January 4, 2013

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
	)	
NUCLEAR INNOVATION NORTH AMERICA	)	
LLC	)	Docket Nos. 52-012 & 52-013
	)	
	)	
(South Texas Project, Units 3 & 4)	)	

NRC STAFF'S ANSWER TO NINA'S MOTION TO PROCEED
WITH A HEARING ON CONTENTION FC-1

INTRODUCTION

Pursuant to 10 C.F.R. § 2.323 the Staff hereby responds in opposition to "NINA's Motion to Proceed with a Hearing on Contention FC-1" (Motion). As further discussed below, NINA's (hereinafter Applicant's) motion should be rejected because: 1) it is untimely; 2) it is based on a false premise of Staff delay; 3) it is contrary to NRC practice to begin a hearing before the Staff has completed its review; and 4) there is no legal authority to exclude the Staff from the hearing.

BACKGROUND

On May 16, 2011, the Intervenors filed one new contention based on foreign ownership, control, or domination (FOCD) restrictions. Intervenors' Motion for Leave to File a New Contention Based on Prohibitions Against Foreign Control (May 16, 2011). The Applicant, Nuclear Innovation North American LLC (NINA), opposed admission of the contention, but the Staff did not. NINA's Answer to Intervenors' Motion for Leave to File a New Contention Based on Prohibitions Against Foreign Control (June 10, 2011); NRC Staff's Answer to Intervenors' Motion for Leave to File a New Contention Based on Prohibitions Against Foreign Control (June 10, 2011). On September 30, 2011, the Board admitted contention FC-1. *Nuclear Innovation*

North America LLC (South Texas Project Units 3 & 4), LBP-11-25, 74 NRC __ (Sept. 30, 2011) (slip op.). On December 13, 2011, the Staff issued a determination letter (Determination Letter) (ML113390176) to the Applicant indicating that the COL application does not meet the FOCD requirements of 10 C.F.R. § 50.38.[1] On December 30, 2011, the Intervenors filed a "Motion for Summary Disposition of Intervenors' Contention FC-1" based on the Staff's Determination Letter. On February 7, 2012, the Board denied the motion for summary disposition. *Nuclear Innovation North America LLC* (South Texas Project Units 3 & 4), (Feb. 7, 2012) (unpublished).

DISCUSSION

I. The Motion is Untimely.

The Applicant bases its motion on its claim that "the NRC Staff continues to leave its FOCD determination unresolved with no decision in sight." Motion at 1. But the status of the Staff's schedule has been known since October, when the Staff first stated its intent to provide a schedule in early 2013.[2] Nothing has changed in the intervening three months.

NRC regulation on motion practice at 10 C.F.R. § 2.323(b) requires that motions be "filed within ten (10) days after the occurrence or circumstance from which the motion arises," which was reiterated and emphasized in the Board's Revised Scheduling Order on October 3, 2012. Revised Scheduling Order at 9. However, the Applicant did not file in October, when its motion would have been timely. Instead, the Applicant waited nearly three months to file, and is

[1] The Staff also notified the Board and the parties of this Determination Letter. *See* Letter from Michael Spencer to Members of the Licensing Board, Notification of the Issuance of a Determination Letter in the STP Units 3 and 4 COL Proceeding (Dec. 14, 2011).

[2] NRC Staff Status Report Update (Oct. 1, 2012) (ADAMS Accession No. ML12275A259).

therefore untimely.[3]

Whenever interveners are late to file, the Applicant has never missed an opportunity to object on timeliness grounds. Indeed, the Applicant has raised timeliness arguments in this proceeding on multiple occasions. *See, e.g.,* NINA's Answer Opposing New Contention Concerning Temporary Storage and Ultimate Disposal of Nuclear Waste at South Texas Units 3 & 4, at 2 (Aug. 8, 2012) ("The information upon which the Proposed Contention is based is not materially different than information previously available…."); NINA'S Answer to Intervenors' Motion for Leave to File A Reply, at 2 (Jan. 27, 2012) ("Even if replies were permissible, the Intervenors' Motion is untimely."); NINA's Answer in Opposition to Proposed Contention Regarding Fukushima Task Force Report, at 13 (Sept. 6, 2011) ("[T]he timeliness of the Motion must be judged by when that relevant information was disclosed, not by the timing of the most recent report that discussed the information."). Now the Applicant brings an untimely motion, without even an attempted justification for the motion's timeliness. Accordingly, NINA's motion should be dismissed as untimely.

