

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Michael M. Gibson, Chairman  
Dr. Gary S. Arnold  
Dr. Randall J. Charbeneau

In the Matter of

NUCLEAR INNOVATION NORTH AMERICA  
LLC

(South Texas Project Units 3 and 4)

Docket No. 52-12-COL and 52-13-COL

ASLBP No. 09-885-08-COL-BD01

February 7, 2012

MEMORANDUM AND ORDER

(Ruling on Intervenors' Motion for Summary Disposition of Contention FC-1)

This adjudicatory proceeding derives from the application of Nuclear Innovation North America LLC (NINA or Applicant) for combined licenses (COLs) that would permit the construction and operation of two new nuclear reactor units, proposed South Texas Project (STP) Units 3 and 4, on a site near Bay City, Texas, where STP Units 1 and 2 currently operate. Intervenors have moved for summary disposition of admitted contention FC-1, which alleges that statutory and regulatory prohibitions on foreign ownership, control, and domination (FOCD) forbid the licensing of proposed STP Units 3 and 4:<sup>1</sup>

Contention FC-1: Applicant, [NINA], has not demonstrated that its STP Units 3 and 4 joint venture with Toshiba, is not owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government contrary to 42 U.S.C. § 2133(d) and 10 C.F.R § 50.38.<sup>2</sup>

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<sup>1</sup> Intervenors' Motion for Summary Disposition of Intervenors' Contention FC-1 (Dec. 30, 2011) at 1 (Motion for Summary Disposition).

<sup>2</sup> Intervenors' Motion for Leave to File a New Contention Based on Prohibitions Against Foreign Control (May 16, 2011) at 1 (Motion to Admit FC-1).

For the reasons stated below, we deny Intervenors' motion, concluding that summary disposition of Contention FC-1 is not appropriate.

### I. Procedural Background

On May 16, 2011, Intervenors moved for leave to file Contention FC-1.<sup>3</sup> Although Applicant opposed admission of FC-1,<sup>4</sup> the NRC Staff (Staff) did not oppose its admission.<sup>5</sup> On August 17, 2011, we held oral argument on FC-1 in Austin, Texas,<sup>6</sup> and on September 30, 2011, we admitted contention FC-1.<sup>7</sup>

Based on the Applicant's responses to subsequently issued requests for additional information, Staff issued to Applicant a Determination Letter on December 13, 2011 indicating that its COL application (COLA) does not meet the FOCD requirements of 10 C.F.R. § 50.38.<sup>8</sup> Within 20 days after the Staff issued its Determination Letter, Intervenors moved for summary disposition of Contention FC-1.<sup>9</sup>

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<sup>3</sup> Id.

<sup>4</sup> [NINA's] Answer Opposing New Contention Based on Prohibition Against Foreign Control (June 10, 2011)

<sup>5</sup> NRC Staff's Answer to Intervenors' Motion for Leave to File a New Contention Based on Prohibitions Against Foreign Control (June 10, 2011)

<sup>6</sup> Tr. at 1273-1394.

<sup>7</sup> Nuclear Innovation North America LLC (South Texas Project Units 3 & 4), LBP-11-25, 74 NRC \_\_\_, \_\_\_ (slip op. at 23) (Sept. 30, 2011).

<sup>8</sup> Letter from Michael Spencer, Counsel for the NRC Staff, to Licensing Board, Notification of the Issuance of a Determination Letter in the STP Units 3 and 4 COL Proceeding (Dec. 14, 2011) attach. 1, Letter from David B. Matthews, NRC Division Director of New Reactor Licensing, to Mark McBurnett, NINA Vice President Regulatory Affairs, [STP] Units 3 and 4 [COLA] Financial Review (Dec. 13, 2011) (Determination Letter).

<sup>9</sup> Motion for Summary Disposition at 1-2; id. attach., Intervenors' Statement of Material Facts (Dec. 30, 2011) (Intervenors' Statement of Facts); Intervenors' Reply to Applicant's Answer to Intervenors' Motion for Summary Disposition of Contention FC-1 (Feb. 3, 2012).

