

**Official Transcript of Proceedings**  
**NUCLEAR REGULATORY COMMISSION**

Title: Nuclear Innovation North America  
South Texas Project, Units 3&4

Docket Number: 52-12-COL and 52-13-COL

ASLBP Number: 09-885-08-COL-BD01

Location: Houston, Texas

Date: Tuesday, January 7, 2014

Work Order No.: NRC-497

Pages 2228-2347

**NEAL R. GROSS AND CO., INC.**  
**Court Reporters and Transcribers**  
**1323 Rhode Island Avenue, N.W.**  
**Washington, D.C. 20005**  
**(202) 234-4433**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

+ + + + +

ATOMIC SAFETY AND LICENSING BOARD PANEL

+ + + + +

HEARING

-----x

In the Matter of: : Docket No.  
NUCLEAR INNOVATION NORTH : 52-12-COL  
AMERICA LLC : 52-13-COL  
(South Texas Project Units : ASLBP No.  
3 and 4) : 09-885-08-COL-BD01

-----x

Tuesday, January 7, 2014

Harris County Civil Courthouse  
301 Fannin Street  
Houston, Texas

BEFORE :

MICHAEL M. GIBSON, Chair

GARY S. ARNOLD, Administrative Judge

RANDALL J. CHARBENEAU, Administrative Judge

1 APPEARANCES:

2 On Behalf of NINA:

3 STEPHEN J. BURDICK, ESQ.

4 STEVEN P. FRANTZ, ESQ.

5 JOHN E. MATTHEWS, ESQ.

6 of: Morgan, Lewis & Bockius LLP

7 1111 Pennsylvania Avenue, NW

8 Washington, DC 20004

9 (202) 739-5059 (Burdick)

10 (202) 739-5460 (Frantz)

11 (202) 739-3001 (Fax)

12

13 On Behalf of the Nuclear Regulatory Commission:

14 RICHARD HARPER, ESQ.

15 MICHAEL SPENCER, ESQ.

16 of: Office of the General Counsel

17 Mail Stop - O-15 D21

18 U.S. Nuclear Regulatory Commission

19 Washington, DC 20555

20

21

22

23

24

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

On Behalf of the Interveners:

ROBERT V. EYE, ESQ.

BRETT A. JARMER, ESQ.

of: Kauffman & Eye

The Dibble Building

112 SW 6<sup>th</sup> Avenue

Suite 202

Topeka, KS 66603

(785) 234-4040

(785) 234-4260 (Fax)

bob@kauffmaneye.com

brett@kauffmaneye.com

## P R O C E E D I N G S

(8:47 a.m.)

1  
2  
3 CHAIR GIBSON: Okay, why don't we go ahead  
4 and get started. I believe that Judge Arnold has some  
5 questions. If you can't hear him, or understand him,  
6 please let us know.

7 MS. SIMMONS: Okay.

8 CHAIR GIBSON: Thank you. Judge Arnold.  
9 Is he there?

10 JUDGE CHARBENEAU: Gary? He may be  
11 waiting until 9:00 a.m.

12 CHAIR GIBSON: Yes, yes. He may be  
13 waiting until 9:00 a.m.

14 MS. SIMMONS: Okay.

15 CHAIR GIBSON: Well, maybe we can't get  
16 started until he gets back.

17 (Pause)

18 CHAIR GIBSON: Okay, good. Okay, Judge  
19 Arnold, you're on. We're going to get started a few  
20 minutes early.

21 JUDGE ARNOLD: Okay. My questions are for  
22 Ms. Simmons.

23 CHAIR GIBSON: She's sitting here waiting  
24 to hear from you.

25 JUDGE ARNOLD: In Answer 4 up here in your

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 testimony, you stated you are the author of the status  
2 evaluation. Are you the only person who was involved  
3 in coming up with that evaluation?

4 MS. SIMMONS: I was the primary author.  
5 But, of course, the way that our review process works  
6 there are many, many people on concurrence. So, it  
7 went through a very thorough vetting process before it  
8 was complete.

9 JUDGE ARNOLD: Amongst all the people that  
10 reviewed it and eventually concurred, did anyone  
11 disagree with the final, the ultimate findings of your  
12 evaluation?

13 MR. SPENCER: Your Honor, I think that  
14 gets into the deliberative process, internal  
15 deliberative process, which is privileged information.

16 MS. SIMMONS: Maybe I could answer just  
17 generally about our concurrence process.

18 MR. SPENCER: Okay.

19 JUDGE ARNOLD: Fine.

20 MS. SIMMONS: And, you know, I don't want  
21 to -- Clearly this is a unique situation, because  
22 it's, you know, holding up a licensing decision about  
23 foreign ownership. So, I can just say that there was  
24 a lot of, you know, staff discussion about this, a lot  
25 of points of view.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1           And ultimately, our concurrence process,  
2           as Counsel mentioned, is about coming to a consensus  
3           position. So yes, there's always varying views. And  
4           ultimately we were able to make an agency decision on  
5           this.

6           JUDGE ARNOLD: Okay. Thank you. Looking  
7           at both the Atomic Energy Act and 10 CFR 15.38, it  
8           talks about an AP, which is with the Commission's  
9           notes, or has reason to believe its owners are  
10          dominated by an alien foreign corporation or a foreign  
11          government.

12          I'm going to, in your determination of,  
13          what affect does the phrase, "has reason to believe",  
14          make to your determination? Does that make it more  
15          clear, does that help clarify things? What's the  
16          impact of that phrase?

17          MS. SIMMONS: I think that the best way to  
18          start the impact of that phrase is in the review  
19          process itself. You know, clearly to come to a  
20          conclusion about ownership, or about control actually,  
21          which is about really what FOCD turns on, you have to  
22          incorporate a lot of information.

23          And so this, when you look at the review  
24          process as laid out in SRP, the Commission, I think,  
25          was very clear in directing the staff to, very early

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 on in the threshold review, to look at all relevant  
2 information.

3 And if there's really anything that the  
4 staff feels might be something that would need further  
5 inquiry, that's where I see that that phrase, knows or  
6 has reason to believe, in directing the staff to  
7 continue the inquiry into the details that might be  
8 relevant to the situation. So I think, to me, it  
9 just, it directs the staff to really look at all the  
10 factors, and weigh all the factors in some detail.

11 JUDGE ARNOLD: But, would you say that it  
12 affects the degree of uncertainty, or the degree of  
13 certainty you have to have before making a finding of  
14 improper foreign ownership or domination?

15 MS. SIMMONS: Certainly I think it's,  
16 what's challenging in this situation is, some of the  
17 factors in making the FOCD determination are  
18 qualitative. And that, just from my personal  
19 experience in an agency that is about quantitative  
20 facts in many ways, that can be challenging.

21 Certainly, I think the staff, in this  
22 situation, has a high degree of certainty about the  
23 control, the conclusions about foreign control. I  
24 think just in general though, there certainly is  
25 always some uncertainty in any conclusion that the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701



1 staff makes.

2           However, I think that there's so many  
3 facts, and because the staff relied so significantly  
4 on written contractual and financial, and docketed  
5 information, that I think that that, you know,  
6 uncertainty is not what it might be in some other  
7 cases.

8           JUDGE ARNOLD: Okay. Thank you. And  
9 Answer 54 of your direct testimony stated "Based on a  
10 review of documents related to NINA's financing, and  
11 an assessment of all the facts and circumstances  
12 described, the staff determined that by the end of  
13 2011 TANE exercised control of NINA." Do you mean  
14 that TANE directed NINA to take actions? Or were you  
15 just saying that TANE had the capability to do so?

16           MS. SIMMONS: I didn't hear the very last,  
17 like eight words of your question. If you could just  
18 repeat it for me, please?

19           JUDGE ARNOLD: Sure. When you said TANE  
20 exercised control of NINA, does that mean that TANE  
21 was actually directing the actions of NINA? Or was it  
22 just that TANE had the capability to direct some  
23 actions of NINA?

24           MS. SIMMONS: I think the best way to  
25 answer that question would be, both. Primarily, the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 phrase in my testimony, "exercise control of NINA",  
2 was because I was referring to the end of 2011, which  
3 is in the past. And in the meaning of FOCD, FOCD is,  
4 of course, as we know, the power to direct or decide  
5 whether or not exercise. So they had the potential to  
6 control.

7 But also, by the end of 2011 we did have  
8 this letter to the SEC, where there were at least  
9 indications to the staff that Toshiba, in NRG's own  
10 words, Toshiba was controlling licensing activities,  
11 for example. Toshiba was setting the amount of money  
12 that would be available. So, I think probably the  
13 best answer would be, both.

14 JUDGE ARNOLD: Okay. Let's see, the  
15 Standard Review Plan on Foreign Ownership Control and  
16 Domination, says that that analysis should be given an  
17 orientation toward safeguarding the national defense  
18 and security. You're familiar with that phrase?

19 MS. SIMMONS: Yes, sir.

20 JUDGE ARNOLD: Do you know the national  
21 defense and security, if there is any definition of  
22 what it encompassed under that phrase?

23 MS. SIMMONS: Well, I think the best way  
24 to explain that, first of all, the SRP is, you're  
25 right. It mentions the common defense and security in

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 Section 1.1, just to get this on the record. And then  
2 it later says, the national defense and security, in  
3 Section 3.2.

4 Now that, in the context of the FOCD  
5 analysis, we all have a viewpoint, I think, about what  
6 that means. But the staff really has to follow what  
7 the Commission has said. Common defense and security  
8 issues are related to FOCD.

9 So the earliest case where they talked  
10 about that was in the SEFOR case, where they explained  
11 that this orientation for the common defense and  
12 security, one of the most important factors was the  
13 ability of the foreign entity to inhibit or restrict  
14 compliance with NRC requirements, okay. So it's  
15 broadly interpreted.

16 And so, on that basis, this orientation  
17 towards common defense and security, although it can  
18 impact the things that we commonly believe are  
19 directly related to, say, NRC security requirements,  
20 it's more, it's broader than that.

21 And, you know, yesterday we discussed at  
22 length the PacifiCorp transfer. I think it's  
23 important to note that that was an example where the  
24 staff required an extensive negation action plan, in  
25 a situation where we had 2.5 percent direct ownership,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 minimal financing, less than 2.5 percent, and the  
2 reactor was decommissioned, was in the middle of  
3 decommissioning.

4 So if you think about an orientation for  
5 its common defense and security in that situation,  
6 where the true decisions relating to safety, security,  
7 radiological public health and safety, all the things  
8 that are under the umbrella of NRC regulations may  
9 have been actually quite limited, because the reactor  
10 vessel was gone.