II. The Staff Has Diligently Reviewed The STP Application, Despite Many Delays on The Part of The Applicant.

The premise underlying the Applicant's motion is the unfounded assertion that the Staff has engaged in "prolonged delay" of the review of the application causing it to remain pending for almost five years. Motion at 8. This argument simply ignores the fact that the primary

[3] The Applicant filed this motion not only immediately before the December holidays, but also a mere two weeks before the first status update in "early next year," which was filed on January 2nd. Consistent with the Staff's previous status updates, the January 2nd status update reflects the Staff's expectation that there would be a schedule by the end of this month for completing its review of the foreign ownership, control, or domination issues.

reason that the STP application has been pending for five years is due to the actions of the Applicant. Although the application was docketed on November 29, 2007, shortly thereafter the Applicant decided to switch vendors for the application and sent a letter to the Staff requesting that the review of the application *be suspended*, in part, until the Applicant could arrange vendor support. *See* Letter from M. A. McBurnett, Vice President, STP Nuclear Operating Company, to U.S. Nuclear Regulatory Commission (Jan. 10, 2008) (ADAMS Accession No. ML080160242). The Staff promptly suspended most of the safety review until such time as the Applicant was prepared to support the review. *See* Letter from David B. Matthews, Director, Division of New Reactor Licensing, to Mark McBurnett, Vice President, South Texas Project Nuclear Operating Company (Jan. 30, 2008) (ADAMS Accession No. ML080230721). Over a year after its initial request to suspend the review, the Applicant informed the Staff that it was prepared to support the review, and the review of the application began. *See* Letter from Scott Head, Manager, STP Nuclear Operating Company, to U.S. Nuclear Regulatory Commission (Jan. 15, 2009) (ADAMS Accession No. ML090210287). The Staff utilizes a nominal thirty month review schedule for the review of a COL application referencing a certified design. *See* NUREG/BR-0468, *Frequently Asked Questions About License Applications for New Nuclear Power Reactors*, at 10 (Dec. 2009) (Attachment 1). This schedule is premised on the application not undergoing major substantive revisions in that time. *See id.* Over the last four years there have been numerous substantive changes to the application by the Applicant which have led to lengthening review times.

Significantly, a major revision to the financing and ownership structure occurred on June 23, 2011. *See* Proposed Update to COLA Part 1 Information (June 23, 2011) (ADAMS Accession No. ML11178A106). The current Applicant is NINA, a limited liability corporation that was formed in February 2008. *Id.* at 9. NINA is owned approximately 89.5% by NRG and

10.5% by TANE, a wholly owned subsidiary of Toshiba Corporation- a foreign corporation. *Id.* In the spring of 2011, NRG, the majority owner, announced that it would not invest any further capital in the STP COL project. *Id.* at 10. NRG also informed the SEC that while it still held majority legal ownership it no longer had a controlling financial interest. *Id.* at 11. In its June 23, 2011, update to the application, the Applicant included a provision that would have allowed up to 90% foreign ownership of NINA. *Id.* at 7.[4] This new information meant that the Staff financial qualifications review and FOCD review essentially had to be restarted.