Although Intervenors' motion for summary disposition relied principally on the Determination Letter, the Staff's response not only supported Intervenors' motion, but supplied new facts and arguments to support the motion.<sup>10</sup> Applicant responded, opposing both the motion<sup>11</sup> and Staff's answer.<sup>12</sup>

## II. Legal Standards

### A. Summary Disposition

The standards for summary disposition in Subpart L proceedings are set forth at 10 C.F.R. § 2.1205. That rule provides that motions for summary disposition "must be in writing and must include a written explanation of the basis of the motion, and affidavits to support statements of fact."<sup>13</sup> The rule also directs licensing boards to apply the same standards for granting or denying summary disposition as would be applied in proceedings conducted under Subpart G of the Rules, which are set forth in section 2.710.<sup>14</sup> In turn, section 2.710(d)(2) provides that a moving party may obtain summary disposition "if the filings in the proceeding, . . . together with the statements of the parties and the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law."

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<sup>10</sup> NRC Staff's Answer o Intervenors' Motion for Summary Disposition of Contention FC-1 (Jan. 19, 2012) at 1 (Staff Answer); id. attach. 1, Statement of Material Facts on which No Genuine Dispute Exists (Jan. 19, 2012) (Staff's Statement of Facts).

<sup>11</sup> NINA's Answer to Intervenors' Motion for Summary Disposition of Intervenors' Contention FC-1 (Jan. 19, 2012) at 1; id. attach., NINA's Statement of Material Facts on Contention FC-1 (Jan. 19, 2012) (Applicant's Statement of Facts).

<sup>12</sup> NINA's Response to NRC Staff's Answer to Intervenors' Motion for Summary Disposition of Contention FC-1 (Jan. 30, 2012) (Applicant Response).

<sup>13</sup> 10 C.F.R. § 2.1205(a).

<sup>14</sup> 10 C.F.R. § 2.1205(c) ("In ruling on motions for summary disposition, the presiding officer shall apply the standards for summary disposition set forth in subpart G of this part.").

In NRC adjudicatory proceedings, the Commission's standards for ruling on summary disposition motions are analogous to the standards for granting summary judgment motions under Rule 56 of the Federal Rules of Civil Procedure in Federal courts.<sup>15</sup> The moving party bears the initial burden of "showing the absence of a genuine issue as to any material fact" and that it is entitled to a decision as a matter of law.<sup>16</sup> If the moving party meets its burden, the party opposing the motion must "set forth specific facts showing that there is a genuine issue," and may not rely on "mere allegations or denials,"<sup>17</sup> or "merely colorable" or "not significantly probative" evidence.<sup>18</sup> In any case, "no defense to an insufficient showing is required."<sup>19</sup> After considering the arguments and facts offered by the parties, if no genuine dispute remains the Board may dispose of all arguments based on the pleadings.<sup>20</sup>

Yet, summary disposition is an extreme remedy<sup>21</sup> that should only be granted cautiously,<sup>22</sup> especially, as here, where the parties have not yet been afforded an opportunity to

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<sup>15</sup> Advanced Medical Systems, Inc. (One Factory Row, Geneva, Ohio 44041), CLI-93-22, 38 NRC 98, 102 (1993).

<sup>16</sup> Id.

<sup>17</sup> Id.

<sup>18</sup> Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc. (Pilgrim Nuclear Power Station), CLI-10-11, 71 NRC 287, 297 (2010) (citing Anderson v. Liberty Lobby, 477 U.S. 242, 247-48 (1986)); see 10 C.F.R. § 2.710(b).

<sup>19</sup> Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), ALAB-443, 6 NRC 741, 754 (1977) (internal citations omitted).

<sup>20</sup> Advanced Medical Systems, 38 NRC at 102.

<sup>21</sup> See Moore v. Jackson, 123 F.3d 1082, 1086 (8th Cir. 1997); SRI Int'l. v. Matsushita Elec. Corp. of America, 775 F.2d 1107, 1116 (9th Cir. 1985) (explaining that summary judgment is a "lethal weapon"); Transource Int'l., Inc. v. Trinity Industries, Inc., 725 F.2d 274, 279 (5th Cir. 1984) (describing summary judgment as "drastic relief"); U.S. v. Bosurgi, 530 F.2d 1105, 1110 (2d. Cir. 1976) ("summary judgment is a drastic remedy").