11 Even in that situation staff, in order to  
12 approve that license transfer, required this extensive  
13 negation action measures in order to meet NRC  
14 requirements and the statute.

15 JUDGE ARNOLD: Question. Would you agree  
16 that some degree of foreign control would be  
17 permissible if that control could in no way affect  
18 national defense or security?

19 MS. SIMMONS: Certainly. That's the  
20 purpose of the negation action plan, is that foreign  
21 involvement, if it can be sufficiently negated, is  
22 permitted under Commission precedence and staff  
23 practice. That's the Commission's interpretation of  
24 the prohibition.

25 JUDGE ARNOLD: Okay. I just, that was all

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 I had.

2 CHAIR GIBSON: Judge Charbeneau, do you  
3 have anything else at this point?

4 JUDGE CHARBENEAU: I mean, we talked about  
5 this, I think, a fair amount yesterday. But let me go  
6 with a couple of questions. Is there a regulatory  
7 difference between ownership of a project or business,  
8 and financing of a project or business?

9 MS. SIMMONS: Well in the FOCD context  
10 there's two issues. The Commission does not separate  
11 out ownership from financing.

12 JUDGE CHARBENEAU: Let's, for just right  
13 now, let's look at FOCD, and put these aside.

14 MS. SIMMONS: Oh, okay.

15 JUDGE CHARBENEAU: So, I'm thinking, from  
16 your background as a financial analyst. Is there a  
17 distinction between the ownership and finance?

18 MS. SIMMONS: Ownership can certainly be  
19 decoupled from financing and control.

20 JUDGE CHARBENEAU: So, can a business be  
21 jointly owned, and unilaterally financed by one party  
22 for a period of time?

23 MS. SIMMONS: Yes. And that may be, I  
24 think, the control may not be consistent with the  
25 degree of financing.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 JUDGE CHARBENEAU: Okay. Do you agree  
2 that Toshiba is a vendor in the nuclear energy retail  
3 business?

4 MS. SIMMONS: Yes.

5 JUDGE CHARBENEAU: Do you agree that  
6 Toshiba would likely receive substantial financial  
7 benefit if Units 3 and 4 are licensed and eventually  
8 constructed for operation?

9 MS. SIMMONS: Yes.

10 JUDGE CHARBENEAU: Now, we don't  
11 necessarily have the pull this out, but if you recall  
12 Exhibit STP-078, which is the April 19th, 2011 news  
13 release?

14 MS. SIMMONS: Yes.

15 JUDGE CHARBENEAU: You might remember the  
16 phrase, TANE will be responsible for funding ongoing  
17 costs to continue in the licensing process.

18 MS. SIMMONS: That's correct.

19 JUDGE CHARBENEAU: Do you consider this,  
20 again as a financial analyst, that this may be a sound  
21 business decision on behalf of Toshiba?

22 MS. SIMMONS: I really can't opine on  
23 someone's business decisions. But certainly, if  
24 they're making that decision I would presume it would  
25 be in their best interests financially.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 JUDGE CHARBENEAU: And so in this  
2 situation specifically now with TANE, Toshiba and  
3 NINA, the part that causes you heartburn is where we  
4 start to bring FOCD into the picture?

5 MS. SIMMONS: Yes. My only role here is  
6 the recommendation of FOCD.

7 JUDGE CHARBENEAU: Thank you.

8 CHAIR GIBSON: Toward the end of the day  
9 yesterday, Ms. Simmons, we were talking about  
10 revolving credit agreements. And I don't want to get  
11 into any of the details about that. But at 30,000  
12 feet, if you need to talk about the specifics then let  
13 us know, and we can postpone it for the second part of  
14 this proceeding.

15 MS. SIMMONS: Okay.

16 CHAIR GIBSON: But it was my impression  
17 that one of your arguments is that TANE controls  
18 NINA's cash flow through revolving credit agreements.  
19 And as a result, TANE can control NINA's strategic  
20 decision making.

21 Because the threat of limiting, and I'm  
22 reading now from your testimony on Page 30. The  
23 threat of limiting or ceasing cash flow is significant  
24 enough that debtors may find themselves seeking the  
25 approval of the creditor in basic business decisions,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 to avoid such a situation.

2 MS. SIMMONS: Yes. That's consistent with  
3 my testimony, yes.

4 CHAIR GIBSON: Okay. If we could look at  
5 the Exhibit 106, NRC 106, which is the NRC Standard  
6 Review Plan for Foreign Ownership Control and  
7 Domination Issues? I'd like to turn to 64 Fed Reg 32,  
8 I mean, 52358. And in the far right column, I believe  
9 the first full paragraph there. Even though, yes, or  
10 I guess it's the second full paragraph.

11 "Even though a foreign entity contributes  
12 50 percent or more of the cost of constructing a  
13 reactor, participates in project review, is consulted  
14 on policy and cost issues, and is entitled to  
15 designate personnel to design and construct the  
16 reactor, subject to the approval and direction of the  
17 non foreign applicant, these facts alone do not  
18 require a finding that the applicant is under foreign  
19 control."

20 Now, what NINA would like to argue, as I  
21 understand from your brief, is that what this means is  
22 that the standard review plan states explicitly that  
23 more than 50 percent of the funding can come from a  
24 foreign source. Now, you don't dispute that?

25 MS. SIMMONS: No.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701



1 CHAIR GIBSON: Okay. And so my question  
2 is, how much funding does the foreign ownership  
3 control or domination standard review plan allow,  
4 before it is too much? And so triggers this threshold  
5 for foreign owner control or domination analysis, that  
6 it's too excessive.

7 MS. SIMMONS: Okay. Well, just, I think  
8 I'll give a two part answer. The first part is that  
9 the standard review plan clearly is where the  
10 Commission declined to set a safe harbor, okay.  
11 Meaning, the Commission declined to set a level either  
12 below which we would presume there's no FOCD.

13 They also didn't set any kind of funding  
14 amount or ownership amount where it would be  
15 conclusive that we would find FOCD. And the  
16 Commission was very clear about that, about why they  
17 did that.

18 And they said because there could be,  
19 there's infinite creativity in the kind of corporate  
20 structures that might be presented to the staff, okay.  
21 So, there's no safe harbor. So in other words,  
22 there's no, even though we have never approved a  
23 situation above 50 percent for ownership, that's not  
24 a threshold, okay.

25 So first, there's just no safe harbor.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 There's no guidelines here. And certainly, the  
2 Commission was clear to say that above 50 percent  
3 could be allowed.

4 Now, this paragraph is very, very specific  
5 to the first, the seminal case on FOCD, which is the  
6 SEFOR case. And I think it's important to talk about  
7 how the SEFOR case, with foreign financing, was  
8 different than the case we have here. And how we  
9 might imagine more than 50 percent financing would be  
10 possible.

11 So in SEFOR there was a German participant  
12 in the project. And they had some rights to choose  
13 specialists who would be involved in the licensing of  
14 this experimental reactor. They also provided  
15 financing.

16 But the financing was different in this,  
17 than what's in this case. Because the financing was  
18 established up front, and the German entity, which was  
19 abbreviated GFK, because I can't pronounce the German  
20 title of this company.

21 But they were required to pay invoices as  
22 presented, okay. So ultimately their control over the  
23 amount of financing was very much delineated by the  
24 structure of the SEFOR project.

25 Another important factor in that is that

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 that was the time of the AEC. And the AEC was a  
2 partner to this project. So the Commission concluded  
3 in that situation, hey, if the AEC is basically a  
4 licensee, you know, the regulator's a licensee, that's  
5 just very effective negation, okay. So that's what  
6 this paragraph is talking about.

7 CHAIR GIBSON: When you say, this  
8 paragraph, you're referring to the --

9 MS. SIMMONS: SEFOR case.

10 CHAIR GIBSON: I know. But you're  
11 referring to the paragraph in the Federal Register.

12 MS. SIMMONS: Correct.

13 CHAIR GIBSON: In this character.

14 MS. SIMMONS: Yes.

15 CHAIR GIBSON: Okay.

16 MS. SIMMONS: Okay. Now, of course that's  
17 very different to the type of financing provided by  
18 TANE. As we know from the STC letter, it is Toshiba  
19 that is establishing how much money will be provided.  
20 I don't want to get into a lot of the details about  
21 some of that. Because we will talk about that in the  
22 closed session.

23 You know, clearly the NRC is not a  
24 licensee participant in this case. And as I mentioned  
25 I think yesterday, you know, certainly arms length

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 financing, which was more similar to the SEFOR case,  
2 could be a situation where the staff would be able to  
3 look at that in a very different way, if it was over  
4 50 percent foreign financed.

5 CHAIR GIBSON: Okay. As I think Judge  
6 Arnold referred to earlier, our primary concern is  
7 always going to be nuclear safety, security and  
8 reliability, correct?

9 MS. SIMMONS: That's correct.

10 CHAIR GIBSON: It seems to me that TANE's  
11 funding might impact whether the project goes forward.  
12 But once the facility is built NINA seems to be  
13 arguing that TANE's funding would not impact NINA's  
14 compliance with rules on nuclear safety, security or  
15 reliability.

16 So let's take this in two parts. Part  
17 one, do you agree that that's the way they structured  
18 it? And two, is your reservation about that, that the  
19 financing sort of vitiates that structure, and  
20 prevents it from, and creates this sort of excessive  
21 foreign ownership or foreign domination problem?

22 MS. SIMMONS: I'm --

23 CHAIR GIBSON: Because you're projecting  
24 into the future?

25 MS. SIMMONS: I disagree with their

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 characterization of their structure, or the financing,  
2 or what the TANE credit agreement says in terms of the  
3 EPC contract. I think some of that we will have to  
4 cover --

5 CHAIR GIBSON: Right.

6 MS. SIMMONS: -- in the closed session.  
7 But just generally, so that aside, did I disagree with  
8 that characterization of their financing, and the  
9 extent to which the TANE financing extends.

10 You know, again, I go back to this issue  
11 of the broad interpretation of FOCD. The broad view  
12 of common defense and security, and public health and  
13 safety in the FOCD context. And ultimately they are  
14 seeking a license to construct, which has, you know,  
15 a direct link to public health and safety, common  
16 defense and security.

17 And so it's with that in mind that the  
18 staff made its conclusions, that the control over a  
19 license, the license that they are seeking, would  
20 implicate, of course, issues related to public health  
21 and safety, common defense and security, all those  
22 issues.

23 CHAIR GIBSON: Okay. I think you're  
24 right. I think we'll need to, in order to drill down  
25 into that, we'll have to get into the confidential

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 business issues that we can't discuss now.