The many significant changes to the application have also created novel issues in both the FOCD and financial qualifications realm. Specifically with respect to FOCD, the Staff is not aware of any prior instance in which all domestic investors have ceased further financial contributions in a nuclear reactor project, leaving only the foreign investor to provide funds for the project's continuation. Despite this major substantive change, the Staff promptly reviewed the foreign ownership portion of this revised application and sent a letter in a matter of months stating that the application as revised did not comply with 10 C.F.R. § 50.38. *See* Letter from David Matthews, Director, Division of New Reactor Licensing, to Mark McBurnett, Vice President Regulatory Affairs (Dec. 13, 2011) (ADAMS Accession No. ML113390176). In response, the Applicant submitted several RAI responses and supplemental RAI responses that significantly changed its application, the latest of which was submitted in May 2012.[5] The Staff

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[4] The Applicant subsequently deleted this provision after the Staff issued its Determination Letter. *See* Response to Request for Additional Information (Feb. 23, 2012) (ADAMS Accession No. ML12060A106).

[5] NINA submitted a supplemental RAI response on September 5, 2012, regarding a proposed merger between NRG and GenOn, but this did not involve a change to the COL application.

has been diligently reviewing NINA's submissions including the most recent significant response filed only seven months ago. A review pending for seven months with the Staff of a novel issue is hardly evidence of prolonged delay; the Staff's review of the many significant changes made to the FOCD portions of the STP COL application is well within the Staff's 30 month timeframe for review.

Moreover, in August 2012, the licensee for STP Units 1 and 2 informed the Staff that there was a proposed merger between NRG Energy, Inc., one of the owners of NINA, and GenOn Energy, Inc. Request for Threshold Determination Under 10 CFR 50.80 (Aug. 1, 2012) (ADAMS Accession No. ML12228A380). The licensee anticipated that this merger would close by the first quarter of 2013. *Id.* at 2. As noted by the Staff in its September 4, 2012 status report, if and when the merger is completed, the STP Units 3 and 4 application would need to be updated to reflect the merger, and the Staff would review any changes. *See* NRC Staff Status Report Update (Sept. 4, 2012) (ADAMS Accession No. ML12248A119).[6] On September 5, 2012, the Applicant submitted a supplemental RAI response on the STP Units 3 and 4 docket stating that there was no basis to revise the COL application because the merger had not yet occurred, but nonetheless providing information about the proposed merger. *See* Supplemental Information in Support of Request for Additional Information, at 2 (Sept. 5, 2012) (ADAMS Accession No. ML12255A037). From press reports, the Staff has recently learned that the merger was, in fact, completed on December 14, 2012. Press Release, NRG, NRG and GenOn

[6] There are several reasons why a proposed merger would not be reviewed in these circumstances until it is finalized. An applicant's ownership structure does not change until the merger is consummated and a proposed merger might never be consummated. In addition, even if the merger is finalized, this might occur after substantial delay and the terms of the merger may have changed in the meantime.

Complete Merger (Dec. 14, 2012) (Attachment 2). Thus far, the application has not been updated to reflect the completed merger.

Furthermore, the Staff review of the FOCD issue has not impacted the overall schedule for the STP review. Numerous issues with the application remain unresolved, for which the Applicant continues to make changes to the application. One of those issues is the above mentioned financial qualifications review. The most recent example involving a significant change to the application is the Applicant's letter of Dec 6, 2012, stating that it is changing the vendor (and thus the design) for the spent fuel racks, and that it anticipates submitting topical reports in support of the new racks in August 2013. *See* Notification of Vendor Change for Spent Fuel Racks (Dec. 6, 2012) (ADAMS Accession No. ML12346A446). Spent fuel pool rack reviews are by their very nature complex reviews, and the Staff anticipates that it will take many months to complete this review after the topical reports are received. Based on the Spent Fuel pool rack issue alone, which is not the only outstanding issue, the Staff review of the application will not be completed until at least 2014. Thus, any suggestion that the Staff's continuing review of FOCD is delaying an overall decision on the license application does not stand up to scrutiny.

III. Scheduling a Hearing Before the Staff Has Reached a Position on Contested Issues is Contrary to Established NRC Practice and Regulations.

