfaction of the FQ License Condition is likely to require the entry of new equity investors. If material new equity investors acquire membership interests and a role in the governance of NINA, this change would be subject to further NRC review and approval of an indirect transfer of control pursuant to 10 CFR 50.80. At all times after the COL is issued, any potential for alternative "future investor structures" for the project would be subject to the NRC's license transfer regulations, which require prior NRC review and consent to any material change in the direct or indirect control of NINA after issuance of the licenses. This would include any material change in the current 10% ownership by TANE.

Any change in the investors or ownership of NINA (the parent holding company of NINA 3 and NINA 4) will not change the method of decommissioning funding assurance provided by NINA 3 and NINA 4 for their 92.372% interests in STP 3&4. It is not expected that NINA 3 or NINA 4 will transfer a direct undivided ownership interest in STP 3&4 to any other company (investor, parent company, or third party). However, if NINA 3 or NINA 4 were to propose to do so, such an action would require an NRC approval for the direct transfer of an ownership license pursuant to 10 CFR 50.80. Financial qualifications issues (including decommissioning funding assurance requirements) would be reviewed in connection with any such licensing action.

*The following responds to the specific question: "How will changes in the proposed terms of the transaction impact the amount of the credit subsidy cost for any future DOE loan guarantee?"*

NINA does not expect the credit subsidy cost will change based upon a change in NINA investors, but any such change is impossible to predict with certainty. In any event, the payment

of the credit subsidy cost is a prerequisite to the Financial Closing of the Project Finance. Thus, before the FQ License Condition is satisfied the payment of credit subsidy costs would be provided for, regardless of the amount of this cost. In other words, the amount of credit subsidy cost will already have been funded and paid, if the FQ License Condition is satisfied. Thus, the FQ License Condition satisfies any concern NRC may have regarding the amount of credit subsidy cost.

*The following responds to the specific question: "What is the total of funds required in addition to the construction cost estimate, including, but not limited to, the costs and contingencies listed above, to meet all financing conditions?"*

By letter dated October 5, 2011 (U7-C-NINA-NRC-110121), NINA submitted an updated Table 1.3-2, which provides a reasonable cost estimate for the construction of STP 3&4 that includes all costs and contingencies required to meet all financing conditions. This information regarding the sources and uses of funds was developed for purposes of entering into a DOE conditional loan guarantee commitment. As such, the information is both reliable and includes all items contemplated by the planned Project Finance for STP 3&4 that was the subject of the proposed Loan Guarantee.

**Question 4: Tax Implications**

Pursuant to 10 CFR 50.33(f)(2), “ the applicant shall submit information that demonstrates that the applicant possesses or has reasonable assurance of obtaining the funds necessary to cover estimated operation costs for the period of the license...and shall indicate the source(s) of funds to cover these costs.”

Pursuant to 10 CFR 50.33(f)(5), “The Commission may request an established entity or newly-formed entity to submit additional or more detailed information respecting its financial arrangements and status of funds if the Commission considers this information appropriate. This may include information regarding a licensee’s ability to continue the conduct of the activities authorized by the license and to decommission the facility.”

Does the proposed project qualify for any tax incentives at the Federal and State level? What is the estimated value, if any, of the tax incentives? If the project no longer qualifies for tax incentives how will the applicant cover their costs, including operations, maintenance and interest?

**RESPONSE to Question 4:**

NINA 3 and NINA 4 continue to qualify for certain state tax incentives that will reduce the tax burden for STP 3&4 and reduce their operating costs. The benefits of these tax incentives are already reflected in NINA’s financial projections.

NINA 3 and NINA 4 may qualify for production tax credits (PTCs) pursuant to Section 45J of the Internal Revenue Code. The value of such PTCs will depend upon the allocation of PTCs that NINA 3 and NINA 4 receive as part of an allocation process established by the U.S. Department of Treasury, and the allocation process is impacted by the timing for development of STP 3&4 and other nuclear projects that may qualify for PTCs. In order to be conservative in its financial projections, NINA is no longer including benefits from PTCs in its financial projections. However, NINA believes that it may be reasonable to project that it would qualify for an allocation of approximately 1400 MW in PTCs. During years of full operation of both STP 3&4, the projected value of these PTCs would be approximately \$175 million per year in tax credits for approximately eight years. This would have a very positive impact upon NINA’s financial projections.