2 MS. SIMMONS: Okay.

3 CHAIR GIBSON: But we'll hopefully be able  
4 to take that up while you're on the stand.

5 MS. SIMMONS: Okay.

6 CHAIR GIBSON: Let's turn to Exhibit 131,  
7 NRC 131. This is the article entitled, "Private Debt  
8 and the Missing Lever of Corporate Governments", by  
9 Baird and Rasmussen. Now, you've referred to this  
10 article in support of your opinion that TANE'S  
11 position as a creditor allows it exercise extensive  
12 control over NINA. Is that a fair statement?

13 MS. SIMMONS: Yes. I used it as an  
14 illustrative example in my testimony.

15 CHAIR GIBSON: Now, the company that was  
16 analyzed in the Baird and Rasmussen article was not a  
17 nuclear company regulated by the NRC, now was it?

18 MS. SIMMONS: No.

19 CHAIR GIBSON: Okay. Let's go to see what  
20 NINA would like to argue on this point. And I believe  
21 we can turn to Mr. McBurnett's rebuttal testimony,  
22 which is 91, and to Answer 18 on Pages 21 to 22.

23 Now, as I read what Mr. McBurnett's done,  
24 he has attempted to distinguish NINA from the company  
25 that was discussed in the Baird and Rasmussen article.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 You'd agree that that's what he attempted to do  
2 anyway, correct?

3 MS. SIMMONS: Yes, sir.

4 CHAIR GIBSON: Okay. And what he  
5 testifies to in this rebuttal testimony is that the  
6 company in the Baird and Rasmussen article had several  
7 powers that are not present in NINA.

8 Specifically, Mr. McBurnett testified that  
9 the company in the Baird and Rasmussen article had  
10 many affirmative and negative covenants. Secondly,  
11 was able to replace the management of the company.  
12 And third, was able to exercise de facto control over  
13 the company. Now, with respect to those matters, was  
14 Mr. McBurnett incorrect?

15 MS. SIMMONS: I disagree with Mr.  
16 McBurnett's assessment of the comparison about the  
17 Baird and Rasmussen company and my example.

18 CHAIR GIBSON: And I can certainly  
19 appreciate you would. But my question, this question  
20 I'm asking, just has to do with these three points.  
21 He stuck with three points where he believes the  
22 company discussed in the Baird and Rasmussen article  
23 was different because of the three separate things.

24 Many affirmative and negative covenants,  
25 the ability to replace the management of the company,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 and the ability to exercise de facto control of the  
2 company. Now, is he wrong that those three things are  
3 differences from NINA?

4 MS. SIMMONS: Yes, he's wrong. I believe  
5 that those three things are actually similar to NINA.

6 CHAIR GIBSON: Please amplify on why you  
7 think they're different. I mean, why you think he's  
8 incorrect --

9 MS. SIMMONS: Okay.

10 CHAIR GIBSON: -- in your assessment.

11 MS. SIMMONS: I think he's incorrect  
12 because the, with the Warnaco, the example in the  
13 Baird and Rasmussen article, which, by the way, was  
14 not used as the standard for the review. It was  
15 simply an example of how a creditor, and I think it  
16 articulated well how a creditor can exert control,  
17 okay.

18 But clearly the standard is the FOCD SRP.  
19 The financing provided by TANE is quite comparable to  
20 what was happening in the Warnaco example. There are  
21 numerous, numerous negative and affirmative covenants  
22 that restrict NINA's ability, for example, to incur  
23 additional indebtedness.

24 There are numerous negative covenants and  
25 affirmative covenants that allow for an avenue of

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701



1 control for Toshiba. Two, we know from the SEC letter  
2 that following a meeting in spring of 2011, the  
3 management of NINA was replaced. Certainly, there's  
4 not a direct correlation.

5 But we know from NRG's own statements that  
6 Toshiba, via TANE, has management roles, and  
7 participates in day to day operational type decisions.  
8 They have some influence on that. Because remember,  
9 the standard is direct or indirect, whether or not  
10 exercised.

11 So by dint of sitting on the Board of  
12 Directors, they are participating in decisions  
13 relating to NINA, okay. And third, the final point  
14 was --

15 CHAIR GIBSON: The ability to exercise de  
16 facto control over the company.

17 MS. SIMMONS: It is my professional  
18 opinion that TANE is exercising control over the  
19 company, as defined by the FOCD SRP by the Commission.

20 CHAIR GIBSON: Okay. Thank you for  
21 clarifying that. Now, NINA would say that the company  
22 discussed in the Baird and Rasmussen article is  
23 different, because the creditors of NRC licensees are  
24 subject to the limitations of 10 CFR Section 50.81,  
25 which obviously does not attach to a company that's

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 not in the nuclear business. Do, you would agree that  
2 that condition does not attach to another company,  
3 correct?

4 MS. SIMMONS: Unless it's regulated by  
5 another regulator I'm unaware of, yes.

6 CHAIR GIBSON: Sure. But I take it you  
7 don't, it's your view that that's not significant?

8 MS. SIMMONS: I don't think that's --

9 CHAIR GIBSON: In CFR 50.81?

10 MS. SIMMONS: Certainly it's an NRC  
11 requirement. And that would be something that you  
12 would be required to meet when you become a licensee.  
13 Now, in this case we're talking about an FOCD  
14 licensing decision. And 50.81, of course, the  
15 licensee would have to be in compliance with that.

16 However, I don't think that NINA's point  
17 is relevant to the FOCD analysis, which is related to  
18 how the financing of TANE, of NINA via TANE, allows  
19 for foreign control. I don't think it's particularly  
20 relevant. It is an NRC requirement.

21 CHAIR GIBSON: Okay. Now, it does however  
22 make, 10 CFR 50.81 does make clear that creditors  
23 cannot exercise de facto control of the licensee  
24 unless they first obtain the consent of the NRC under  
25 50.81, correct?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 MS. SIMMONS: Yes. That's what the  
2 requirement says.

3 CHAIR GIBSON: Okay. And those are the  
4 NRC's license transfer regulation?

5 MS. SIMMONS: That's correct.

6 CHAIR GIBSON: But again, in your  
7 estimation that's not significant for your analysis?  
8 Is that correct?

9 MS. SIMMONS: It's not going to change the  
10 staff's conclusion. Because it ultimately relates to  
11 license transfers. And we're in the position where we  
12 haven't issued a license yet.

13 So I think for the FOCD analysis even if,  
14 you know, clearly we believe that an effective  
15 negation action plan would prevent de facto control of  
16 an applicant or a licensee through financing. It  
17 would need to. And so that's, I think, more essential  
18 to the current FOCD analysis.

19 CHAIR GIBSON: Sure. And I think again  
20 though, this sort of brings us back home to the basic  
21 dispute that we have between NINA and, on the one  
22 hand, and the staff and the intervenors on the other.

23 And that is that NINA would like to say,  
24 okay, we get to this point and there's no way they  
25 could exercise this sort of control without having

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 gotten the NRC's approval. And therefore, the license  
2 should be issued, because we structured it that way.

3 And you're essentially saying, we can't  
4 look at what's going to happen later. We look at what  
5 the situation is now. And we project it into the  
6 future. And based on the current situation that's not  
7 going to pass muster, with respect to the foreign  
8 ownership, control and domination issue.

9 I'm not, I don't want to argue with you,  
10 or anything. I think this is a matter that's probably  
11 going to be covered in detail in the closing arguments  
12 by your attorneys. But I think that it is, we keep  
13 getting back to this point, I think.

14 MS. SIMMONS: I think just to, I don't  
15 disagree with your statements. I think that  
16 ultimately, from a licensing, procedural licensing  
17 perspective, the decision does need to be made now.

18 The staff can make reasonable conclusions  
19 about the future, based on some set of docketed facts.  
20 And ultimately, maybe to address a little bit what we  
21 discussed yesterday about concerns about the applicant  
22 not being fully informed of the staff's concerns.

23 You know, we did issue a letter to them in  
24 December of 2011. We met with them. We went very  
25 clearly over the many ways that this could be

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 addressed.

2 But ultimately we can only make reasonable  
3 projections about the future if we have some set of  
4 facts. And without any evidence of U.S. participation  
5 here, or even any dilution of the foreign financing,  
6 we are unable to come to that conclusion.

7 CHAIR GIBSON: Sure. Judge Charbeneau?

8 JUDGE CHARBENEAU: Yes. I'd like to, so  
9 we'll stay with Exhibit NRC 131, and look at two  
10 additional examples of lender control. If we could go  
11 to the same exhibit? And towards the top of Page  
12 1229. 1229 is what I have.

13 And if we look at the second line, yes,  
14 where you see it states that the lender also actively  
15 manages the debtor's cash flow through a revolving  
16 credit line. Is this assertion pertinent here?

17 MS. SIMMONS: Some of this we might have  
18 to talk more in detail in the closed session.  
19 However, the TANE credit facility, although it doesn't  
20 carry the label of a revolving credit facility, the  
21 substance of how it is working is that quite similar  
22 to the example that they've talked about here.

23 JUDGE CHARBENEAU: Okay. Let me see if I  
24 can ask it a slightly different way.

25 MS. SIMMONS: Okay.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 JUDGE CHARBENEAU: Do you agree that TANE  
2 does not have the ability to manage the cash flow of  
3 NINA, even though it can appoint the CFO?

4 MS. SIMMONS: No. TANE, I believe is  
5 controlling the cash flow of NINA.

6 JUDGE CHARBENEAU: Rather than NINA's CEO?

7 MS. SIMMONS: Correct.

8 JUDGE CHARBENEAU: And if we go down and  
9 look at the next paragraph down here, the one that  
10 starts off, "The ability to cut off a debtor's cash --  
11 I'm sorry. "The ability to cut off a debtor's cash  
12 flow is a much more potent threat." If TANE were to  
13 seize cash flow to NINA, what would be the possible  
14 outcomes?

15 MS. SIMMONS: Well, NINA has explained, I  
16 think, in the testimony yesterday, there would be  
17 potentially cessation of the project. It's a primary  
18 issue that they would not advance towards achieving a  
19 COL. Or, NRG would have to seek additional, a  
20 different financier.

21 JUDGE CHARBENEAU: And would either of  
22 these pose a threat to the common defense and security  
23 of the U.S.?

24 MS. SIMMONS: It would depend on who their  
25 ultimate financing. If they were to replace this

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 foreign financing with different foreign financing,  
2 there is the potential that we would be in the same  
3 situation.

4 JUDGE CHARBENEAU: So back with FOCD  
5 again?

6 MS. SIMMONS: Yes.

7 CHAIR GIBSON: I think I'd like to go back  
8 to NRC 106, the Foreign Ownership Control and  
9 Domination Standard Review Plan. And I'd like to get  
10 to 64 Fed Reg 52359. On the far left side of the page  
11 there, under the heading 4.2 Supplementary Review.