In this motion the Applicant makes the novel argument that the evidentiary hearing could commence before the Staff has completed its review of the contested issues. The Applicant does not identify a single proceeding where the evidentiary hearing on contested issues commenced before the Staff completed its review of those contested issues. Similarly, the Staff is unable to identify any proceedings where the evidentiary hearing commenced on a contested issue prior to the Staff coming to a position on the contested issue. In support of its novel

approach, the Applicant asserts that 10 C.F.R. § 2.332(d) gives the Board the authority to schedule a hearing before the Staff has completed its review. However, the Applicant's argument is contrary to the intent of the regulation.

Section 2.332(d) states that in establishing a schedule, presiding officers are to "ensure that the hearing schedule does not adversely impact the staff's ability to complete its reviews in a timely manner," and that a hearing can be scheduled before "publication of the NRC staff's safety evaluation upon a finding by the presiding officer that commencing the hearings at that time would expedite the proceeding." See 10 C.F.R. § 2.332(d). This regulation was altered as part of the 2004 revisions to Part 2. The Commission noted that the Staff may not be in a position to provide testimony or take a final position on some issues until its documents have been completed, but that "[n]onetheless, the Commission recognizes that where the NRC staff is a party, the staff could prepare testimony and evidence, and take a final position on contested matters if its safety review has been completed in areas relevant to the contested matters." Changes to Adjudicatory Process, 69 Fed. Reg. 2182, 2187 (Jan. 14, 2004) (final rule). This statement makes it clear that, in allowing a hearing to go forward before publication of the SER, the Commission contemplated that the Staff review would be completed on the issues in controversy. This intent is also consistent with the requirement in § 2.332(d) that the hearing schedule not adversely impact the Staff's ability to complete its reviews in a timely manner. Scheduling a hearing on contested issues prior to the Staff completing its review of the contested issues would adversely impact the Staff's ability to complete its review of contested issues in a timely manner, because the staff who should be working to complete the FOCD portion of the SER would be diverted to witness preparation activities, such as preparing testimony.

The Commission's intent behind allowing an evidentiary hearing to precede the

completion of the SER is further illuminated by the Commission's discussion in the Statements of Consideration for the 2004 revisions to Part 2 of what should be introduced as evidence at hearing. The Commission noted that the Staff's practice has been to prepare relatively complete SERs without preparation of separate documents that specifically address matters in controversy. *See* 69 Fed. Reg. at 2208–09. However, the Commission also observed that the Staff could prepare testimony and take a final position on contested safety matters if its safety review had been completed in the areas relevant to the contested matters. *Id.* Thus, contested safety issues may proceed to evidentiary hearing without a completed SER as long as the Staff has completed its review in the areas being contested. *Id.* For example, in many proceedings, including this one, the Board has scheduled the evidentiary hearing based on the completion of the ACRS report rather than the completion of the final SER. *See* Initial Scheduling Order, at 14 (Oct. 20, 2009) (ADAMS Accession No. ML092930523). Utilizing the ACRS report as the trigger date for the evidentiary hearing rather than the final SER takes advantage of the flexibility allowed by § 2.332 to proceed to an evidentiary hearing prior to the publication of the final SER.

The Applicant's view that the hearing could take place prior to the completion of the Staff's review of the contested issues demonstrates a lack of understanding of the role of the Staff. The Commission recently outlined the role of the Staff in the high level waste proceeding in response to a petition from the State of Nevada to remove the Staff from that hearing. *See* Letter from Edward McGaffigan, Jr., Acting Chairman, NRC, to Brian Sandoval, Attorney General, State of Nevada (July 8, 2003) (ADAMS Accession No. ML031631253). The Commission stated that the State was misconstruing the hearing as a matter of private law. *See id.* at 5. The Commission explained that the Staff is independent and has an extraordinary knowledge of the application and the issues surrounding it, and that it is difficult to imagine not

putting that independence and knowledge to use. *Id.* Moreover, "the staff's review of the application—not any hearing on the application—is the key element in the regulatory process for ensuring that the disposal of high-level radioactive waste will be safe." *Id.*