**Question 5: Sources of funds for Operation: Income Statement**

Pursuant to 10 CFR 50.33(f)(2), "...the applicant shall submit information that demonstrates that the applicant possesses or has reasonable assurance of obtaining the funds necessary to cover estimated operation costs for the period of the license...and shall indicate the source(s) of funds to cover these costs."

Pursuant to 10 CFR 50.33(f)(5), "The Commission may request an established entity or newly-formed entity to submit additional or more detailed information respecting its financial arrangements and status of funds if the Commission considers this information appropriate. This may include information regarding a licensee's ability to continue the conduct of the activities authorized by the license and to decommission the facility."

Submit a projected income statement for the first ten years of operations, including the following rows of information: total revenues from sales of energy, operations expenses, overhead and administration expenses, subtotal (net operating income), other income, debt financing(interest), decommissioning expense, taxes and grand total. The format should follow the model as submitted by Constellation Energy in its 2009 license transfer application on January 22, 2009 (ML09290101). Provide third party substantiation for revenue and expense assumptions. Include a summary of the experience and qualifications of the preparer(s) of the projection, the basis of the projection, and citations to the information sources used in the projection.

For the projected income statements, perform the following sensitivity analyses:

Base Case: 100% Market based revenue

Sensitivity Analysis 1: 100% Market based revenue with at 10% reduction in MWhr Sales

Sensitivity Analysis 2: 100% Market based revenue with a 10% increase in Operating Expenses

**RESPONSE to Question 5:**

NINA expects to be able to provide the requested projected income statements and sensitivity analyses in a separate proprietary submission that it plans to make within 30 days.

**Question 6: Sources of funds for Operation: Market Price Projection**

Pursuant to 10 CFR 50.33(f)(2), "...the applicant shall submit information that demonstrates that the applicant possesses or has reasonable assurance of obtaining the funds necessary to cover estimated operation costs for the period of the license..."

Provide a market price projection for power for the same 10 yr period to substantiate revenue projections for question 5. Include a summary of the experience and qualifications of the preparer(s) of the projection, the basis of the projection, and citations to the information sources used in the projection. What impact will lower than expected natural gas prices have on the applicant's ability to cover costs, including operations, maintenance and interest, for STP Units 3 and 4 project assuming no changes in direct costs or in subsidies?

**RESPONSE to Question 6:**

NINA expects to be able to provide the market price projections in the projected income statements and sensitivity analyses requested in Question 5. The market price projections and other requested information will be provided by NINA in a separate proprietary submission that it plans to make within 30 days.

**Question 7: Projected Statement of Operating Cashflows**

Pursuant to 10 CFR 50.33(f)(2), "...the applicant shall submit information that demonstrates that the applicant possesses or has reasonable assurance of obtaining the funds necessary to cover estimated operation costs for the period of the license..."

Submit a projected statement of operating cashflows for the first ten years of operations, including debt service payments, using the same revenue assumptions as the Base Case income statement. Include a summary of the experience and qualifications of the preparer(s) of the projection, the basis of the projection, and citations to the information sources used in the projection. Perform the same two sensitivity analyses as for the projected income statement.

**RESPONSE to Question 7:**

NINA expects to be able to provide the requested projected statement statement of operating cashflows and sensitivity analyses in a separate proprietary submission that it plans to make within 30 days.

**Question 8: South Texas Units 3 and 4 Project Financial Model**

Provide the Financial Plan and Financial Model for South Texas Units 3 and 4, including the Operating Revenue Schedule, debt coverage ratio and any other supporting analyses. Indicate the financial criteria required for the project to advance to the construction phase.

In a February 22, 2011 call with investors, NRG CEO David Crane made the following statement in response to a question about financial returns for STP Units 3 and 4:

[T]hrough the first few years, when we've talked about receiving \$500 million of cash, that's based on our view on where gas prices go, which is, obviously, some way up from where they are now, sort of into the \$6 to \$7 range. Having said that... we've stressed the returns on the nuclear project from an IRR perspective, sort of \$4 gas in perpetuity model. And the IRR in the project, it would still be in double digits, but obviously, the higher gas prices, the better we do. But it works, the numbers work even at a \$4 gas environment. And the reason that is the case... is because, obviously, the tax benefits associated with nuclear project, particularly, the production tax credits, meaning that through the first several years of the nuclear project, the economics are more driven actually by the tax benefits than they are by the price of electricity.

