

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	Docket Nos. 52-012-COL
NUCLEAR INNOVATION NORTH AMERICA LLC)	52-013-COL
(South Texas Project Units 3 and 4))	July 22, 2013

**REBUTTAL TESTIMONY OF APPLICANT WITNESSES SAMUEL J. COLLINS AND
ROBERT S. WOOD REGARDING CONTENTION FC-1**

I. WITNESS BACKGROUND

A. Samuel J. Collins (SJC)

Q1. Please state your full name.

A1. (SJC) My name is Samuel J. Collins.

**Q2. Have you previously presented testimony in this proceeding related to
Contention FC-1?**

A2. (SJC) Yes. I co-sponsored the “Direct Testimony of Applicant Witnesses Samuel J. Collins and Robert S. Wood Regarding Contention FC-1” (“Direct Testimony”) (Exh. STP000037).

**Q3. Did your Direct Testimony describe your educational and professional
qualifications?**

A3. (SJC) Yes. My responses to Questions 2 and 3 in the Direct Testimony summarized my current employment position and my educational and professional qualifications. My professional and educational qualifications also are described in my resume (Exh. STP000040). In summary, before starting my own consulting company, I worked for the U.S.

Nuclear Regulatory Commission (“NRC”) for over 30 years in various capacities, including Director of Nuclear Reactor Regulation (“NRR”). In that position I managed members of the Staff with responsibility for review of applications, including issues related to foreign ownership, control, or domination (“FOCD”). I served as the Director of NRR when several license transfer applications involving foreign participation were reviewed and approved applying the NRC’s draft and final FOCD Standard Review Plan (“SRP”) (Exh. NRC000106). In my last position at the NRC, I was the Regional Administrator of NRC’s Northeast Region (Region I) in King of Prussia, Pennsylvania.

Q4. Please summarize the conclusions in your Direct Testimony regarding Contention FC-1.

A4. (SJC) My testimony demonstrated that NINA’s Negation Action Plan (“NAP”) conforms to the FOCD SRP and NRC precedent involving approval of foreign participation in U.S. reactor projects. I also explained that NINA’s NAP includes numerous attributes that negate any potential for improper FOCD with respect to the STP Units 3 and 4 project, including the establishment of a Security Committee. Finally, I disagreed with certain aspects of the Staff’s April 29, 2013 letter with a negative determination regarding FOCD issues for STP Units 3 and 4 (“Staff FOCD Evaluation”) (Exh. NRC000104), and concluded that I would not have had a concern with the STP Units 3 and 4 project satisfying the FOCD requirements if I still were the Director of NRR.

B. Robert S. Wood (RSW)

Q5. Please state your full name.

A5. (RSW) My name is Robert S. Wood.

Q6. Have you previously presented testimony in this proceeding related to Contention FC-1?

A6. (RSW) Yes. I co-sponsored the Direct Testimony (Exh. STP000037).

Q7. Did your Direct Testimony describe your educational and professional qualifications?

A7. (RSW) Yes. My responses to Questions 5 and 6 in the Direct Testimony summarized my current employment position and my educational and professional qualifications. My professional and educational qualifications also are described in my resume (Exh. STP000041). In summary, before consulting, I worked for the NRC for many years as a financial and economic policy analyst. I was intimately and extensively involved with various nuclear power reactor financial issues and FOCD issues facing the NRC from 1978 until my retirement from the NRC in June 2002. This included development of the FOCD SRP and review of FOCD submissions. Because of my extensive experience with financial and ownership issues relevant to the safe construction, operation, and decommissioning of nuclear power plants, I applied for and was selected as the NRC's first Senior Licensee Financial Policy Advisor in 1997, a Senior Level Service position in NRR. I served in that capacity until my retirement in 2002.

Q8. Please summarize the conclusions in your Direct Testimony regarding Contention FC-1.

A8. (RSW) My testimony demonstrated that NINA's NAP includes numerous attributes that negate any potential for improper FOCD with respect to the STP Units 3 and 4 project, including the establishment of a Nuclear Advisory Committee ("NAC"). I concluded that the NAP conforms to the FOCD SRP and NRC precedent involving approval of foreign participation in U.S. reactor projects. Finally, I also testified that I disagree with certain aspects

of the Staff FOCD Evaluation, and that I would not have had a concern with the STP Units 3 and 4 project satisfying the FOCD requirements if I still were a reviewer of these issues in NRR.