As the Commission has previously explained "the staff's participation on all substantive issues is necessary to assist in the development of a sound record … The Commission and the adjudicatory boards rely heavily on the staff's expertise…." Rules of Practice for Domestic Licensing Proceedings, 51 Fed. Reg. 36,811, 36,811-12 (Oct. 16, 1986). In addition, the Commission found that "the staff is the representative of the public interest in these proceedings and that the staff should continue to present and defend the results of its objective evaluation of the application at the hearing for the benefit of the public." *Id.* at 36,812. The Staff's presentation and defense of its safety and environmental conclusions in a public hearing is most consistent with the agency goal of ensuring the transparency and openness of the licensing process. All of these reasons for Staff participation in proceedings are equally applicable as to why the evidentiary hearing cannot commence before the Staff has completed its review and arrived at a position.

In fact, even in Subpart M proceedings where the Staff is not a party the Staff still presents witnesses and its SER. 10 C.F.R. § 2.1316(b); *see, e.g.*, *Power Authority of The State of New York and Entergy Nuclear Fitzpatrick LLC, Entergy Nuclear Indian Point 3 LLC, and Entergy Nuclear Operations, Inc.* (James A. FitzPatrick Nuclear Power Plant and Indian Point Nuclear Generating Unit No. 3), CLI-01-14, 53 NRC 488, 559–60 (June 21, 2001) (*redacted version*) (ADAMS Accession No. ML012000311) (In this proceeding the Staff chose not to participate as a party, but still presented witnesses and submitted a brief at the request of the presiding officer). Similarly, Subpart L contemplates that the hearing will be held after the Staff review is completed, regardless of whether or not the Staff is a party. In 2004, when revising Part 2, the

Commission explicitly added a provision allowing for Commission review when the presiding officers' initial decision was inconsistent with the Staff's action. 10 C.F.R. § 2.1210(a)(2). *See* Changes to Adjudicatory Process, Fed. Reg. 2182, 2209 (Jan. 14, 2004). The reason for this added provision was to ensure that the Commission was the final agency arbiter when the presiding officer's decision was inconsistent with the Staff position. *Id.* Holding the evidentiary hearing prior to the Staff reaching a position on contested matters removes this safeguard[7].

Finally, even if it were appropriate for a licensing board to schedule a hearing prior to the Staff reaching a position on contested matters, the schedule proposed by the Applicant is both unrealistic and contrary to the letter and spirit of the Board's Revised Scheduling Order. In the Revised Scheduling Order, initial testimony and evidence is due within sixty days of the issuance of ACRS report on the application, Revised Scheduling Order, at 14, at which point the Staff will have completed its safety review. Here, the Applicant not only proposes to schedule initial testimony and evidence prior to the Staff having completed its review, but proposes that initial testimony and evidence be due sixty days after the Applicant filing its motion, a motion which the Staff opposes and believes to be without merit. If the Board were to schedule a hearing prior to the Staff reaching a position on contested matters, the trigger date for evidentiary filings should be the issuance of the Board's order, not the filing of an opposed motion.

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[7] Since the Staff is bound by the Board ruling in the event the Board was to proceed to evidentiary hearing in the absence of a Staff position, the Staff would presumably not publish an SER that might be contrary to the Board ruling on contested issues.

IV. The Board Has No Authority to Require the Staff to Take a Position by January 30, 2013.

The Applicant suggests that the Board should order the Staff to disclose its position and a description of the basis for its position by January 30, 2013. The Applicant cites no legal precedent that would allow such an action, but rather bases its extraordinary request on the purported 'unfairness' of the Staff withholding its position until the filing of testimony. *See* Motion at 9. The Applicant fails to mention that this alleged 'unfairness' is wholly of the Applicant's own making in that it is the Applicant suggesting that testimony should be due before the Staff has arrived at its position. It is well established that the Licensing Board has no authority to direct the Staff in the performance of its safety review. *See, e.g.*, *The Curators of the University of Missouri*, (Byproduct License and Special Nuclear Material License), CLI-95-1, 41 NRC 71, 121 (Feb. 28, 1995). This suggestion that the Board should require the Staff to 'disclose its position' is nothing more than a transparent attempt on the part of the Applicant to request that the Board direct the Staff in the performance of its safety review. Such a suggestion is especially inappropriate here, where the Staff has stated it does not yet have a position to disclose.