Yes, so the returns would be in the teens area in the \$4, in perpetuity model. Again, this is based on the idea that we're running a model where there's roughly 1,000 megawatts of power sold by long-term contract, and the rest is taken into the merchant market.

Provide the financial analysis that supports the statement "returns would be in the teens area in the \$4 perpetuity model" made by Mr. Crane, with details about the revenue, off take, and tax benefit assumptions. Is the financial model described by Mr. Crane still valid or have there been modifications? Indicate the financial factors that changed after these statements which resulted in NRG's decision to cease further financial participation in the project.

**RESPONSE to Question 8:**

NINA does not have access to the financial models referred to by Mr. Crane, if they continue to exist. In any event, the quoted statements by Mr. Crane refer to a projected rate of return that would be earned by NRG Energy, Inc. (NRG), as an investor, based upon its level of investment in the project. As indicated in the presentation materials (*e.g.*, slide 9) for the February 22, 2011 earnings call with investors, these assumptions were based upon a number of developments expected for the project in 2011 which did not occur, including issuance of a DOE conditional loan guarantee commitment and a "sell down" of NRG's interests in the project to 40%. NRG's further investment in the project was to be limited (*e.g.*, slide 10) to \$10 million until issuance of the conditional loan guarantee, with additional total investments thereafter of \$40 million for 2011, \$25 million for 2012, and up to \$300 million during construction years 2015 & 2016. NINA believes that even though the Q&A discussion in the February call makes ambiguous

references to the viability of “the project” in a “\$4 gas in perpetuity model,” any NRG projections of a “project” rate of return referred to NRG’s own expected return based upon its level of investment.

The presentation materials for the February 2, 2011 earnings call are available at:

<http://phx.corporate-ir.net/phoenix.zhtml?c=121544&p=irol-presentations>

NINA believes that the best updated financial model projections that it can provide to NRC for the NINA 3 and NINA 4 share of the project (92.375% of STP 3&4) are those which it plans to provide in Response to Questions 5-7.

**Question 9: Financial Reports**

Per 10 CFR 50.33(f)(4) Each application for a construction permit, operating license, or combined license submitted by a newly-formed entity organized for the primary purpose of constructing and/or operating a facility must also include information showing:

- (i) The legal and financial relationships it has or proposes to have with its stockholders or owners;
- (ii) The stockholders' or owners' financial ability to meet any contractual obligation to the entity which they have incurred or proposed to incur; and
- (iii) Any other information considered necessary by the Commission to enable it to determine the applicant's financial qualification.

The applicant has not provided the information required by 10 CFR 50.33(f)(4)(i-iii). Provide the required information, in sufficient detail for the staff to make a determination, including but not limited to, updated financial reports (or links to SEC filings), including income, balance sheet and cash flow statements for the project equity and debt participants.

**Regulatory Basis**

10 CFR 50.33(f)(5) states: The Commission may request an established entity or newly-formed entity to submit additional or more detailed information respecting its financial arrangements and status of funds if the Commission considers this information to be appropriate.

NUREG 1577, Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance states: "The reviewer will determine the financial qualifications of a licensee applicant...based on the adequacy of the relevant information provided and the applicant's ability to meet the standards stipulated in the NRC's regulations."

Appendix C to Part 50 states:

With respect, however, to the applicant which is a newly formed company established primarily for the purpose of carrying out the licensed activity, with little or no prior operating history, somewhat more detailed data and supporting documentation will generally be necessary.

Further, per Appendix C to Part 50, Section II:

- A. Applications for Construction Permits or Combined Licenses
  - 2. Source of construction funds. The application should specifically identify the source or sources upon which the applicant relies for the funds necessary to pay the cost of constructing the facility, and the amount to be obtained from each. With respect to each source, the application should describe in detail the applicant's legal and financial relationships with its stockholders, corporate

affiliates, or others (such as financial institutions) upon which the applicant is relying for financial assistance. If the sources of funds relied upon include parent companies or other corporate affiliates, information to support the financial capability of each such company or affiliate to meet its commitments to the applicant should be set forth in the application. This information should be of the same kind and scope as would be required if the parent companies or affiliates were in fact the applicant. Ordinarily, it will be necessary that copies of agreements or contracts among the companies be submitted.

