April 29, 2013

Mr. Mark McBurnett
Chief Executive Officer and Chief Nuclear Officer
Nuclear Innovation North America LLC
122 West Way, Suite 105
Lake Jackson TX 77566

SUBJECT: SOUTH TEXAS PROJECT UNITS 3 AND 4 COMBINED LICENSE APPLICATION FOREIGN OWNERSHIP, CONTROL OR DOMINATION REVIEW

Dear Mr. McBurnett:

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

Following the events in Fukushima, Japan, in March of 2011, you made significant revisions to your COL application Part 1, General Financial Information. You submitted this information in Revision 6 to your COL application dated August 30, 2011. The staff reviewed Part 1 of Revision 6 to your COL application as well as the proposed negation action plan. From that review, the staff determined that NINA was subject to foreign ownership, control, or domination. In a letter dated December 13, 2011, we informed you of the staff's determination; we also informed you that no license will be issued until the requirements of Title 10 of the *Code of Federal Regulations* (10 CFR) 50.38 are met.

After receiving that letter you made changes to NINA's negation action plan as described in Part 1 of your application. These changes are reflected in Revision 8 to your COL application dated September 17, 2012. By letter dated January 31, 2013, you submitted a proposed Revised Part 1 to be submitted with Revision 9 of your COL application. Revision 9 to your COL application dated April 17, 2013, includes changes to Part 1 of the application in addition to those identified in your January 31, 2013, submittal.

On reviewing your application and all other relevant material, including the changes to Part 1 included in Revision 9 to your COL application, the staff made its evaluation relative to foreign ownership, control, or domination of NINA. The staff has determined that NINA and its wholly owned subsidiaries (NINA Texas 3 LLC and NINA Texas 4 LLC) continue to be under foreign ownership, control, or domination and do not meet the requirements of Section 103d of the Atomic Energy Act or the requirements of 10 CFR 50.38.

Document transmitted herewith contains sensitive unclassified information. When separated from the enclosure, this document is "DECONTROLLED."

The basis for the staff's determination is explained in detail in the enclosure which includes information from documents that you have designated as containing proprietary information. The staff has determined that Toshiba, a Japanese corporation, through Toshiba American Nuclear Energy Corporation (TANE), its American subsidiary, is the sole source of financing for NINA. This financial control is combined with TANE's ownership stake in NINA, TANE's Board representation, multiple and interrelated contractual arrangements with TANE, and TANE's authority to appoint NINA's Chief Financial Officer. The staff has found that, although TANE owns about 10 percent of NINA, its overwhelming financial contributions give it significantly more power than is reflected by this ownership stake. The staff has further found that the proposed negation action plan does not negate TANE's control and domination of NINA.

Because the enclosure may contain proprietary information, the NRC is not making it publicly available. As NINA and the staff agreed, NINA will have 30 days to determine whether or not the enclosure does contain such information and to identify any information that should continue to be withheld from the public.

While NINA considers its options to move forward, the review of the remaining portions of the COL application will continue, as scheduled; however, a license will not be issued until the requirements of Section 103d of the Atomic Energy Act and 10 CFR 50.38 are met. If you would like to discuss any of the issues in this letter, please contact the lead project manager, George Wunder at (301) 415-1494.

Sincerely,

/RA/

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

Docket Nos.: 52-012
52-013

Enclosure: As stated

cc w/o encl.: See next page

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Sincerely,

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Division of New Reactor Licensing
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