V. There Is No Legal Basis to Exclude the Staff from the Hearing.

Pursuant to NRC regulations, the Staff is allowed to elect whether or not it wishes to participate in proceedings of this type, and "[o]nce the NRC staff chooses to participate as a party, it shall have all the rights and responsibilities of a party with respect to the admitted contention/matter in controversy on which the staff chooses to participate." 10 C.F.R. § 2.1202(b)(3). The Applicant suggests that the Board has the authority to exclude the Staff from the proceeding should the Staff be "unable to take a position." Motion at 9. The Applicant's basis for this argument is that the Staff would not have a position to defend and thus

would have no stake in the proceeding. See Motion at 9-10. As the Applicant well knows, the Staff has not declined to take a position, rather it is working diligently to review the application and reach a determination on whether or not the application complies with 10 C.F.R. § 50.38 and § 103d. of the Atomic Energy Act. The fact that the Staff does not yet have a position demonstrates the Staff's careful consideration of the issues, not a lack of interest.

In essence, the Applicant's motion is an attempt to transform this proceeding into a simple dispute between two private parties. But, a licensing proceeding significantly implicates the public interest. As discussed above, given the significance of the issues in NRC proceedings to the public, the Commission has long stressed the importance of Staff participation, particularly at the evidentiary hearing stage of a proceeding, to ensure that the public's interest is fairly represented. Rules of Practice for Domestic Licensing Proceedings, 51 Fed. Reg. at 36,811-12. The Applicant's proposal to eliminate the Staff from this proceeding ignores and frustrates these critical policy considerations.

10 C.F.R. § 2.1202 allows the Staff to elect to be a party, and lays out certain criteria for the board to compel the participation of the Staff as a party. The Applicant attempts to suggest that somehow 10 C.F.R. § 2.1202 gives the Board the authority to exclude the Staff. *See* Motion at 10–11. While it is true that the Board can compel the Staff to participate, it does not follow that the Board has the authority to remove the Staff from the proceeding. The Staff can choose to participate. The Board has the authority to order the Staff to participate when the Staff has chosen not to. By its plain language, Section 2.1202 does not give the Board the opposite authority to order the Staff not to participate.[8]

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[8] The Board does have the power to suspend the participation of a party who is noncompliant, (continued…)

The Applicant references an alleged lack of notice of intent to participate as a party on the part of the Staff and asserts that the time to elect to participate has "long since passed." *See* Motion at 10, n.29. The Staff has previously provided notice of its intent to participate at earlier stages of the proceeding, and the Staff fully intends to participate as a party in the evidentiary hearing on this contention. The Staff has been participating without objection as a party to this contention, including filing a response to the Intervenors' summary disposition motion. *See* NRC Staff's Answer to Intervenors' Motion for Summary Disposition of Contention FC-1 (Jan. 19, 2012) (ADAMS Accession No. ML12019A379). Notably, both the Applicant in its summary disposition response and the Board in its ruling on the summary disposition motion referred to the Staff as a party. Memorandum and Order (Ruling on Intervenors' Motion for Summary Disposition of Contention FC-1), at 8 (Feb. 7, 2012) (ADAMS Accession No. ML12038A169); NINA's Answer to Intervenors' Motion for Summary Disposition of Intervenors' Contention FC-1, at 1–2 (Jan. 19, 2012) (ADAMS Accession No. ML12019A045) ("the Staff is simply another party to this proceeding"). Lest there be any confusion on this matter, this response can hereby serve as the Staff notice of its intent to participate as a party on this contention, and any future contentions that may be admitted in the proceeding.[9]

(…continued)

disorderly, or contemptuous, as described in § 2.314(c), but there has been no allegation in this proceeding that any party, let alone the Staff, has been noncompliant, disorderly, or contemptuous.