12 The last sentence of the first paragraph  
13 states, "The fact that some of the below listed  
14 conditions may apply does not necessarily render the  
15 applicant ineligible for a license." Do you see that?

16 MS. SIMMONS: Yes, sir.

17 CHAIR GIBSON: And in both Section 1.1 and  
18 Section 3.2 of this Standard Review Plan it suggests  
19 to me that the NRC's foreign control determination  
20 should be oriented toward national defense and nuclear  
21 safety. I'm sorry, national defense and nuclear  
22 security, which I think Judge Charbeneau just raised,  
23 correct?

24 MS. SIMMONS: Yes, that's correct.

25 CHAIR GIBSON: Now, what NINA would like

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 the NRC to do, it seems to me, is to put all these  
2 three items together to form this sequence. The first  
3 is, some foreign ownership domination control may be  
4 permissible, which I think we've established.

5 Two, the staff's analysis as to whether  
6 there is an impermissible amount of foreign ownership  
7 control or domination must be viewed through the prism  
8 of concern for national defense and nuclear safety.  
9 That's basically what they're arguing.

10 MS. SIMMONS: Yes. I wouldn't disagree  
11 with that.

12 CHAIR GIBSON: Okay. Let's see if we can  
13 delve into a little more of what NRC's argument is,  
14 and NINA's argument is then. If we could to go to STP  
15 R 92, which is a Collins and Wood rebuttal testimony?

16 And on Page, Answer 11 on Page 16, Table  
17 1. And if you'll go to Answer A11? Is this the -- I  
18 don't seem to have it. Let's just, there is a table,  
19 can you go to Table 1? Mr. Frantz, what table, what  
20 page is Table 1? There's Table 1 right there, okay.  
21 There we go. Sorry. Thank you. We found it.

22 Table 1, the first column is Factors  
23 Considered During FOCD SRP Supplementary Review. And  
24 the second column is STP Units 3 and 4 Attributes.  
25 And again, they're trying to figure out a way to

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701



1 structure their deal in such a way that it's going to  
2 meet these requirements.

3 The first entry under the first column is,  
4 whether any foreign interests have management  
5 positions, such as directors, officers or executive  
6 personnel in the applicant's organization.

7 And under STP Units 3 and 4 it says that,  
8 "Although NINA has a TANE Board Manager, that  
9 manager's authority is greatly limited, due to its 10  
10 percent voting on the Board." Now, do you dispute  
11 that statement about STP Units 3 and 4 attributes?

12 MS. SIMMONS: Yes. Because I believe that  
13 TANE's authority is not particularly affected by its  
14 voting authority. Its voting authority, although  
15 limited in their agreements, is overwhelmed by the  
16 influence it has due to its financing. So what I  
17 would disagree with in this assessment is, greatly  
18 limited.

19 CHAIR GIBSON: Okay. And you would say  
20 essentially that it, that's just a sham, because in  
21 fact, the financing again overwhelms the transaction.  
22 And that's where we need to be focusing our attention?

23 MS. SIMMONS: You know, I would agree that  
24 they have voting authority. And they certainly have  
25 those rights. I just would say that they're not

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 sufficient enough to overcome, to change the staff's  
2 conclusion.

3 CHAIR GIBSON: Okay. Now, the second  
4 entry under the first column, we don't want to read  
5 every single word there. But essentially what it  
6 concerns is whether foreign entities can control the  
7 directors or officers of the domestic entity. Is that  
8 a fair summary of essentially what --

9 MS. SIMMONS: Yes.

10 CHAIR GIBSON: -- point is? NINA's focus  
11 in the second column on the CFO reporting to the CEO,  
12 which must be a U.S. citizen. Or actually, who must  
13 be a U.S. citizen. Whether which or who is better,  
14 but we'll say who. Is that an accurate statement?

15 MS. SIMMONS: Yes, I believe it's an  
16 accurate statement.

17 CHAIR GIBSON: Let's go to the third  
18 point, third entry, I'm sorry. It starts, "Whether  
19 the applicant is indebted to foreign interests, or has  
20 contractual or other agreement with foreign entities  
21 that may affect control of the applicant."

22 You previously testified about the  
23 agreements and the debts, the foreign entities that  
24 you say may affect control of NINA. I understand  
25 that.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1           But NINA's stated here in the second  
2 column that, "Although NINA is indebted to TANE  
3 through loans, the loans from April 2011 through COL  
4 issuance are a small fraction of the overall financial  
5 support for NINA and the STP Units 3 and 4 project.

6           Additionally, these loans do not give TANE  
7 any control over nuclear safety, security or  
8 reliability issues." Now, I assume that you're not in  
9 agreement with that statement.

10           MS. SIMMONS: No.

11           CHAIR GIBSON: I kind of thought you might  
12 not be. Yes, that's okay if you want to say  
13 something. I don't want to --

14           MS. SIMMONS: I think maybe just to  
15 clarify a little bit about -- I don't want to go into  
16 repetitive detail about this. But it's important to  
17 look at, you know, the supplementary review is only  
18 one part of the entire review, okay.

19           So, looking at this table, and focusing on  
20 only the supplementary review factors I think is  
21 incomplete. So I don't, I wouldn't say that anything  
22 that they've presented here is inaccurate. It simply  
23 doesn't give the full picture, okay.

24           There is, the SRP does direct the staff to  
25 have orientation toward the common defense and

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 security. But the Commission specifically said, that  
2 may not be the only important factor. You get to look  
3 back at the early, the threshold determination, the  
4 initial review

5 And they all talk about, you know,  
6 whether the applicant has other foreign involvement  
7 that's not covered by these elements. You know, we  
8 have to look at all the facts and circumstances about  
9 who's making what kinds of decision, and who's  
10 exerting control.

11 So I think, I don't think this is  
12 inaccurate. But I think it is not reflective of how  
13 the staff conducts an FOCD review, as directed by the  
14 Commission. Or how the staff looks at the facts to  
15 make its conclusion.

16 We don't, you know, we don't look at  
17 particular facts in isolation. And I would disagree  
18 with some of the characterizations in the table as  
19 well.

20 CHAIR GIBSON: Okay. We're going to try  
21 to figure out where you disagree and where you agree.  
22 So we're going to keep on with this. I'm sorry if  
23 it's a bit repetitive.

24 MS. SIMMONS: No, no.

25 CHAIR GIBSON: But we need to try and get

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 a complete record. All of TANE's funding since April  
2 of 2011 has been through loans, and not through equity  
3 contributions, correct?

4 MS. SIMMONS: Yes.

5 CHAIR GIBSON: Now, as the deal's been  
6 structured, the commitment to the application, the  
7 commitments in the application restricts TANE's  
8 ownership share to not more than 10 percent of NINA,  
9 correct?

10 MS. SIMMONS: That's correct.

11 CHAIR GIBSON: And likewise, as this  
12 deal's been structured, the terms of the draft DOE  
13 conditional loan program provided the NRC binding them  
14 would require that the TANE loans be paid off in  
15 connection with completing the closing of a project,  
16 is that correct?

17 MS. SIMMONS: As I understand the draft,  
18 the terms of that conditional letter.

19 CHAIR GIBSON: Okay. Just to make sure I  
20 understand, as you understand the terms of that  
21 letter, you would agree with that statement?

22 MS. SIMMONS: I don't dispute NINA's  
23 assertions about the future.

24 CHAIR GIBSON: The deal, as the deal's  
25 been structured, once the TANE loan is paid off, could

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 TANE continue to exercise right -- Oh, we can get to  
2 that. Never mind. We'll have to talk about this  
3 next. Sorry about that. I'm getting a long list over  
4 here of things I got to add for later.

5 Okay, let's go to the fourth entry,  
6 whether the applicant is interlocking directors or  
7 officers of foreign corporations. And here NINA  
8 stated, and said con, that although NINA has an  
9 interlocking director with Toshiba, who is the TANE  
10 Board manager, that manager's authority is greatly  
11 limited, due to its 10 percent voting authority.

12 NINA seems to be arguing that there is  
13 nothing inappropriate about a foreign individual  
14 making suggestions, which an interlocking director  
15 essentially hired to give, provided that all the  
16 control of the domestic entity is in U.S. hands.  
17 That's essentially I think what they're arguing.

18 Now, your opinion, if I understand  
19 correctly, is to be that the mere fact that TANE's non  
20 U.S. citizen interlocking director can vote at NINA  
21 Board Meeting, and influence the agenda and decisions  
22 of the Board, including appointment of keepers now,  
23 that that alone is enough to create a conflict of  
24 interest. Is that a fair statement?

25 MS. SIMMONS: No, I would not agree with

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 that characterization of my views.

2 CHAIR GIBSON: What are your views in that  
3 regard, so we'll make sure that the record's clear,  
4 ma'am.

5 MS. SIMMONS: Okay. The fact along, the  
6 fact -- Certainly there's nothing untoward with  
7 having, or impermissible by itself, in having a non  
8 U.S. citizen Board Member. We've approved those types  
9 of situations in the past.

10 However, the participant in this  
11 situation, you have to look at the fact that TANE has  
12 Board representation, which as I said in my testimony,  
13 is a way to influence the agenda and the operations of  
14 a --

15 Board representation gives participatory  
16 rights that are very important, particularly in light  
17 of the overall, and all the other factors related to  
18 Toshiba providing financing, Toshiba being the ECP  
19 contractor, and the interlocking nature of the  
20 operating agreements.

21 The corporate structure is outlined in the  
22 main operating agreement, TANE credit agreement and  
23 EPC contract. So the Board representation in this  
24 case is different, because of all the other factors  
25 involved. We certainly had other situations.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1           Again, CENG EDF, we had French Board  
2 Members. However, because the financial control was  
3 shared there was significant U.S. involvement. That  
4 additionally limited the leverage that they would have  
5 in asserting control over the U.S. entity. And that  
6 is not the case in this situation.

7           The Board Member, combined with all these  
8 other factors, gives this person, and Toshiba in  
9 general. That's what we're looking at, who's  
10 controlling NINA. Gives them that infamous control.

11           CHAIR GIBSON: So, the structure, per se,  
12 is not necessarily a problem? What makes this a  
13 problem, and you were shaking your head. I take it  
14 the answer to that is no?

15           MS. SIMMONS: No. Sorry.

16           CHAIR GIBSON: Court Reporter can't get --

17           MS. SIMMONS: I understand.

18           CHAIR GIBSON: But what you're essentially  
19 saying is that the problem is that there is additional  
20 power that Toshiba exercises, by virtue of these TANE  
21 loans. And that that, in effect, is what creates a  
22 problem for having somebody on the Board. Is that a  
23 fair statement?