II. PURPOSE

Q9. Have you reviewed the July 1, 2013 “Prefiled Direct Testimony of Anneliese Simmons on Contention FC-1” (“Simmons Direct Testimony”) (Exh. NRC000101) and the exhibits cited in that testimony?

A9. (SJC, RSW) Yes, we have reviewed the Simmons Direct Testimony and the referenced exhibits.

Q10. Have you reviewed the July 1, 2013 “Prefiled Direct Testimony of Michael F. Sheehan, Ph.D. on Behalf of Intervenors Sustainable Energy and Economic Development Coalition (SEED), Susan Dancer, the South Texas Association for Responsible Energy, Public Citizen, Daniel A. Hickl and Bill Wagner Regarding Contention FC-1” (“Sheehan Direct Testimony”) (Exh. INTR00041) and the exhibits cited in that testimony?

A10. (SJC, RSW) Yes, we have reviewed the Sheehan Direct Testimony and the referenced exhibits.

Q11. Please describe the purpose of your Rebuttal Testimony.

A11. (SJC, RSW) The purpose of our Rebuttal Testimony is to respond to certain statements made in the Simmons Direct Testimony (Exh. NRC000101) and the Sheehan Direct Testimony (Exh. INTR00041), both of which pertain to Contention FC-1.

III. FINANCIAL CONTROL

Q12. Ms. Simmons states that safeguarding the national defense and security and nuclear safety are important factors in the FOCD analysis, but not the only factors. (Simmons Direct Testimony, pages 47-49 (Exh. NRC000101)). Did Ms. Simmons evaluate FOCD issues in the context of safeguarding the national defense and security and nuclear safety as part of her testimony?

A12. (SJC, RSW) No. Although she concedes that these are important factors, and even quotes the FOCD SRP stating that the FOCD limitation has an “orientation toward safeguarding the national defense and security,” her testimony otherwise totally ignores those factors and she focuses solely on financial control.

Section 1.1 of the FOCD SRP states that “[t]he foreign control determination is to be made with an orientation toward the common defense and security.” (FOCD SRP, 64 Fed. Reg. at 52,357 (NRC000106)). Similarly, Section 3.2 of the FOCD SRP states that “the foreign control limitation should be given an orientation toward safeguarding the national defense and security.” (FOCD SRP, 64 Fed. Reg. at 52,358 (NRC000106)). As we explain in Section III of our Direct Testimony, NRC precedent related to FOCD issues consistently focuses on national defense and security and nuclear safety. (Direct Testimony, pages 10-19 (STP000037)). This does not mean that the Staff should not consider other project attributes, such as loans from Toshiba America Nuclear Energy Company (“TANE”), but in doing so, the Staff should consider these other project attributes in the context of nuclear safety, security, or reliability.

Q13. Ms. Simmons quotes from the NRC’s response to a comment made on the interim FOCD SRP and states that the response means that the Staff must consider issues beyond national defense and security. (Simmons Direct Testimony, page 48 (Exh.

NRC000101)). Do you agree with her evaluation that this comment response supports the Staff's position?

A13. (SJC, RSW) No, the comment response does not support the Staff's position.

The Commission's response to the comment states:

[I]t is true that the exertion of control over the "safety and security aspects" of reactor operations (interpreting that phrase broadly for the purpose of this discussion) can be an important factor in the foreign ownership or control analysis. However, it may not be the only important factor, given that the statute does not limit the foreign control prohibition to only those applicants who intend to be actively engaged in operation of the plant, or intend to "exert control" over operations. (FOCD SRP, 64 Fed. Reg. at 52,357 (NRC000106)).

Ms. Simmons misreads and takes out of context this response to indicate that the Staff must review additional and undefined issues beyond issues that could impact national security and safety. To the contrary, however, the response actually provides that the Staff's FOCD evaluation should look at FOCD during other phases of the project (not just plant operations) and for other project participants (not just plant operators). Notably, the response does not indicate that the Staff's review must focus on issues other than ones that could impact national security and safety. We agree that the FOCD review should consider project phases other than reactor operations and consider project participants other than the operator. However, operations is the phase of principal concern for FOCD issues, and an applicant such as NINA that is not seeking operating authority presents less of an FOCD concern. Nevertheless, our Direct Testimony and the McBurnett Direct Testimony look at all phases of the project, such as licensing, post-licensing/pre-construction, construction, and operations. The FOCD SRP requires that the evaluation of all of these phases must be given an "orientation toward safeguarding the national defense and security." (FOCD SRP, 64 Fed. Reg. at 52,358 (NRC000106)). Ms. Simmons does

not do this in her testimony, but rather reinterprets the FOCD SRP to impose new limitations on foreign participation.