[9] By its terms, § 2.1202(b)(2) expressly allows the NRC Staff to become a party after the fifteen day time period by notifying the parties and making the disclosure required by § 2.336(b)(3)–(5). The Staff had always intended to participate as a party and has been making the required disclosures throughout this proceeding.

CONCLUSION

The Applicant's motion misconstrues NRC regulations and the role of the Staff in hearings and tells an incomplete story of the history of this COL application review. The Staff has diligently reviewed this COL application and will continue to do so. The Staff has elected to participate in this evidentiary hearing, and the evidentiary hearing should not commence until the Staff reaches a position on the contested issues.

Respectfully submitted,

/Signed (electronically) by/
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Dated at Rockville, MD
This 4th day of January 2012

REQUIRED CERTIFICATION

I certify that I have made a sincere effort to make myself available to listen and respond to the moving party, and to resolve the factual and legal issues raised in the motion, and that my efforts to resolve the issues were unsuccessful.

Executed in Accord with 10 CFR § 2.304(d)

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1.3.1 Combined License

1.3.1.1 What is a combined license (COL)?

A COL authorizes construction and conditional operation of a new nuclear facility. Once the required inspections, tests, and analyses are performed, and the acceptance criteria are met, the Commission can authorizes the operation of the facility.

1.3.1.2 What is required of a COL applicant ?

The specific requirements are contained in 10 CFR 52.79 and 10 CFR 52.80. The application for a COL for a new nuclear facility must address; the design, environmental impacts, site safety, financial and technical qualifications, emergency plans, security plans, quality assurance programs, and inspections, tests, analyses, and acceptance criteria. It must also include a final safety analysis report and the inspections, tests, and analyses that are necessary to demonstrate that the facility has been constructed and will operate in accordance with the licensed design.

1.3.1.3 How long does it take to complete the review of a COL application?

Generally, the NRC performs an acceptance review in 60 days, followed by a nominal 30-month detailed review for an application that references a certified design. Non-certified designs would take 48 to 60 months to review. The NRC also allows 12 months for completion of the hearing process. There are many factors that could impact the review schedule, including requests from the NRC for additional information and the timely availability of that information from the applicant, and other factors outside the control of the NRC. The agency develops specific review schedules for each application based on its completeness and quality.

1.3.1.4 What happens during the review process?

The NRC staff reviews the documents in the application to ensure that they demonstrate conformance with the NRC's regulations for a COL and that there is reasonable assurance that the facility will be constructed and operated in conformity with the license, the provisions of the Atomic Energy Act, and the Commission's regulations. During the review the NRC staff may also request additional information from the applicant in order to complete the review. In addition, the NRC holds numerous public meetings at various stages of the review process in the vicinity of the proposed site and at NRC Headquarters. Applicants and the NRC must comply with the Atomic Energy Act, NEPA, and NRC regulations.

Attachment 2

PRESS RELEASE

FOR IMMEDIATE RELEASE

NRG and GenOn Complete Merger, Creating Nation's Largest Competitive Power Generator

—Combined company has about 47,000 megawatts of generating capacity comprised of nearly 100 generating facilities in 18 states —

PRINCETON, NJ; and HOUSTON; December 14, 2012 — NRG Energy, Inc. (NYSE: NRG) and GenOn Energy, Inc. (NYSE: GEN) have completed their merger effective today, creating the largest competitive power generator in the United States. NRG now has a diverse fleet of almost 100 generation assets with a total capacity of approximately 47,000 megawatts (MW) concentrated in three domestic regions: East, Gulf Coast and West.

"Today, we usher in a new era of scale and scope in the American power industry, creating additional value for our shareholders and enhancing our ability to serve our growing retail energy customer base with safe, affordable and reliable power," said David Crane, NRG's President and CEO.

In connection with the consummation of the merger, GenOn Energy stockholders will receive a fixed ratio of 0.1216 shares of NRG common stock for each share of GenOn common stock, except that cash will be paid in lieu of fractional shares. GenOn common stock will cease being traded prior to the market opening Monday, Dec. 17, and will no longer be listed on the New York Stock Exchange.