24           MS. SIMMONS: Yes. Based on the  
25 Commission's direction on how we're supposed to look

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701



1 at the situation.

2 CHAIR GIBSON: So we get back to the,  
3 where we always end up, which is, the financing is  
4 what is driving this?

5 MS. SIMMONS: I think just to clarify  
6 that. It's not only the financing. It's all of the  
7 facts and circumstances, with a very significant,  
8 clearly a very significant part of that is the control  
9 via financing.

10 CHAIR GIBSON: Because, but still, the  
11 basic structure of this deal, had their financing been  
12 something different, the basic structure of this deal  
13 seems like it's going to, would pass muster with you.  
14 The problem we always come back to is the financing.

15 MS. SIMMONS: That's, I would agree with  
16 that statement.

17 CHAIR GIBSON: Thank you. If we could  
18 turn, go to your A17 on Page 8 of your direct  
19 testimony, which is NRC 101? You say that a non U.S.  
20 citizen interlocking director may create a conflict of  
21 interest situation with the NRC licensee.

22 But it would be fair to say, based on what  
23 we've just gone through here, that it's also possible  
24 that a non U.S. interlocking director would not create  
25 a conflict of interest situation. As was the case, I

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 believe you gave an example of, was it CENG, the one  
2 you just gave an example of?

3 MS. SIMMONS: I think, just to clarify,  
4 there's always the potential. The problem with  
5 interlocking directorates is there's always the  
6 potential for a conflict of interest, okay. Because  
7 the Board, particularly if the Board Directors --

8 And in the CENG case I don't think they  
9 were interlocking, and that, I don't recall. In this  
10 situation you have a Board Member of NINA, who's also  
11 a Board Member of Toshiba. Therefore, as a Board  
12 Member he has a fiduciary responsibility to Toshiba,  
13 you know. Also there's a fiduciary responsibility to  
14 NINA.

15 Now, that's where the conflict of interest  
16 can arise. And that's where I think the underlying  
17 concern is in the Standard Review Plan, as to why the  
18 staff has to look for that, or identify it. Now,  
19 those conflicts can be mitigated, the potential  
20 conflict of interest can be mitigated.

21 Just to compare and contrast with the CENG  
22 case. Because you had, you know, the financial  
23 control was mitigated through very significant U.S.  
24 participation and operating reactors, okay. Different  
25 situation here in that, as we've said I think a number

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 of times, that is an avenue of control.

2 It isn't, it's part and parcel of all the  
3 control that's being exercised by Toshiba, just isn't  
4 sufficiently negated. Interlocking directorates  
5 though are different than non U.S. citizen  
6 participation on a Board. Maybe that's the  
7 distinction.

8 CHAIR GIBSON: Okay. If we could return  
9 to the table there, fifth entry? Whether the  
10 applicant has foreign involvement not otherwise  
11 covered by Items 1 to 4 above. And here it is  
12 indicated that the staff identifies Westinghouse as  
13 providing additional foreign involvement.

14 Westinghouse, however, is only a  
15 contractor on the STP Units 3 and 4 project. And is  
16 subject to direction by NINA and it's U.S. citizen CEO  
17 and CNO. Westinghouse also is a frequent contractor  
18 in U.S. nuclear activities, and does not present any  
19 FOCD concerns in that role. Is this an accurate  
20 statement?

21 MS. SIMMONS: Yes. I don't think it's an  
22 inaccurate statement. However, I would think that  
23 it's an incomplete statement. Because I think that,  
24 you know, the Standard Review Plan does direct the  
25 staff to identify other foreign involvement. And the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 staff did that as part of the safety evaluation.

2 It is true that any particular chunk of  
3 foreign involvement by itself, Westinghouse  
4 participation by itself is not, what is the tipping  
5 point into problematic foreign FOCD, okay. You know,  
6 part of the reason that we look, we have to identify  
7 all, whatever foreign involvement may be.

8 Because in some cases we found situations  
9 where you have, you know, different parties that there  
10 are interlinked business relationships between them,  
11 for example.

12 But I would agree that Westinghouse's  
13 participation alone would not alter the staff's  
14 conclusion. But it was something that we did review  
15 as part of the safety evaluation.

16 CHAIR GIBSON: And was, is the,  
17 recognizing you reviewed it, is the role of  
18 Westinghouse insignificant in your analysis? Or is  
19 there some significance that the staff attaches to it?

20 MS. SIMMONS: I want to just turn to what  
21 I actually said in the safety evaluation. Certainly,  
22 Westinghouse participation, as I said, is not a  
23 dispositive factor in the evaluation. And I, let me  
24 just turn to the safety evaluation so that I don't  
25 give an inaccurate statement about what we did here.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 All right. I believe this is changed.  
2 One of the concerns, or one of the issues identified  
3 by the staff is that Westinghouse is linked to  
4 Toshiba, or at the time of the safety evaluation. I  
5 believe that ownership structure has changed since  
6 then. But you see that there's, on Page, if we could  
7 turn to NRC 104, which is the safety evaluation.

8 CHAIR GIBSON: Yes. Do you know what page  
9 you're on there on 104?

10 MS. SIMMONS: Yes, Page 12.

11 CHAIR GIBSON: Page 12 of NRC 104?

12 MS. SIMMONS: Yes.

13 CHAIR GIBSON: Hold on a second. We're  
14 going to see if we can get that up. I think, NRC 104.

15 FEMALE PARTICIPANT: I'm not sure. Do  
16 we have a redacted version of this --

17 MR. SPENCER: Your Honor, yes, we filed  
18 both a redacted and proprietary version of the  
19 document. The redacted version is 105.

20 MS. SIMMONS: Oh, thanks.

21 CHAIR GIBSON: There we go. Thank you Ms.  
22 Schroeder for being sensitive to that. And we're on  
23 Page 12?

24 MS. SIMMONS: Yes.

25 CHAIR GIBSON: Where on Page 12 should we

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 be looking.

2 MS. SIMMONS: Let's see here. I think  
3 actually if we, actually, yes, scroll up just two  
4 lines. That, actually, that's okay, stop right there.  
5 So, the paragraph at the top of the screen. And I can  
6 read it.

7 "In addition, there's foreign involvement  
8 not covered by the first four factors." So this is  
9 the supplemented, the staff's safety evaluation for  
10 the supplementary review on Number 4, under the  
11 standard review plan.

12 So the staff identified additional foreign  
13 involvement with Westinghouse, which is a Toshiba  
14 affiliate. As someone who's participating in the  
15 project, providing the engineering support. So, the  
16 Standard Review Plan indicates to the staff to look at  
17 the contractual and financial relationships among the  
18 parties.

19 Although this was not, again, a factor  
20 that would change the staff's conclusion. It was yet  
21 another indication of indirect Toshiba involvement.  
22 Because Toshiba has a business relationship with  
23 Westinghouse.

24 Now, nothing wrong with that. It's just  
25 an element that the staff is required to assess as

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 part of the Standard Review Plan. And the reason it's  
2 mentioned, oops, in the safety evaluation was simply  
3 that there is this business, this interrelated, these  
4 interrelated business relationships between the  
5 parties.

6 CHAIR GIBSON: Okay. So Westinghouse is  
7 relatively insignificant? But it was just one other  
8 brick in the wall?

9 MS. SIMMONS: I think, you know, certainly  
10 it is, in my view, an indication that Toshiba, another  
11 example of Toshiba's interest in this project, okay.  
12 And the fact that there are these interrelated  
13 relationships, you know, are indications that Toshiba  
14 has a control, based on the Standard Review Plan.

15 CHAIR GIBSON: Okay. We have hinted at  
16 this a little earlier. But I don't think we can  
17 completely leave this question of the group temporal  
18 sequences, because essentially, I think, what the  
19 applicant is arguing is that, what happens if our  
20 proper orientation's national defense and nuclear  
21 security, the rubber really meets the road, not at the  
22 licensing stage, but at the operating stage?

23 And I understand that, you know, you all  
24 don't buy that argument. And you're essentially  
25 saying we've got to focus on what the situation is

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 now. And can't really make assumptions about what  
2 might happen.

3 And as the deal's constructor, TANE's role  
4 in NINA's corporate guidance, governance and funding  
5 is supposed to wane as NRG's waxes. As we sort of  
6 move from application to licensing, to construction,  
7 to operation.

8 You would agree that that is essentially  
9 the way they have drawn it up? Even though I know  
10 it's not sufficient for you, you would agree that is  
11 how they've drawn it up at this point, correct?

12 MS. SIMMONS: I actually disagree that we  
13 have any evidence on the docket as to what the future  
14 of the financing would be. I do agree that they have  
15 asserted that that's what will happen in the future.  
16 However, I just don't think we have those facts to  
17 rely on to make a conclusion.

18 CHAIR GIBSON: And at least what they've  
19 told you to this point is that, once project kicks in  
20 TANE's funding would be extinguished?

21 MS. SIMMONS: That's what they have said,  
22 yes.

23 CHAIR GIBSON: Correct. And that phase  
24 would occur after licensing, but before construction,  
25 correct? As they've drawn it up?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701



1 MS. SIMMONS: As they have asserted, which  
2 in my view is at this point speculative. But I can't  
3 dispute their statements.

4 CHAIR GIBSON: Okay. If we could go to,  
5 there's a, I guess no one did this, so we'll make this  
6 our own Board Exhibit 1, how about that? So we can,  
7 just for identification purposes at least.

8 I want to refer to the 2007 NRC Rulemaking  
9 for Limited Work Authorizations for Nuclear Power  
10 Plants. And that is at 72 Fed Reg 52416. And in your  
11 direct testimony you're asserting that all  
12 construction activities are related to the public  
13 health and safety, or the common defense and security.  
14 Is that right?

15 MS. SIMMONS: Yes. The Commission  
16 determined by Rule that the construction is related to  
17 public health and safety, and common defense and  
18 security.

19 CHAIR GIBSON: And as I understand your  
20 opinion, that is based on your use of the definition  
21 of construction found in this Rulemaking? Is that  
22 right?

23 MS. SIMMONS: Yes. I believe that that's  
24 the Rulemaking in question, where the Commission  
25 defines construction.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 CHAIR GIBSON: I don't want you to be  
2 speculating.

3 MS. SIMMONS: Yes.

4 CHAIR GIBSON: It's on, I believe you  
5 refer to this in Answer 90 on Page 48 of your direct  
6 testimony.

7 MS. SIMMONS: That's correct.

8 CHAIR GIBSON: Okay. If we could look at  
9 the top of the far right column, it states, "The SSCs  
10 which are within the scope of the definition of  
11 construction, and which have a reasonable nexus to  
12 radiological health and safety, or common defense and  
13 security, are set forth in Paragraph A1." Do you see  
14 that?