<sup>22</sup> Flaherty v. Coughlin, 713 F.2d 10, 13 (2d. Cir. 1983); McSpadden v. Mullins, 456 F.2d 428, 430 (8th Cir. 1972); James v. Honaker Drilling, Inc., 254 F.2d 702, 706 (10th Cir. 1958).

marshal their evidence.<sup>23</sup> Additionally, when presented with conflicting expert opinions, licensing boards should be mindful that summary disposition is rarely proper.<sup>24</sup> During summary disposition, it is not appropriate for boards “to untangle the expert affidavits and decide ‘which experts are more correct.’”<sup>25</sup> As the Commission has explained:

a licensing board (or presiding officer) should not . . . conduct a trial on affidavits. At this stage, the judge’s function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for [hearing]. The evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor. If reasonable minds could differ as to the import of the evidence, summary disposition is not appropriate. Caution should be exercised in granting summary disposition, which may be denied if there is reason to believe that the better course would be to proceed to a full [hearing].<sup>26</sup>

#### B. Foreign Ownership, Control, or Domination

Section 102 of the Atomic Energy Act of 1954 (AEA) states that commercial licenses for utilization or production facilities for industrial or commercial purposes shall be issued in accordance with the terms of Section 103 of the AEA.<sup>27</sup> AEA Section 103d provides, *inter alia*, that “[n]o license may be issued to an alien or any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign

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<sup>23</sup> Anderson, 477 U.S. at 248.

<sup>24</sup> See Phillips v. Cohen, 400 F.3d 388, 399 (6th Cir. 2005).

<sup>25</sup> Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Facility), LBP-01-39, 54 NRC 497, 509 (2001) (quoting Norfolk Southern Corp. v. Oberly, 632 F. Supp. 1225, 1243 (D. Del. 1986)).

<sup>26</sup> Pilgrim, CLI-10-11, 71 NRC at 297-98 (internal citations omitted).

<sup>27</sup> Atomic Energy Act of 1954 as amended, 42 U.S.C. § 2132(a). For this proceeding, production and utilization facilities include nuclear reactors such as proposed STP Units 3 and 4. See 10 C.F.R. § 50.2 (defining production and utilization facilities).

corporation, or a foreign government.”<sup>28</sup> NRC regulations interpret AEA Section 103d with much the same language, specifying that

[a]ny person who is a citizen, national, or agent of a foreign country, or any corporation, or other entity which the Commission knows or has reason to believe is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government, shall be ineligible to apply for and obtain a license.<sup>29</sup>

Offering guidance on the issue, the Commission stated in its Standard Review Plan (SRP) on FOCD that an entity is under foreign ownership, control, or domination “whenever a foreign interest has the ‘power,’ direct or indirect, whether or not exercised, to direct or decide matters affecting the management or operations of the applicant.”<sup>30</sup> However, the Commission has cautioned that there is no specific ownership percentage above which it would conclusively find that an applicant is per se controlled by foreign interests.<sup>31</sup> Rather, foreign control “must be interpreted in light of all the information that bears on who in the corporate structure exercises control over what issues and what rights may be associated with certain types of shares.”<sup>32</sup> While the focus of any FOCD inquiry should be “safeguarding the national defense and security,” the Commission has also identified a series of other factors that are to be considered:

(1) the extent of the proposed partial ownership of the reactor; (2) whether the applicant is seeking the authority to operate the reactor; (3) whether the applicant has interlocking directors or officers and details concerning the relevant companies; (4) whether the applicant would have any access to restricted data; and (5) details concerning ownership of the foreign parent company.<sup>33</sup>

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<sup>28</sup> 42 U.S.C. § 2133(d).

<sup>29</sup> 10 C.F.R. § 50.38.

<sup>30</sup> Final Standard Review Plan on Foreign Ownership, Control, or Domination, 64 Fed. Reg. 52,355, 52,358 (Sept. 28, 1999), cited with approval in Calvert Cliffs 3 Nuclear Project, LLC, and Unistar Nuclear Operating Services, LLC (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-09-20, 70 NRC 911, 920 (2009).

<sup>31</sup> 64 Fed. Reg. at 52,358; Calvert Cliffs, CLI-09-20, 70 NRC at 920.

<sup>32</sup> 64 Fed. Reg. at 52,358; Calvert Cliffs, CLI-09-20, 70 NRC at 920-21.