Q14. Ms. Simmons criticizes the NAP, concluding that it does not negate financial control. (Simmons Direct Testimony, pages 43-45 (Exh. NRC000101)). Mr. Sheehan makes similar statements. (Sheehan Direct Testimony, pages 19-20 (Exh. INTR00041)). Do you agree with their criticism of the NAP?

A14. (SJC, RSW) No. The FOCD SRP is not aimed at negating financial control *per se*. In that regard, the FOCD SRP explicitly states that a foreign entity may provide more than 50% of the funding for a project. (FOCD SRP, 64 Fed. Reg. at 52,358 (NRC000106)). This highlights the problem with the Staff's and Intervenors' positions. They "cherry pick" parts of the FOCD SRP. For example, they ignore some of the most critical guidance issued by the Commission through the approval of the FOCD SRP, including the following statement:

Even though a foreign entity contributes 50%, or more, of the costs of constructing a reactor, participates in the project review, is consulted on policy and cost issues, and is entitled to designate personnel to design and construct the reactor, subject to the approval and direction of the non-foreign applicant, these facts alone do not require a finding that the applicant is under foreign control. (FOCD SRP, 64 Fed. Reg. at 52,358 (NRC000106)).

The Staff's and Intervenors' positions are not consistent with the FOCD SRP. Rather than focus on financial control *per se*, the FOCD SRP and NRC FOCD precedent are aimed at negating financial control to the extent that it could translate into control over decisions affecting nuclear safety, security, or reliability. Consistent with the FOCD SRP, the NINA NAP ensures that the control of decisions affecting nuclear safety, security, or reliability will be in the hands of U.S. citizens. Therefore, the NAP does not need to address financing by itself, because the prohibition on foreign control is not aimed at financial decisions in isolation from nuclear safety,

security, or reliability. Moreover, to the extent a financing issue arises that impacts nuclear safety, security, or reliability, then under the NAP, the ultimate decision over the issue would remain in the hands of a U.S. citizen.

Q15. Ms. Simmons discredits NRG Energy, Inc.’s (“NRG Energy”) 90% ownership of NINA, and corresponding governance rights, based upon the premise that TANE as a creditor exercises extensive control over NINA, citing an article by Baird and Rasmussen. (Simmons Direct Testimony, pages 30-31 (Exh. NRC000101)). Do you agree with her evaluation?

A15. (SJC, RSW) No. Ms. Simmons cites Baird and Rasmussen for the proposition that “[i]n situations involving revolving credit agreements, a creditor has control over a debtor’s cash-flow, and the threat of limiting or ceasing cash-flow is significant enough that debtors may find themselves seeking the approval of the creditor in basic business decisions to avoid such a situation.” (Simmons Direct Testimony, page 30 (Exh. NRC000101)). This position does not reflect the realities of the STP Units 3 and 4 project, which is subject to the NRC license transfer and creditor regulations in 10 CFR §§ 50.80 and 50.81. The Baird and Rasmussen analysis of lender control discusses the ability of creditors to exercise control over the senior management of a company, *i.e.*, control gained through the ability to remove and replace the Chief Executive Officer (“CEO”) and other key executives. Under the governance of NINA and the TANE credit documents, TANE does not have such rights, and instead, NRG Energy exercises this key element of “control.”

In particular, NINA corporate decisions are made by the NINA CEO or by the NINA Board, which is controlled by the NRG Energy member’s supermajority vote. Neither the CEO nor the NRG Energy member can be replaced by TANE. Therefore, it is not possible for TANE

to exercise the type of control described in the Baird and Rasmussen article. Furthermore, it would be inappropriate to assume that the NRG Energy member and the CEO would not comply with their obligations under the NRC requirements, including the requirements on FOCD. NRG Energy is an independent U.S. entity, and as the NRC Staff concluded in its November 1, 2012 threshold determination for the GenOn merger (page 5, Exh. STP000067), NRG Energy is not under foreign control.