With the merger completed, NRG is now dual headquartered, with financial and commercial headquarters in Princeton and operational headquarters in Houston. The combined fleet of conventional and renewable power generation facilities produced more than 104 terawatt-hours (TWh) of electricity in 2011 and can supply nearly 40 million homes.

About NRG Energy

NRG is at the forefront of changing how people think about and use energy. We deliver cleaner and smarter energy choices for our customers, backed by the nation's largest independent power generation portfolio of fossil fuel, nuclear, solar and wind facilities. A Fortune 300 company, NRG is challenging the U.S. energy industry by becoming the largest developer of solar power, building the first privately-funded electric vehicle charging infrastructure, and providing customers with the most advanced smart energy solutions to better manage their energy use. In addition to 47,000 megawatts of generation capacity, enough to supply nearly 40 million homes, our retail electricity providers – Reliant, Green Mountain Energy and Energy Plus – serve more than two million customers. More information

is available at www.nrgenergy.com. Connect with NRG Energy on Facebook and follow us on Twitter @nrgenergy.

Forward Looking Statements

In addition to historical information, the information presented in this communication includes forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Exchange Act. These statements involve estimates, expectations, projections, goals, assumptions, known and unknown risks and uncertainties and can typically be identified by terminology such as "may," "will," "should," "could," "objective," "projection," "forecast," "goal," "guidance," "outlook," "expect," "intend," "seek," "plan," "think," "anticipate," "estimate," "predict," "target," "potential" or "continue" or the negative of these terms or other comparable terminology. Such forward-looking statements include, but are not limited to, statements about the anticipated benefits of the transaction between NRG and GenOn, the combined company's future revenues, income, indebtedness, capital structure, plans, expectations, objectives, projected financial performance and/or business results and other future events, and economic and market conditions.

Forward-looking statements are not a guarantee of future performance and actual events or results may differ materially from any forward-looking statement as result of various risks and uncertainties, including, but not limited to, those relating to: impact of the transaction on relationships with customers, suppliers and employees, the ability to finance the combined business post-closing and the terms on which such financing may be available, the financial performance of the combined company following completion of the transaction, the ability to successfully integrate the businesses of NRG and GenOn, the ability to realize anticipated benefits of the transaction (including expected cost savings and other synergies) or the risk that anticipated benefits may take longer to realize than expected, legislative, regulatory and/or market developments, the outcome of pending or threatened lawsuits, regulatory or tax proceedings or investigations, the effects of competition or regulatory intervention, financial and economic market conditions, access to capital, the timing and extent of changes in law and regulation (including environmental), commodity prices, prevailing demand and market prices for electricity, capacity, fuel and emissions allowances, weather conditions, operational constraints or outages, fuel supply or transmission issues, hedging ineffectiveness.

Additional information concerning other risk factors is contained in NRG's and GenOn's most recently filed Annual Reports on Form 10-K, subsequent Quarterly Reports on Form 10-Q, recent Current Reports on Form 8-K, and other SEC filings.

Many of these risks, uncertainties and assumptions are beyond NRG's ability to control or predict. Because of these risks, uncertainties and assumptions, you should not place undue reliance on these forward-looking statements. Furthermore, forward-looking statements speak only as of the date they are made, and NRG does not undertake any obligation to update publicly or revise any forward-looking statements to reflect events or circumstances that may arise after the date of this communication. All subsequent written and oral forward-looking statements concerning NRG, the transaction, the combined company or other matters and attributable to NRG or any person acting on their behalf are expressly qualified in their entirety by the cautionary statements above.

# # #

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
	)	
NUCLEAR INNOVATION NORTH AMERICA LLC	)	Docket Nos. 52-012 & 52-013
	)	
	)	
(South Texas Project, Units 3 & 4)	)	

CERTIFICATE OF SERVICE

I hereby certify that the "NRC STAFF'S ANSWER TO NINA'S MOTION TO PROCEED WITH AHEARING ON CONTENTION FC-1" has been filed through the E-Filing system this 4th day of January 2013.

/Signed (electronically) by/
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