<sup>33</sup> 64 Fed. Reg. at 52,358; Calvert Cliffs, CLI-09-20, 70 NRC at 921.

The Commission's SRP on FOCD suggests that a finding of foreign control is not mandated even where there is substantial foreign funding or involvement—e.g. where “a foreign entity contributes 50%, or more, of the costs of constructing a reactor” or where it “participates in the project review” and is “consulted on policy and costs issues.” Instead, the SRP would focus on adequate safeguards to ensure U.S. national defense and security.<sup>34</sup> In the Commission's estimation, such safeguards could be implemented with a Negation Action Plan (NAP) that would deny a foreign partial-owner from exerting control or domination.<sup>35</sup> Finally, the Commission's SRP on FOCD provides guidance for evaluating whether financial controls can negate the effects of partial foreign ownership. These include modification or termination of loan agreements, contracts, and other understandings with foreign interests; diversification or reduction of foreign source income; and demonstration of financial viability independent of foreign interests.<sup>36</sup>

### III. Discussion and Analysis

Based on the parties' pleadings and supporting affidavits, we conclude that genuine issues of material fact remain in dispute regarding whether Applicant, NINA, is owned, controlled, or dominated by a foreign entity.

Intervenors principally rely on Staff's Determination Letter to support their Motion for Summary Disposition. In that Determination Letter, Staff reasoned that Applicant's COLA violates 10 C.F.R. § 50.38 because “(1) Revision 6 to NINA's COLA would allow Toshiba<sup>37</sup> to acquire up to 90 percent ownership of NINA, thereby obtaining an 85 percent ownership interest

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<sup>34</sup> 64 Fed. Reg. at 52,358.

<sup>35</sup> 64 Fed. Reg. at 52,359.

<sup>36</sup> 64 Fed. Reg. at 52,359.

<sup>37</sup> Toshiba Corporation is a Japanese entity. Applicant's Statement of Facts ¶ I.B.3.

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.”<sup>38</sup> As a result, Staff stated it would suspend further review of the foreign ownership section of the COLA.<sup>39</sup>

Intervenors argue that the conclusion and statements in Staff’s Determination Letter have dispositive weight<sup>40</sup> and that, as a matter of law, the Board must rule that Applicant is ineligible to hold a license, and, in turn, must deny the license and terminate this entire adjudicatory proceeding.<sup>41</sup>

But Intervenors’ complete reliance on Staff’s position in the Determination Letter is misplaced. Staff is a party to this proceeding and licensing boards evaluate Staff positions just the same as intervenor or applicant positions.<sup>42</sup> “[T]he staff does not occupy a favored position at hearings. . . . [Rather] when a board comes to decide contested issues, it must evaluate the staff’s evidence and arguments in the light of the same principles which apply to the presentations of the other parties.”<sup>43</sup> In short, just because Staff says that Applicant violates section 50.38 does not make it so.

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<sup>38</sup> Determination Letter at 1-2.

<sup>39</sup> Id.

<sup>40</sup> In fact Intervenors’ Statement of Facts supporting its Motion for Summary Disposition do no more than echo the statements by Staff in the Determination Letter.

<sup>41</sup> Motion for Summary Disposition at 6-7, 9.

<sup>42</sup> See 10 C.F.R. § 2.1202(b)(3).

<sup>43</sup> Consolidated Edison Co. of New York, Inc. (Indian Point, Units 1, 2, & 3), ALAB-304, 3 NRC 1, 6 (1976) (citing Vermont Yankee Nuclear Power Corp. (Vermont Yankee Station), ALAB-194,

Moreover, Applicant demonstrates that several genuine disputes of material fact exist with respect to Intervenor regarding Contention FC-1. For instance, Intervenor state that “Toshiba [is] the sole remaining contributing member of the NINA joint venture.”<sup>44</sup> Applicant disputes this statement because, according to Applicant, NRG Energy<sup>45</sup> and CPS Energy<sup>46</sup> have contributed, to date, the vast majority of equity for STP Units 3 and 4;<sup>47</sup> NRG Energy is still contributing capital to NINA (albeit limited);<sup>48</sup> TANE’s<sup>49</sup> future funding to NINA is limited to loans, not equity contributions, that constitute only about 1% of the total investments in STP Units 3 and 4 to date;<sup>50</sup> future funding for construction and operation will be provided by project finance and the sale of electricity from STP Units 3 and 4.<sup>51</sup> Additionally, according to Applicant, NRG remains active by exercising its voting authority on the NINA Board.<sup>52</sup> NRG Energy owns 90% of NINA, and therefore, the NRG Energy Board Member has the voting authority to decide all

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7 AEC 431, 445-46 (1974); Southern California Edison Co. (San Onofre Units 2 & 3), ALAB-268, 1 NRC 383, 400 (1975)).