15 MS. SIMMONS: Yes.

16 CHAIR GIBSON: Now, SSCs refer to  
17 structures, systems and components, is that correct?

18 MS. SIMMONS: That's correct.

19 CHAIR GIBSON: Now, if we could go to 72,  
20 57418 in the same Rulemaking? In the middle of the  
21 column, I'm sorry, middle column this very same  
22 Rulemaking is soliciting comments on three different  
23 types of construction.

24 And it refers to -- Where is it in that  
25 middle column? I want to make sure we follow this

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 along. Let me see. Okay. Okay. The three, they're  
2 talking here about three different types of  
3 construction.

4 And the first are those pre-construction  
5 activities that should be permitted without prior NRC  
6 approval. And the second are those construction  
7 activities that should be permitted under a LWA, which  
8 is a Limited Work Authorization, correct?

9 MS. SIMMONS: That's correct.

10 CHAIR GIBSON: And that would encompass  
11 activities outside of the nuclear island, correct?

12 MS. SIMMONS: I'm not an expert. But  
13 that's my understanding.

14 CHAIR GIBSON: Okay. And third, those  
15 construction activities that should be permitted after  
16 issuance of a construction permit, or combined  
17 license, correct?

18 MS. SIMMONS: That's correct.

19 CHAIR GIBSON: And --

20 MR. SPENCER: Your Honor?

21 CHAIR GIBSON: Yes.

22 MR. SPENCER: I'm sorry to interrupt. But  
23 I just wanted to make sure I understood the question  
24 correctly. You refer to these as three types of  
25 construction activities?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 CHAIR GIBSON: Correct.

2 MR. SPENCER: But the first two items  
3 don't identify those as, well the first item doesn't  
4 identify it as a construction activity.

5 CHAIR GIBSON: Okay, fair enough. It  
6 doesn't say construction. But I will say that I think  
7 it's probably talking about construction or pre-  
8 construction activities. I believe, actually the  
9 first one are pre-construction activities. And I  
10 think that was what my question was.

11 MR. SPENCER: Oh, okay, Your Honor.

12 CHAIR GIBSON: I believe.

13 MR. SPENCER: Okay.

14 CHAIR GIBSON: I believe.

15 MR. FRANTZ: Judge Gibson, also, just very  
16 briefly, I believe that LWA activities can include  
17 activities within the scope of the nuclear island,  
18 such as laying the basement.

19 CHAIR GIBSON: Right. Right. The  
20 definition of construction that you want to, that  
21 you're using in your direct testimony comes from the  
22 Limited Work Authorization. Is that correct?

23 MS. SIMMONS: That's correct.

24 CHAIR GIBSON: And that is referring to a  
25 time period that would precede the issuance of the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 license? Is that correct?

2 MS. SIMMONS: My reliance is on the  
3 definition of construction as it relates to safety.

4 CHAIR GIBSON: Fair enough. But the  
5 definition of construction that you're referring to,  
6 there is a time period that would precede the issuance  
7 of a license, correct? Because you would get a  
8 Limited Work Authorization before the license was  
9 issued, correct?

10 MR. SPENCER: Your Honor?

11 CHAIR GIBSON: Yes.

12 MR. SPENCER: In this proceeding the  
13 applicant has not sought the Limited Work  
14 Authorization. That is an option, but it is not  
15 required.

16 CHAIR GIBSON: Fair enough. Fair enough.  
17 But I'm trying to understand where she got her  
18 definition of construction, Mr. Spencer.

19 MR. SPENCER: Okay.

20 MS. SIMMONS: Of course, the staff has to  
21 rely on the definitions set out by the Commission.

22 CHAIR GIBSON: Right.

23 MS. SIMMONS: However, for the purposes of  
24 the FOCD analysis, and my recommendation, my testimony  
25 was on the understanding of construction activities

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 that would happen after issuance of a license.  
2 Because, as Counsel mentioned, I have no knowledge  
3 that they are seeking a Limited Work Authorization.

4 CHAIR GIBSON: Surely. Surely. This  
5 Rulemaking does not involved construction that  
6 happened, that could only happen after the license is  
7 issued though, correct?

8 MS. SIMMONS: I believe this Rulemaking  
9 does encompass construction activities. Again, I'm  
10 not an expert on Limited Work Authorizations.

11 CHAIR GIBSON: Right.

12 MS. SIMMONS: I believe it encompasses  
13 construction both before and after issuance of a  
14 license, as I understand it. And because it  
15 delineates, by delineating what can happen before  
16 issuance of a license, it ultimately includes,  
17 indirectly, what happens after a license. But again,  
18 I'm not an expert on the Limited Work Authorization  
19 process. That is beyond sort of my specific  
20 expertise.

21 MR. SPENCER: Your Honor, if it would be  
22 helpful, perhaps of there are legal questions about  
23 the process, I could answer.

24 CHAIR GIBSON: No. I'm not really, we can  
25 certainly cover this in closing argument, Mr. Spencer.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 MR. SPENCER: Okay.

2 CHAIR GIBSON: You're not sworn, and I  
3 don't plan to call you. But I will be glad to let you  
4 address this in closing argument. This construction  
5 of structure, systems and components having a  
6 reasonable nexus to radiological health and safety, or  
7 common defense and security would not even be subject  
8 to an FOCD determination, would it?

9 MS. SIMMONS: In order to embark on  
10 construction activities, as I understand it, they  
11 would need a license. So a COL certainly has that, is  
12 what's needed to commence construction activities,  
13 which absolutely, as you said, have a link to public  
14 health and safety, or the common defense and security.

15 CHAIR GIBSON: Okay. I just wanted to  
16 know what your understanding was, ma'am. Thank you.  
17 I think we'll take a five minute break. And we'll be  
18 right back. Thank you.

19 (Whereupon, the above-entitled matter went  
20 off the record at 10:03 a.m. and resumed at 10:14  
21 a.m.)

22 CHAIR GIBSON: Ms. Simmons, previously you  
23 made some references to the SEFOR case, I believe  
24 under examination by Judge Arnold.

25 MS. SIMMONS: Yes.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 CHAIR GIBSON: Now, I'd like to turn to  
2 that a little bit. In the staff's rebuttal position  
3 on Page 5, and I'm not asking you to give me a legal  
4 opinion, so please understand that. I'll let your  
5 Counsel do that in the closing argument.

6 But the Commission's saying there that the  
7 ability to restrict or inhibit compliance with the  
8 security and other regulations of AEC and the capacity  
9 to control the use of nuclear fuel and to dispose of  
10 special nuclear material generated in the reactor  
11 would be of greatest significance. Do you see that?

12 MS. SIMMONS: Yes, sir.

13 CHAIR GIBSON: Focusing only on this one  
14 point, has NINA made adequate provision in the  
15 negation action plan for these matters, that the  
16 Commission's decision in SEFOR is considered to be of  
17 greatest significance in an analysis of foreign  
18 ownership, control or domination?

19 MS. SIMMONS: In my personal opinion, no.  
20 NINA has not presented a negation action plan that  
21 assures that the foreign entity does not have the  
22 ability to restrict or inhibit compliance with the  
23 regulations of the NRC.

24 CHAIR GIBSON: If we could turn to, in  
25 NINA's rebuttal statement position, on Page 29, they

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701



1 state their concern with your position here. And they  
2 say that you've established a new requirement, that  
3 the SRP does not require.

4 And what they argue there is that, "Ms.  
5 Simmons further argues that negation action plans are  
6 effective only when financial responsibility is  
7 shared. Ms. Simmons does not cite anything in the  
8 FOCD SRP to support this proposition. And she appears  
9 to be trying to establish a new requirement."

10 Do you agree with NINA's characterization  
11 of your testimony, and if not, why not?

12 MS. SIMMONS: No. I disagree with the  
13 characterization of my testimony that I am trying or  
14 could even succeed in establishing a new requirement.

15 It's true that the Standard Review Plan  
16 provides examples of effective negation action as  
17 measures. However, it is Commission direction to the  
18 staff as to how to conduct the review. And I believe  
19 that I conducted the review in accordance with the  
20 Standard Review Plan.

21 Now, as to this issue, I do not believe  
22 that diversification of income is a requirement.  
23 However, in the case of NINA, it's very important to  
24 understand that the foreign source income is a  
25 significant problem that has not been appropriately

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 negated.

2 Passively, the Commission believed this  
3 was an issue because four of the six examples provided  
4 for negation action plans were late to financing.

5 CHAIR GIBSON: Four of the six examples in  
6 what?

7 MS. SIMMONS: In Section 4.4 of the  
8 Standard Review Plan regarding negation action plans.

9 CHAIR GIBSON: Thanks. I want to make  
10 sure the record is clear.

11 MS. SIMMONS: Yes. So, no, the  
12 requirement is clear. An entity that's owned,  
13 controlled or dominated by a foreign entity can't be  
14 issued a license. And that's the basis of my  
15 conclusion.

16 CHAIR GIBSON: And your authority is 4.4  
17 then for requiring financial responsibility to be  
18 shared between a foreign and domestic entity?

19 MS. SIMMONS: I would disagree that I've  
20 said that it is a requirement that --

21 CHAIR GIBSON: A requirement for NINA.

22 MS. SIMMONS: They're going to have to  
23 negate the control via financing. There could be many  
24 different ways to do that.

25 They are correct in saying that the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 negation action plan examples in this SRP are not  
2 requirements. However, they have not addressed that,  
3 nor have they actually invoked any of the Commission  
4 directed examples either.

5 We discussed these examples with them.  
6 After we issued them a letter, they were given an  
7 opportunity to amend their application. And, you  
8 know, we just didn't see that they were meeting the  
9 standard for FOCD as laid out by the Commission.

10 CHAIR GIBSON: All right. Let's stick  
11 with this page. Did we have NINA, TANE supplying only  
12 about ten percent? Do you see that? Will you show  
13 her the same page? There we go. Thank you.

14 Now, NINA claims that you're wrong to  
15 assert that TANE has financial control of NINA and  
16 argues instead that TANE has supplied only about ten  
17 percent of the equity contributions.

18 And we've had 25 percent of the NINA  
19 funding has come from loans primarily from TANE and  
20 that TANE's total financial contribution toward the  
21 project will only amount to two percent through  
22 obtaining the combined operating licenses.

23 Do you dispute NINA's numbers about ten  
24 percent, 25 percent and two percent?

25 MS. SIMMONS: I dispute that that's the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 basis of my conclusion that TANE is exercising  
2 control.