**RESPONSE to Question 9:**

The most recent annual reports for NRG are available at:

<http://phx.corporate-ir.net/phoenix.zhtml?c=121544&p=irol-irhome>

The most recent annual reports for Toshiba Corporation (the parent company of TANE) are available at:

<http://www.toshiba.co.jp/about/ir/en/finance/ar/ar2011.htm>

The most recent annual reports for Shaw are available at:

<http://ir.shawgrp.com/phoenix.zhtml?c=61066&p=irol-reportsannual>

By letter dated March 30, 2009 (U7-C-STP-NRC-090021), STPNOC submitted the information required by 10 CFR 50.33(f)(4), which includes the various agreements governing the South Texas Project. These documents reflect the legal relationships among STPNOC, NINA 3, NINA 4, and CPS Energy. (At the time, NINA 3 and NINA 4 were known as "NRG South Texas 3 LLC" and "NRG South Texas 4 LLC," respectively.) This submittal also includes the "Second Amended and Restated Operating Agreement of Nuclear Innovation North America LLC," dated Feb 2, 2009. The management of NINA is now governed by the "Third Amended and Restated Operating Agreement of Nuclear Innovation North America LLC," dated May 8, 2010, a copy of which is provided as a proprietary Attachment 3. Appendix 1D of the Chapter 1 of the Final Safety Analysis Report describes additional material terms that are to be implemented in further amendments to this agreement (expected to be the "Fourth Amended and Restated" agreement).

By letter dated May 26, 2010 (U7-C-STP-NR C-100120), STPNOC submitted further information which included the "Original Operating Agreement of NINA Investments Holdings LLC," dated as of April 9, 2010, which governs the operations of the NINA Investments Holdings LLC (NINA Investments). The April 9, 2010 Operating Agreement included foreign control negation measures; these measures would be superseded or augmented by the further provisions now committed to in Appendix 1D.

As discussed in Response to Question 1, NINA and its subsidiaries have entered into credit arrangements with TANE and Shaw that provide funding for the development of STP 3&4.

However, NINA does not propose that these arrangements continue to exist during any period of licensed construction or operation. Rather, these arrangements will be extinguished in connection with the Financial Closing of a Project Finance, which NINA proposes to be an FQ License Condition that is a prerequisite to any licensed construction activity (except activity authorized by an NRC exemption). Therefore, NINA does not seek to rely upon any of the existing financial arrangements that support development of the project for purposes of establishing its financial qualifications during construction and operation.

The owners of NINA 3 and NINA 4 do not currently have any contractual obligations to provide financial support for the construction of the project, as may be contemplated in 10 CFR 50.33(f)(4)(i)&(ii). Rather, NINA expects that various such obligations will be put in place along with loans and other credit arrangements in connection with the Financial Closing of a Project Finance. Thus, additional relevant information regarding contractual obligations to provide financial support will be made available in connection with satisfying the proposed FQ License Condition prior to construction.

**[Form of] SUPPORT AGREEMENT**

THIS SUPPORT AGREEMENT (as amended, supplemented or otherwise modified from time to time, this "Agreement"), dated as of \_\_\_\_\_, between [Parent Company], a [Delaware] [corporation][limited liability company] (the "Parent"), NINA Texas 3 LLC, a Delaware limited liability company, and NINA Texas 4 LLC, a Delaware limited liability company (together, the "Subsidiaries" and individually "Subsidiary").

WITNESSETH:

WHEREAS, the Parent is an indirect owner of membership interests in the Subsidiaries;

WHEREAS, the Subsidiaries are the owner of a 92.375% undivided interest in the South Texas Project Nuclear Generating Station, Units 3 and 4 ("STP 3&4") and are parties to that certain Amended and Restated South Texas Project Participation Agreement, effective as of November 17, 1997 (as amended, supplemented or otherwise modified from time to time, the "STP Participation Agreement"), and that certain South Texas Project Operating Agreement, dated and effective as of November 17, 1997 (as amended, supplemented or otherwise modified from time to time, the "STP Operating Agreement");