<sup>44</sup> Intervenor’s Statement of Facts ¶ 5.

<sup>45</sup> NRG Energy is a U.S. owned and controlled corporation. Applicant’s Statement of Facts ¶¶ I.B.1, I.B.2, II.A.1.

<sup>46</sup> CPS Energy is a Texas municipal utility and independent Board of the City of San Antonio. Applicant’s Statement of Facts ¶ II.A.1.

<sup>47</sup> Applicant’s Statement of Facts ¶¶ I.B.2, I.C.1, I.C.4, II.A.5.

<sup>48</sup> Applicant’s Statement of Facts ¶ I.C.5.

<sup>49</sup> Toshiba America Nuclear Energy Corporation (TANE) is a U.S. subsidiary of Toshiba Corporation, a Japanese entity. Applicant’s Statement of Facts ¶¶ I.B.1, I.B.3.

<sup>50</sup> Applicant’s Statement of Facts ¶ I.C.3.

<sup>51</sup> Applicant’s Statement of Facts ¶¶ I.C.5, II.C., II.D.

<sup>52</sup> Applicant’s Statement of Facts ¶ I.B.2.

NINA Board matters that are to be decided by majority or supermajority vote.<sup>53</sup> Only a limited number of matters also require consent of the TANE Board Member.<sup>54</sup>

Applicant also disputes Intervenor's principal statement that, according to Staff, "NINA's application does not meet the requirements of 10 C.F.R. § 50.38 because . . . Toshiba has the power to exercise ownership, control, or domination over NINA."<sup>55</sup> Applicant states that Toshiba does not exercise inappropriate ownership, control, or domination of NINA.<sup>56</sup> According to Applicant, the Applicant's NAP "for STP Units 3 and 4 contains measures to negate FOCD with respect to matters involving nuclear safety, security, or reliability of STP Units 3 and 4 throughout the application review stage, construction, and operation of STP Units 3 and 4."<sup>57</sup>

For its part, Staff attempts to buttress Intervenor's motion with new arguments and facts to support the summary disposition of Contention FC-1. Even then, Applicant's response raises several genuine disputes of material fact with Staff's additional arguments and facts regarding Contention FC-1. For instance, regarding project financing, Staff states that NRG Energy will provide limited capital funding henceforth, with TANE continuing to provide funding in the form of loans and service.<sup>58</sup> Applicant disputes this fact, stating that, while this will be the case during the license application process, funding for construction and operation will be provided by

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<sup>53</sup> Applicant's Statement of Facts ¶ I.B.2.

<sup>54</sup> Applicant's Statement of Facts ¶ I.B.2.

<sup>55</sup> Intervenor's Statement of Facts ¶ 7.

<sup>56</sup> Applicant's Statement of Facts ¶¶ I.E, II.E.

<sup>57</sup> Applicant's Statement of Facts ¶ II.E.1.

<sup>58</sup> Staff's Statement of Facts ¶ 10.

project finance, the majority of which will be provided both by U.S. sources and by the Applicant's sale of electricity from proposed STP Units 3 and 4.<sup>59</sup>

Applicant also disputes Staff's characterization of the ownership structure of NINA. Citing several provisions of Revision 6 to the COLA, Staff states that the "final ownership structure for STP Units 3 and 4 is uncertain and will vary, with foreign ownership percentages of NINA potentially increasing up to 90%."<sup>60</sup> Applicant disputes this claim and asserts that the COLA will be revised to require maintenance of the existing ownership shares; i.e., approximately 90% ownership of NINA by NRG Energy (a U.S. owned and controlled entity) and approximately 10% by TANE (a U.S. subsidiary of Toshiba, a Japanese entity).<sup>61</sup> As a result, Applicant disputes Staff's assertions that Toshiba (through TANE) will have control of NINA's Board of Directors and consequently control of NINA's nuclear safety and security decision making.<sup>62</sup> Putting other issues aside, to grant summary disposition or continue the proceeding in the face of Applicant's representations would simply waste resources by potentially terminating the proceeding for FOCD, then restarting the proceeding once Applicant amends its COLA.<sup>63</sup> However, because Applicant has not filed its revised COLA on FOCD to date our denial of the Motion for Summary Disposition does not rest solely on this issue.