3 CHAIR GIBSON: Fair enough. But as the  
4 numbers, you don't dispute the numbers that they put  
5 out here? They put out ten percent, 25 percent and  
6 two percent. That might be on the next page.

7 MS. SIMMONS: I guess I wouldn't, since  
8 these numbers don't show the totals, I can't verify  
9 them. But I have no reason to believe that they're  
10 incorrect.

11 CHAIR GIBSON: Okay. Your dispute is not  
12 with the numbers. Your dispute is with what?

13 MS. SIMMONS: The basis of my conclusion  
14 for control, of course, are all the factors in the  
15 SRP. But specific to the overwhelming and unnegated  
16 control exercised by Toshiba via financing, it's not  
17 related to whether a particular chunk of the financing  
18 represents a significant portion of contributions to  
19 date.

20 We looked at all the history of the  
21 financing. It's that right now NINA is completely  
22 reliant on Toshiba to advance this project, okay. One  
23 hundred percent of the financing now, to advance to a  
24 COL, is coming from the foreign entity.

25 And NINA is economically dependent on

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 Toshiba. And that gives Toshiba a very significant  
2 avenue of control.

3 Combined with the fact that there are  
4 interrelated contractual and financial relationships  
5 that are related to this financing, that is the basis  
6 upon which I, generally speaking, am making my  
7 financial conclusion, not on this characterization by  
8 NINA.

9 CHAIR GIBSON: Okay. Let's stay with the  
10 same document and look on Page 16. NINA is stating  
11 there that the only real power that TANE can wield  
12 over NINA is to decline to provide additional funding,  
13 that TANE could decide to stop further funding of NINA  
14 which would force NINA to stop or slow its licensing  
15 activities and possibly dissolve the company absent  
16 any further investment.

17 But neither of those action would have an  
18 adverse impact on any decisions for later nuclear  
19 safety, security or reliability. Do you maintain that  
20 TANE has more power over NINA than NINA has described  
21 here?

22 MS. SIMMONS: Yes. I think that that's  
23 sort of an incomplete picture of the degree of control  
24 that TANE exercises over NINA.

25 CHAIR GIBSON: Okay. And what else should

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 they have said though to make a completely accurate  
2 statement?

3 MS. SIMMONS: Well, I think that it's more  
4 complete to say that there are additional factors that  
5 are related to TANE's control over NINA, including  
6 the fact that they're participating on the board of  
7 directors, the fact that they are establishing, and  
8 improving and are involved in budgetary decisions, the  
9 way that they're providing funding. And we can talk  
10 about that more in the closed session.

11 And, you know, all of that is really very  
12 extensive leverage that is provided over NINA that I  
13 don't think is fully captured in simply the statement  
14 that it is only about their ability to withdraw  
15 funding.

16 It's also about how they are providing the  
17 continual financing, the negative covenants, the inner  
18 related nature of the contractual and financial  
19 relationships. All of those come into play in the big  
20 picture here.

21 CHAIR GIBSON: Actual withdrawing of  
22 funding, however, per se, just look at that in  
23 isolation. That doesn't have any impact on National  
24 security or nuclear safety, does it, just the ability  
25 to withdraw financing?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 MS. SIMMONS: Looking at that particular  
2 fact in isolation, no. I don't think that has a  
3 direct impact on common defense and security.

4 CHAIR GIBSON: Okay. And you said earlier  
5 how you think the other powers that they didn't list  
6 here would impact that. So we don't need to go back  
7 over that. I just wanted to be sure we isolated that  
8 one point.

9 Okay. On Page 30 of this document, the  
10 rebuttal statement position, NINA makes this  
11 statement. "The purpose of a negation action plan is  
12 to negate control by foreign entities over decisions  
13 affecting nuclear safety, security or reliability. A  
14 negation action plan need not negate foreign  
15 participation in business or financial decisions."  
16 True or False?

17 MS. SIMMONS: False.

18 CHAIR GIBSON: Why false?

19 MS. SIMMONS: The first statement is  
20 false. The purpose of a negation action plan is to  
21 negate control by a foreign entity, period. Now, what  
22 NINA's trying to argue here, and this will be covered,  
23 this is covered in the rebuttal statement position,  
24 was that business decisions are somehow removed from  
25 the FOCD analysis.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1                   You know, we have these statements by NRG.  
2                   We have docketed statements. And I don't think  
3                   they're in dispute. But Toshiba is relying on, it's  
4                   establishing the budget, establishing, approving  
5                   operating plans, okay.

6                   Those business decisions, of course, are  
7                   part and parcel of the whole operations of NINA which,  
8                   again, is seeking a license to construct a reactor.

9                   So to say that business decisions,  
10                  certainly some decisions probably have nothing to do  
11                  with nuclear safety and security, such as the color of  
12                  paint of a building, something like that. But the  
13                  fundamental business decisions such as the budget and  
14                  the ability to proceed, interrelated with how that EPC  
15                  contract is going to proceed, certainly are pertinent  
16                  to the FOCD analysis.

17                  CHAIR GIBSON: Okay. We're okay talking  
18                  about the EPC contract?

19                  MR. FRANTZ: That contract is not actually  
20                  one of our exhibits. And so, I think, as long as we  
21                  stick to what's described in the testimony, we're okay  
22                  on it.

23                  CHAIR GIBSON: Okay. I think we're okay  
24                  here. I think we're going to mention some of these  
25                  proprietary documents but not talk about their

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701



1 details. If you need to give a complete answer to  
2 that, let us know. And we'll just take this on public  
3 session, okay?

4 MS. SIMMONS: Okay.

5 CHAIR GIBSON: NRC FAR 101, on Answer 65  
6 of Page 32, your direct testimony, you say, "While the  
7 EPC contract alone does not appear to affect control  
8 over NINA, the combination of the EPC contract, main  
9 operating agreement and TANE credit agreement provides  
10 an avenue for impermissible FOCD of NINA."

11 Now, again, I don't want us to talk about  
12 the details of any of these agreements. Because we  
13 could be getting into some other things. And if you  
14 need to give a full and complete answer, please let us  
15 know. And we'll postpone the rest of this. But I  
16 think we can get through most of this in public  
17 session.

18 EPC stands for Engineering Procurement and  
19 Construction. Is that correct?

20 MS. SIMMONS: That's correct.

21 CHAIR GIBSON: And I'm sure you won't be  
22 surprised that NINA takes issue with your statement.  
23 And STP R91, Mr. McBurnett's rebuttal testimony, at  
24 his Answer 25 and 26, He argues that you have no basis  
25 for your claim that the EPC contract may be an avenue

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 for foreign control by TANE and that, in fact, the  
2 situation is just the reverse.

3 Because as an EPC contractor, TANE is  
4 subject to the direction of NINA and cannot perform  
5 any work under that contract without the direction of  
6 the U.S. citizen CEO of NINA. You're familiar with  
7 Mr. McBurnett's testimony in that regard?

8 MS. SIMMONS: Yes. I've read his  
9 testimony.

10 CHAIR GIBSON: Okay. Let's look at the  
11 EPC contract. As I read A66 and A67 at Pages 33 and  
12 34 of your direct testimony, you're saying that  
13 Toshiba has control over NINA. Because if the owners  
14 terminate the EPC contract with Toshiba and retain a  
15 different EPC contractor, NRG Energy has to buy out  
16 Toshiba's ownership interest. Is that what your  
17 testimony says?

18 MS. SIMMONS: That's one element of my  
19 testimony. But there are other factors that are  
20 related to my conclusion.

21 CHAIR GIBSON: Okay. Why don't we go  
22 through this one. And if there are others to make  
23 your testimony complete, please let us know that  
24 before we leave this area of testimony. Okay?

25 MS. SIMMONS: Okay.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 CHAIR GIBSON: I do not want it to be  
2 incomplete. Do you have any personal knowledge that  
3 NRG Energy wants to replace Toshiba as the EPC  
4 contractor?

5 MS. SIMMONS: No. I have no personal  
6 knowledge that they want to replace the EPC  
7 contractor.

8 CHAIR GIBSON: Do you have any personal  
9 knowledge that NRG Energy has expressed any desire or  
10 interest in replacing Toshiba as the EPC contractor?

11 MS. SIMMONS: Although I don't have any  
12 understanding of that, I know that if they did that  
13 would be an impediment to their further financing.

14 CHAIR GIBSON: And why would it be an  
15 impediment to their further financing?

16 MS. SIMMONS: A covenant in the TANE  
17 credit agreement is predicated on Toshiba remaining as  
18 the EPC contractor. As well as the NINA operating  
19 agreement, there's a covenant in that operating  
20 agreement that says that Toshiba must remain as the  
21 EPC contractor.

22 CHAIR GIBSON: Okay. Would you dispute  
23 that the standard in the nuclear industry is for the  
24 reactor supplier to be the prime EPC contractor?

25 MS. SIMMONS: I don't disagree with Mr.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1       McBurnett's statements that vendor finance is a way of  
2       financing.

3                   However, in the context of the NRC FOCD  
4       analysis, because this circular funding, whereby there  
5       are restrictions on TANE's ability to use its funding,  
6       that it restricts its use of funding only to the EPC  
7       contract, okay, and further, that funding is provided  
8       by Toshiba, okay. So Toshiba is using the TANE credit  
9       agreement as a vehicle to further fund its EPC  
10      contract.

11                   I think that's known in the industry as  
12      vendor financing, nothing illegal about that.  
13      However, in terms of my review of FOCD, that is an  
14      avenue of control.

15                   It means that NINA does not have the  
16      ability to, you know, the ability to use those funds  
17      is highly restricted by this interplay between the EPC  
18      contract, the NINA operating agreement and the TANE  
19      credit agreement.

20                   CHAIR GIBSON: So you wouldn't dispute  
21      that that is the standard in the nuclear industry.  
22      But you're saying that that doesn't really matter for  
23      purposes of a FOCD analysis. Is that a fair  
24      statement?

25                   MS. SIMMONS: I think that's a fair

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 statement.

2 CHAIR GIBSON: Okay. Again, as I read  
3 your direct testimony at Page 33 and 34, you're saying  
4 that the restriction on the change in EPC contractor  
5 arises from this 2009 LLC agreement, correct?

6 MS. SIMMONS: It's not only in the LLC  
7 agreement, it's also in the TANE credit agreement.

8 CHAIR GIBSON: In 2009, NINA was not  
9 subject to any foreign ownership, control or  
10 domination by TANE. Is that correct?

11 MS. SIMMONS: Yes. Early in the process  
12 there wasn't and FOCD issue. That's true.

13 CHAIR GIBSON: So how do you get to the  
14 opinion that the EPC contractor's a mechanism for  
15 foreign control by TANE? It predated any foreign  
16 ownership, control or domination by TANE. Because  
17 that was in 2009, right?