Baird and Rasmussen rely upon a “Warnaco” example for their conclusions about an institutional lender altering corporate governance and gaining control over a debtor. (Douglas G. Baird & Robert K. Rasmussen, *Private Debt and the Missing Lever of Corporate Governance*, 154 U. Pa. L. Rev. 1209, 1226-27, 1230 (Exh. NRC000131). In the “Warnaco” example, the lenders were able to replace management and exercise *de facto* control, whereas here TANE has no such abilities. Only NRG Energy has the ability to replace the CEO or replace any officers other than the Chief Financial Officer (“CFO”).

If Warnaco were an NRC licensee, the creditors could not have exercised *de facto* control unless they first obtained a license transfer consent from the NRC under 10 CFR § 50.80. Under the special regulatory environment applicable to nuclear power plants, NRC’s creditor regulations at 10 CFR § 50.81 make clear that lenders can create a security interest, but cannot take possession or otherwise exercise control without NRC’s prior approval.

Furthermore, as discussed in the responses to Questions 14 and 22 of the McBurnett Rebuttal Testimony, Ms. Simmons does not accurately present the relative amount of financing provided by TANE vis-à-vis NRG Energy. In any event, Ms. Simmons has provided no support that the type of financial control in Warnaco is occurring, or could occur, with TANE and NINA. Instead, she only speculates that this is a possible type of control, and states that “control over

cash flow is the means by which Toshiba controls NINA.” (Simmons Direct Testimony, page 31 (Exh. NRC000101)). There is no evidence to show that such control is being exercised. In any event, NINA’s commitments for Project Finance ensure a U.S. source of funds for construction, and the NAP ensures that decisions over nuclear safety, security, or reliability are under U.S. citizen control regardless of the source of funds.

Q16. Ms. Simmons and Mr. Sheehan focus on the five factors in Section 4.2 of the FOCD SRP to support their conclusion regarding improper FOCD. (Simmons Direct Testimony, pages 21-25 (Exh. NRC000101); Sheehan Direct Testimony, pages 12-13 (Exh. INTR00041)). Please respond.

A16. (SJC, RSW) We agree that these factors should be considered in evaluating FOCD issues, but the fact that some of these factors show foreign involvement in the STP Units 3 and 4 project does not mean that the project has improper FOCD. The FOCD SRP states that “[t]he fact that some of the . . . listed conditions may apply does not necessarily render the applicant ineligible for a license.” (FOCD SRP, 64 Fed. Reg. at 52,359 (NRC000106)). Therefore, the Staff’s and Intervenors’ evaluation based on these factors is misplaced as they treat foreign involvement under these factors as demonstrating that the project does not meet the NRC’s FOCD requirements. Furthermore, as indicated by Table 1 of our Direct Testimony, many of these factors have been present in cases involving other licensees, and the NRC nevertheless found that the licensees were not subject to inappropriate FOCD.

In fact, as shown in NINA’s direct testimony, consideration of these five issues does not raise any significant FOCD concerns. The following table demonstrates this.

Table 1 – FOCD SRP Section 4.2 Supplementary Review Factors

Factors Considered During FOCD SRP Supplementary Review	STP Units 3 and 4 Attributes
1. Whether any foreign interests have management positions such as directors, officers, or executive personnel in the applicant’s organization.	Although NINA has a TANE Board Manager, that Manager’s authority is greatly limited due to its 10% voting authority.
2. Whether any foreign interest controls, or is in a position to control the election, appointment, or tenure of any of the applicant’s directors, officers, or executive personnel. If the reviewer knows that a domestic corporation applicant is held in part by foreign stockholders, the percentage of outstanding voting stock so held should be quantified. However, recognizing that shares change hands rapidly in the international equity markets, the staff usually does not evaluate power reactor licensees to determine the degree to which foreign entities or individuals own relatively small numbers of shares of the licensees’ voting stock. The Commission has not determined a specific threshold above which it would be conclusive that an applicant is controlled by foreign interests.	Although TANE can appoint the CFO, the CFO reports to the NRG Energy-appointed CEO and does not have any nuclear safety, security, or reliability responsibilities.
3. Whether the applicant is indebted to foreign interests or has contractual or other agreements with foreign entities that may affect control of the applicant.	Although NINA is indebted to TANE through loans, the loans from April 2011 through combined license (“COL”) issuance are a small fraction of the overall financial support for NINA and the STP Units 3 and 4 project. Additionally, those loans do not give TANE any control over nuclear safety, security, or reliability issues.
4. Whether the applicant has interlocking directors or officers with foreign corporations.	Although NINA has an interlocking director with Toshiba, who is the TANE Board Manager, that Manager’s authority is greatly limited due to its 10% voting authority.
5. Whether the applicant has foreign involvement not otherwise covered by items 1–4 above.	The Staff identifies Westinghouse as providing additional foreign involvement. (Simmons Direct Testimony, page 24 (Exh. NRC000101)). Westinghouse, however, is only a contractor on the STP Units 3 and 4 project and is subject to direction by NINA and its U.S. citizen CEO and CNO. Westinghouse also is a frequent contractor in U.S. nuclear activities, and does not present any FOCD concerns in that role.