Applicant also disputes Staff's challenge of the adequacy of the NAP. Staff asserts, inter alia, that "the NAP is insufficient to address concerns about control over special nuclear

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<sup>59</sup> Applicant's Statement of Facts ¶¶ I.C.3, I.C.5, II.C.

<sup>60</sup> See e.g., Staff's Statement of Facts ¶ 14.

<sup>61</sup> See Applicant's Statement of Facts ¶ I.B.1.d.

<sup>62</sup> Applicant's Statement of Facts ¶¶ I.B, I.E.

<sup>63</sup> See Private Fuel Storage, L.L.C. (Independent Spent Fuel Installation), CLI-01-26, 54 NRC 376, 381 (2001); see also Duke Energy Corp. (McGuire Nuclear Station, Units 1 & 2; Catawba Nuclear Station, Units 1 & 2), CLI-01-27, 54 NRC 385, 389 (2001).

material.”<sup>64</sup> Applicant disputes this, arguing that the “NAP [does] provide[] for U.S. control over all decisions affecting nuclear safety, security, or reliability.”<sup>65</sup> According to Applicant, non-U.S. citizens will not be involved in staffing of the key positions of NINA, such as the Chief Executive Officer and Chief Nuclear Officer. To the contrary, Applicant claims the appointment of those positions has been and will be controlled by NRG Energy’s member on the NINA Board of Directors.<sup>66</sup> Moreover, Applicant asserts that the Nuclear Advisory Committee (NAC)<sup>67</sup> can alert the U.S. Government to any potential non-compliance with foreign ownership, control, or domination, and can initiate a special meeting of NINA’s security committee to address any such concerns.<sup>68</sup>

These conflicting statements, supported by affidavit, demonstrate that genuine issues of material fact remain in dispute regarding whether Applicant, is owned, controlled, or dominated by a foreign entity. Accordingly, based on the motion for summary disposition and the responses and Intervenor’s reply, an evidentiary hearing is the appropriate vehicle for weighing these factual claims and legal arguments and reaching a merits-based decision.

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<sup>64</sup> See e.g., Staff’s Statement of Facts ¶ 36.

<sup>65</sup> Applicant’s Statement of Facts ¶ II.E.

<sup>66</sup> Applicant’s Statement of Facts ¶¶ I.B, I.E.

<sup>67</sup> According to Applicant, the NAC would be an independent body composed of U.S. citizens that would provide oversight for compliance with FOCD restrictions. Applicant’s Statement of Facts ¶ II.E.5.

<sup>68</sup> Applicant’s Statement of Facts ¶¶ II.E.4.h, II.E.5.

IV. Conclusion

For the foregoing reasons, Intervenors' motion is denied.

It is so ORDERED.

THE ATOMIC SAFETY  
AND LICENSING BOARD  
*/RA/*

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Michael M. Gibson, Chairman  
ADMINISTRATIVE JUDGE

*/RA/*

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Gary S. Arnold  
ADMINISTRATIVE JUDGE

*/RA/*

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Randall J. Charbeneau  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
February 7, 2012

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of )  
)  
NUCLEAR INNOVATION NORTH AMERICA LLC ) Docket Nos. 52-012-COL and 52-013-COL  
(NINA) )  
)  
(South Texas Project Units 3 and 4) )  
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **MEMORANDUM AND ORDER (Ruling on Intervenors' Motion for Summary Disposition of Contention FC-1)** have been served upon the following persons by the Electronic Information Exchange.

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Docket Nos. 52-012-COL and 52-013-COL

**MEMORANDUM AND ORDER (Ruling on Intervenors' Motion for Summary Disposition of Contention FC-1)**

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**MEMORANDUM AND ORDER (Ruling on Intervenors' Motion for Summary Disposition of Contention FC-1)**

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Dated at Rockville, Maryland  
this 7<sup>th</sup> day of February 2012