WHEREAS, pursuant to the Section 3.1 of the STP Operating Agreement, the each Subsidiary has agreed to pay to STP Nuclear Operating Company, a Texas non-profit corporation and the operator of STP ("STPNOC"), its Participant's Share of the Costs of Operations (as such terms are defined in the STP Operating Agreement); and

WHEREAS, the Parent and the Subsidiaries desire to take certain actions to enhance and maintain the financial condition of the Subsidiaries as hereinafter set forth in order to ensure its ability to pay to STPNOC their Participants' Shares of the Costs of Operations;

NOW THEREFORE, in consideration of the mutual promises herein contained, the parties hereto agree as follows:

1. Support Payments. At all times while this Agreement is in effect and subject to the limitations set forth in paragraphs 3, 4, and 5, the Parent agrees that it will make, or cause one of its subsidiaries or affiliates to make, to the extent necessary, a Support Payment (as defined in paragraph 2) to the Subsidiary in order to ensure that the Subsidiary has sufficient liquidity in order to pay to STPNOC its Participant's Share of the Costs of Operations. Any Support Payments required by this Agreement shall be made not later than the end of the next fiscal quarter following a request for payment.

2. Commitment to Provide Capital. If during the term of this Agreement, the Parent is required to make a Support Payment to the Subsidiary, such payment may be provided by the Parent, or any subsidiary or affiliate of the Parent, at the Parent's option, either as an equity

investment or capital contribution or as a loan, in each case in cash or other liquid assets (any of the foregoing, "Support Payment"). If such payment is advanced to the Subsidiary as a loan, the loan shall be on such terms and conditions, including maturity and rate of interest, as the Parent and the Subsidiary shall agree.

3. Limitation of the Parent's Support Obligations. Each of the Parent and the Subsidiaries agree that the Parent shall not be required to make, or cause its subsidiaries or affiliates to make, Support Payments to the Subsidiaries in excess of \$300,000,000 in the aggregate during the term of the Agreement.

4. Not a Guaranty. This Agreement, its provisions and any actions pursuant hereto by the Parent shall not constitute or be deemed to constitute a direct or indirect guaranty by the Parent of any indebtedness for borrowed money or other obligation or liability of any kind or character whatsoever of the Subsidiary, including, without limitation, any obligation of the Subsidiaries to make any payment or to perform any obligation required of it under the STP Participation Agreement or the STP Operating Agreement.

5. STP Participation Agreement and STP Operating Agreement. The Subsidiaries shall not be permitted to amend, supplement or otherwise modify either the STP Participation Agreement or the STP Operating Agreement without the prior written consent of the Parent. In the event that the Subsidiaries violate this paragraph 5, the Parent's obligations to provide Support Payments hereunder shall be suspended.

6. Rights of Participants and Creditors. The obligations of the Parent pursuant to this Agreement are to the Subsidiaries only and do not run to and are not enforceable directly by STPNOC, any other Participant (as defined in the STP Participation Agreement) or any creditor of the Subsidiaries or other entity or person, nor shall this Agreement cause the Parent to be responsible for payments of any obligation of the Subsidiaries to STPNOC, any Participant or any creditor or other entity or person or give rise to any recourse by STPNOC, any Participant, creditor or other entity or person to or against the Parent or any of its assets or properties.

7. Waivers. Any failure by any party hereto, at any time or times hereafter, to require strict performance by the other party of any provision of this Agreement shall not waive, affect or diminish any right of any party thereafter to demand strict compliance and performance therewith. None of the agreements contained in this Agreement shall be deemed to have been suspended or waived by any party hereto unless such suspension or waiver is in writing.

8. Amendments and Termination. This Agreement may be amended, modified or termination at any time by the parties hereto only by a written instrument signed by both the Parent and the Subsidiaries. This Agreement shall terminate upon the termination of the STP Operating Agreement.

9. Successors. This Agreement shall be binding upon, and shall insure to the benefit of, the parties hereto and their respective successors and assigns, provided that the Subsidiaries may not assign, transfer or pledge its rights hereunder without the prior written consent of the

Parent. This Agreement is not intended for the benefit of any entity or person other than the parties hereto, and shall not confer or be deemed to confer upon any other such entity or person any benefits, rights or remedies hereunder.

10. Governing Law; Severability. This Agreement and all rights and obligations hereunder shall be governed by and construed and enforced in accordance with the laws of the State of New York. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Agreement.