Q17. The Staff stated in its Initial Statement of Position (page 36): “The Staff therefore concluded that NRG’s voting majority was illusory, and that TANE’s financial control overcame any control NRG exercised via its voting rights.” How do you respond?

A17. (SJC, RSW) This conclusion is entirely unsupported by facts. Governance is determined by voting control, and this is not changed by loans. For NINA, only equity contributions would affect voting rights. There is no evidence that NRG Energy’s 90% voting control is ineffective in providing control over nuclear safety, security, or reliability. To the contrary, NRG Energy’s 90% voting control has ensured that decisions affecting nuclear safety, security, or reliability have been and will continue to be under the control of U.S. citizens.

To illustrate the point, TANE’s loans can be analogized to a loan obtained by someone with a home mortgage. For example, if a bank were to lend an individual 80% of the value of a house, the bank could be viewed as having financial control of the house. The bank can require the mortgagee to carry hazard insurance on the house and perhaps life insurance to make mortgage payments; and of course the bank can foreclose and take title if the mortgagee is in default. However, this financial control does not extend to the bank having the right to say how a house is decorated or furnished or landscaped. Nor can the bank dictate whether or when the house may be sold (except under default). The day-to-day decisions regarding the house are made by the home owner, not the bank. Similarly, the day-to-day decisions on issues related to nuclear safety, security, or reliability are made by the NRG Energy-appointed CEO, not by TANE.

Q18. The Staff focuses its evaluation on the period between April 2011 and issuance of the COLs. What is your opinion of that focus?

A18. (SJC, RSW) The Staff’s analysis focuses on a relatively short period of time during the life of the project when FOCD concerns are minimal. From the perspective of FOCD, the most important phase is operations, because that phase has the greatest potential to affect national defense and security and the health and safety of the public. The Staff’s FOCD evaluation of NINA essentially ignores operations. As we discuss on page 40 of our Direct Testimony, there is no inappropriate FOCD related to operation of STP Units 3 and 4, given the fact that STP Nuclear Operating Company (“STPNOC”), not NINA, will have responsibility for operations, and that NINA will continue to implement its NAP during operations.

From the perspective of FOCD, the second most important phase is construction, because that phase involves detailed design work and fuel on-site toward the end of construction. The Staff’s FOCD evaluation largely ignores that phase, except to discount NINA’s proposed commitment and license condition, which will lead to the extinguishment of the TANE loans and require that at least half of the loans used to finance construction come from or be guaranteed by the U.S. Government. As we discuss in our response to Question 57 in our Direct Testimony, there is no inappropriate FOCD related to construction of STP Units 3 and 4, given that Toshiba is the reactor vendor and therefore already has access to the nuclear technology, that STPNOC will be providing security for the nuclear fuel, and that the NAP ensures that decisions over nuclear safety, security, or reliability will be in the hands of U.S. citizens.

The least important period from an FOCD perspective is the licensing and post-licensing/pre-construction phases, because during that period there is no fuel on-site, no activities requiring a license are conducted, and licensing activities are subject to NRC approval. Despite the relative low importance of the licensing and post-licensing/pre-construction phases from an FOCD perspective, the Staff has focused almost exclusively on a relatively small period of time

during that period. Furthermore, the Staff concedes that NINA was U.S. controlled in the past (*i.e.*, when almost all of the existing funding for the project was provided). (Simmons Direct Testimony, page 49 (Exh. NRC000101)). The Staff’s negative FOCD finding for a portion of the licensing and post-licensing/pre-construction phases is based solely on its misunderstanding of TANE’s purported financial control for a relatively small period of the project’s life, without regard to whether U.S. citizens have control over decisions affecting nuclear safety, security, or reliability during that period. Because the NAP ensures that U.S. citizens have ultimate control over decisions on nuclear safety, security, or reliability during the licensing and post-licensing/pre-construction phases, we conclude that there is no inappropriate FOCD during that period. Furthermore, given the relatively little potential for an FOCD concern during that period, we conclude that the NAP is more than sufficient to negate any potential for improper FOCD during the licensing and post-licensing/pre-construction phases.

The following table describes the sources of funding and illustrates the increases in protections against improper FOCD during the project phases.

Table 2 – Increases in Protection Against Improper FOCD During Project Phases

	Licensing and Post-Licensing/Pre-Construction	Construction	Operations
Issues subject to FOCD concern	Minimal (licensing; design and procurement work that does not require a license)	Moderate (detailed design; construction; fuel on-site toward end of construction)	Greatest (design completed; plant operation; fuel on-site)
Responsible applicant/licensee	NINA	NINA Security for fuel provided by STPNOC	STPNOC

Funding	<p>As described in the McBurnett Rebuttal Testimony, NINA funding includes:</p> <p>NRG Energy (approximately [REDACTED], including April 2011 commitment of \$20 million)</p> <p>TANE (approximately [REDACTED] to date, including approximately [REDACTED] in post-April 2011 cash loans)</p>	<p>Project Finance (U.S. sources will provide at least 50% of the total funding)</p>	<p>Power sales</p>
NINA corporate governance	<p>90% voting control by NRG Energy</p> <p>10% voting share of TANE</p> <p>NRG Energy appoints Board Chairman, CEO, and CNO; TANE appoints CFO (unoccupied since 8/2011)</p>	<p>Same as Pre-Construction (any changes of ownership of 5% or more subject to NRC review and consent as needed)</p>	<p>Same as Construction</p>
NAP	<p>U.S. citizen Board Chairman, CEO, and CNO</p> <p>Restriction on TANE ownership</p> <p>QA and security programs</p>	<p>Same as Pre-Construction plus Security Committee and NAC</p>	<p>Same as Construction</p>

In summary, the Staff has focused on a relatively small period in the life of the project - - a period when the potential for FOCD is the least. Furthermore, with respect to that period, the Staff has discounted the contribution of more than [REDACTED] by NRG Energy, and has

focused on cash loans by TANE that will constitute only approximately 2% of the total investments in the project at the time of issuance of the COLs. Finally, the Staff has not accounted for the fact that decisions related to nuclear safety, security, or reliability will be under the control of U.S. citizens during this period. As a result, we conclude that the FOCD evaluation by the Staff does not properly implement the FOCD SRP and reaches an incorrect result.

Q19. In your Direct Testimony, you stated that NINA has received approximately [REDACTED] in cash loans from TANE since April 2011. (Direct Testimony, pages 41, 45 (Exh. STP000037)). Do you have a correction to that value?

A19. (SJC, RSW) As explained in more detail in the response to Question 15 in the McBurnett Rebuttal Testimony (Exh. STP000091), the [REDACTED] value for cash loans should have been [REDACTED]. With this change, the post-April 2011 cash loans by TANE will constitute *approximately 2% (not less than 2%)* of the total investments in STP Units 3 and 4 at the time of issuance of the COLs. These changes do not affect any of our earlier conclusions.

IV. SUMMARY AND CONCLUSIONS

Q20. Please summarize your Rebuttal Testimony.

A20. (SJC, RSW) As explained above, Ms. Simmons and Mr. Sheehan inappropriately focus on purported financial control over NINA for a very limited period of time, rather than on nuclear safety, security, or reliability throughout the life of the project. Notwithstanding the Simmons Direct Testimony and Sheehan Direct Testimony, we continue to conclude that NINA and STP Units 3 and 4 are not subject to inappropriate FOCD. In summary, for the many reasons discussed above and in our Direct Testimony, NINA's COL application for the STP

Units 3 and 4 project complies with Section 103 of the Atomic Energy Act, 10 CFR § 50.38, and the FOCD SRP. There is no inappropriate FOCD of NINA, and adequate negation actions are provided to protect against any potential for improper FOCD.

Q21. Does this conclude your testimony?

A21. (SJC, RSW) Yes.

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

Executed on July 22, 2013.

Executed in Accord with 10 CFR § 2.304(d)

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