11. Commitment of Subsidiaries. The Subsidiaries shall take no action to cause Parent or its successors and assigns, to void, cancel or modify its \$300 million contingency commitment to Subsidiaries or cause it to fail to perform or impair its performance under the commitment, or remove or interfere with the Subsidiaries' ability to draw upon the commitment, without the prior written consent of the Director of the Office of Nuclear Reactor Regulation. Also, each Subsidiary shall inform the NRC in writing any time that it draws upon the \$300 million commitment.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered by their respective officers thereunto duly authorized as of the day and year first above written.

**NINA TEXAS 3 LLC**, a Delaware limited liability company

By: \_\_\_\_\_  
Name:  
Title:

**NINA TEXAS 4 LLC**, a Delaware limited liability company

By: \_\_\_\_\_  
Name:  
Title:

**[PARENT]**, a [Delaware] [corporation] [limited liability company]

By: \_\_\_\_\_  
Name:

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

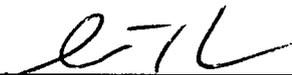
In the Matter of	)		
	)		
Nuclear Innovation North America LLC	)	Docket Nos.	52-012
	)		52-013
South Texas Project	)		
Units 3 and 4	)		

AFFIDAVIT

I, Scott Head, being duly sworn, hereby depose and say that I am Manager, Regulatory Affairs, of the South Texas Project Units 3 & 4 (STP 3&4); that I am duly authorized to sign and file with the Nuclear Regulatory Commission (NRC) this affidavit on behalf of Nuclear Innovation North America LLC (NINA); and state:

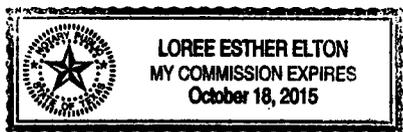
1. I am authorized to execute this affidavit on behalf of NINA, Nuclear Innovation North America Investments Holdings LLC (“NINA Holdings”), Nuclear Innovation North America Investments LLC (“NINA Investments”), NINA Texas 3 LLC (“NINA 3”) and NINA Texas 4 LLC (“NINA 4”).
2. NINA 3 & NINA 4 are providing information to support the application for Combined Licenses for STP Units 3 & 4. The information being submitted contains legal and financial information related to ownership of STP Units 3 & 4, and contains proprietary commercial and financial information that should be held in confidence by the NRC pursuant to the policy reflected in 10 CFR2.390(a)(4), because:
  - i. This information is and has been withheld in confidence by NINA 3, NINA 4 and their affiliates.
  - ii. This information is of a type that is customarily held in confidence by NINA 3, NINA 4 and their affiliates, and there is a rational basis for doing so because the information contains sensitive legal and financial information concerning financing arrangements and project costs for NINA 3 and NINA 4.
  - iii. This information is being transmitted to the NRC voluntarily, in confidence and under the provisions of 10 CFR 2.390(a)(4) and it is to be received in confidence by the NRC.
  - iv. This information is not available in public sources and could not be gathered readily from other publicly available information.

- v. Public disclosure of this information would create substantial harm to the competitive position of NINA 3, NINA 4, and their affiliates by disclosing internal business and financial information.
- 3. The information in Attachment 4 is proprietary in its entirety and has been appropriately marked as proprietary.
- 4. The information has substantial commercial value. The information requested to be withheld reveals commercially valuable and sensitive information and information about financing arrangements. Public disclosure of this proprietary information is likely to cause substantial harm to the competitive position of NINA 3 and NINA 4, NINA Investments, NINA Holdings and NINA itself because it would enhance the ability of competitors to gain knowledge of our costs and our commercial strategies.
- 5. Accordingly, NINA 3 and NINA 4 request that the entire Attachment 4 accompanied by this affidavit be withheld from public disclosure pursuant to 10 CFR 2.390(a)(4).

  
 \_\_\_\_\_  
 Scott Head  
 Manager, Regulatory Affairs  
 South Texas Project Units 3 & 4

STATE OF TEXAS                    )  
   )  
 COUNTY OF MATAGORDA        )

Subscribed and sworn to before me, a Notary Public in and for the State of Texas,  
 this 11 day of January, 2012.



  
 \_\_\_\_\_  
 Notary Public in and for the  
 State of Texas