18 MS. SIMMONS: Well, because I understand  
19 that all of the covenants of the EPC contract, the  
20 TANE credit agreement and NINA operating agreement  
21 remain in effect. Because there's still, you know,  
22 the updated docketed information, okay.

23 What has changed very dramatically is the  
24 underlying facts. In 2009, the foreign financing did  
25 not rise to the level that it does now. So the fact

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 that Toshiba, that these covenants were in place to  
2 restrict NINA's ability to change the EPC contractor,  
3 were different.

4 Because now Toshiba, by providing all that  
5 financing, it has expanded its degree of control. So  
6 the underlying facts have changed. And yet these  
7 rights still remain in place.

8 You know, one of the challenges that the  
9 staff has seen is that there are provisions in both  
10 the NINA operating agreement and the TANE credit  
11 agreement which restrict NINA's ability to incur  
12 additional indebtedness.

13 Now, we have discussed quite at length  
14 that one way to alleviate this FOCD issue is to seek  
15 additional financing. But financing, as I see it, is  
16 dependent on TANE's agreement. That's yet another  
17 avenue of control considering that they are  
18 economically dependent on this entity.

19 CHAIR GIBSON: So just to circle back  
20 around and make sure that I'm getting what you're  
21 saying, yes, in 2009 NINA was not subject to foreign  
22 ownership, control or domination. And the EPC  
23 contract, at that time, was not a mechanism for  
24 foreign control by TANE.

25 But since that time, the arrangements,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 financial arrangements between the parties have  
2 changed. And that, in turn, has affected this EPC  
3 contract and its impact on foreign ownership, control  
4 and domination. And that basically a fair statement  
5 of what you're saying now?

6 MS. SIMMONS: I think that's fair in the  
7 context of all the contractual arrangements, yes.

8 CHAIR GIBSON: Okay. I realize that  
9 you're not an expert in construction. So I don't want  
10 to quibble with you about this. But as this deal's  
11 been structured, the EPC contract, as well as the  
12 other work performed by contractors, is to be subject  
13 to the oversight of the U.S. citizen CEO and CNO,  
14 correct?

15 MS. SIMMONS: That's correct.

16 CHAIR GIBSON: Is there anything  
17 fundamentally different between the contractors for  
18 STP Units 3 and 4 and the types of contractors for  
19 other new nuclear projects in the United States?

20 MS. SIMMONS: Well, what I can say is, I  
21 think, distinguishes this project is that, although I  
22 do believe the CEO can initiate activities under the  
23 EPC contract, the CEO in this situation, the U.S.  
24 citizens have no ability to force TANE to pay for  
25 those activities.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1           And therein is the difference between, as  
2 I understand it, this project and other projects that  
3 may be in the United States right now.

4           CHAIR GIBSON: So again, there's no  
5 fundamental difference between the way the contractors  
6 are set up here and they way they would be at other  
7 projects. The difference between this and other  
8 projects is that there is a foreign financing element.  
9 And that taints everything else.

10           MS. SIMMONS: Yes.

11           CHAIR GIBSON: Is that true? On Page 27  
12 of your direct testimony, Answer 55, do you testify  
13 that three of the six NRG U.S. citizen officers were  
14 removed and the CEO was instructed to terminate all  
15 remaining NINA employees?

16           And also, regarding operations, it was  
17 decided that NRG would fund NINA's New York lease  
18 termination, and Toshiba would fund the Bay City,  
19 Texas, office. Is that what you testified about?

20           MS. SIMMONS: Yes. However, we're  
21 starting to get into proprietary information.

22           (Off the record comments)

23           CHAIR GIBSON: Oh, that was redacted. Oh,  
24 my goodness. Well, I apologize for that. Please  
25 strike that from the record? Sorry about that. I

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701



1 don't know how that escaped, sorry. Let me just move  
2 these to the numbers. Sorry.

3 To date, are you aware of any actual  
4 control by TANE over the licencing activities for STP  
5 Units 3 and 4?

6 MS. SIMMONS: I have no direct knowledge  
7 of examples where they've exercised control.

8 CHAIR GIBSON: Are you aware of TANE  
9 forcing NINA to change any of its licensing activities  
10 to date?

11 MS. SIMMONS: Although I'm not aware of  
12 that, the standard of review is whether that avenue of  
13 control exists, whether or not it's exercised. So  
14 even if I didn't have any evidence of that exercise of  
15 control actually occurring, the standard of review as  
16 set up by the Commission is whether or not that power  
17 does exist.

18 CHAIR GIBSON: Okay. If we could go to  
19 the staff rebuttal statement of position on Page 34,  
20 there's a reference there to the Yankee facilities.

21 Now, I tried to tie this to NINA's Table  
22 1. It was a little difficult for me to figure it out,  
23 even after your reading your answers. So I want to  
24 make sure that we're on the same page of the same  
25 hymnal here.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1                   The NRC staff references the  
2 Yankee facilities are to the main Yankee, which would  
3 be CY and YAEC on Table 1 of the document we referred  
4 to yesterday.

5                   MS. SIMMONS: Yes.

6                   CHAIR GIBSON: Okay. So that was the  
7 facility's reply?

8                   MS. SIMMONS: Correct.

9                   CHAIR GIBSON: Okay. Now, the context for  
10 the NRC's decision on the Yankee facilities was a  
11 request from the company for an exemption from 10 CFR  
12 50.38, correct?

13                   MS. SIMMONS: I believe the information in  
14 the table was actually related to, prior to the  
15 exemption request by these licensees, there was a  
16 license transfer request that involved foreign  
17 ownership, control and domination.

18                   If I'm understanding your question  
19 correctly, that's I believe what the table was  
20 referring to.

21                   CHAIR GIBSON: Okay. Well, let's go to  
22 the table. Talking about and event that occurred in  
23 2012?

24                   MS. SIMMONS: Yes. I'm not sure that --

25                   CHAIR GIBSON: You were with the NRC then,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 I take it.

2 MS. SIMMONS: Yes. And I reviewed that  
3 license transfer. So, yes. Okay, yes, there it is.

4 CHAIR GIBSON: Right?

5 MS. SIMMONS: So, yes. The correlation  
6 between this table and the, this table's referring to  
7 the license transfer.

8 CHAIR GIBSON: Okay. This has to do with  
9 the license transfer?

10 MS. SIMMONS: Right.

11 CHAIR GIBSON: And in conjunction with  
12 that license transfer request, was there a request for  
13 an exemption --

14 MS. SIMMONS: Yes.

15 CHAIR GIBSON: -- 10 CFR 50.38?

16 MS. SIMMONS: Yes. That was handled  
17 separately, but yes.

18 CHAIR GIBSON: And the NRC granted the  
19 exemption, correct?

20 MS. SIMMONS: That's correct.

21 CHAIR GIBSON: Okay. From reading Answer  
22 24 on Pages 19 to 20 of your rebuttal testimony, it  
23 was my impression that you were making a distinction  
24 between the Yankee facilities and NINA insofar as the  
25 Yankee facilities are FERC related electric utilities

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 that can recoup costs related to the interim ISFSI.  
2 I'm trying to, the interim storage, whatever it is.

3 MS. SIMMONS: Yes.

4 CHAIR GIBSON: I've got one of those in  
5 Prairie Island.

6 (Laughter)

7 CHAIR GIBSON: And cite through their  
8 parent owners via special FERC tariffs. Is that  
9 right?

10 MS. SIMMONS: That was one element.  
11 That's one distinct element that distinguishes the  
12 Yankee case from the NINA case.

13 However, probably the more important point  
14 here and the reason that the Agency made the decision  
15 to exempt these facilities is because, as you  
16 mentioned, this is an independent spent fuel storage  
17 installation.

18 CHAIR GIBSON: Good job.

19 MS. SIMMONS: Because I'm reading it.

20 (Laughter)

21 MS. SIMMONS: And because an ISFSI is not  
22 a production and utilization facility under the Atomic  
23 Energy Act, the Agency was able to come to a  
24 conclusion that they were not subject to the FOCD  
25 prohibition based on the Atomic Energy Act.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1           However, NINA of course is seeking a  
2 license for a utilization facility. So they are  
3 subject to that prohibition.

4           So I think there's, you know, many factors  
5 that distinguish the Yankee situation. You know,  
6 there's no reactors at the Yankee sites. They only  
7 have these ISFSIs.

8           It is true that they are utility plants  
9 and that they are not merchant facilities. But the  
10 key point is that they are not production utilization  
11 facilities and are subject to a different set, they're  
12 not subject to the same prohibition.

13           CHAIR GIBSON: Other than the ISFSI and  
14 this ability to recoup costs in FERC, are the Yankee  
15 facilities and the NINA facilities, do they present  
16 the same foreign ownership, control and domination  
17 issues?

18           MS. SIMMONS: No. They're very, very  
19 different. The Yankee facilities' ownership is made  
20 of both, first of all there are multiple owners.  
21 There are, I think, at least three to four owners.  
22 There are varying degrees of different foreign  
23 involvement, different multiple foreign entities  
24 involved in their ownership structure.

25           So ultimately, you know, the FOCD

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 situation was quite different. Because they were  
2 ISFSIs in the license transfer approval, we were able  
3 to negate them with something called a board  
4 resolution, so a really rather simplistic negation  
5 action plan.

6 I mean, ultimately the Agency decided to  
7 exempt them from those requirements. But I think that  
8 there's really very little similarity here between  
9 the, you know, a COL license and these ISFSIs.

10 CHAIR GIBSON: Okay. On Page 27 in your  
11 rebuttal testimony, Answer 29, you state, "In the TMI  
12 case the staff determined that the proposed ownership  
13 and home country of the applicant did not pose a  
14 threat to National defense and security. This may not  
15 be the case in all situations."

16 And AmerGen was the foreign entity in that  
17 case, right?

18 MS. SIMMONS: That's correct.

19 CHAIR GIBSON: And AmerGen's sworn parent  
20 was British Energy, correct?

21 MS. SIMMONS: That's correct.

22 CHAIR GIBSON: Do you have an opinion  
23 about whether the proposed NINA ownership involving  
24 Toshiba and its home country of Japan poses a threat  
25 to the National defense and security?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 MS. SIMMONS: My opinion regarding  
2 nationality of any foreign entity in an FOCD analysis  
3 is that the conclusion does not turn on the  
4 nationality. The FOCD conclusion does not turn on the  
5 nationality of the nation involved. And that's based  
6 on the Standard Review Plan.

7 Certainly, you know, a secondary review,  
8 an additional review that the staff does is an  
9 inimicality review.

10 There are certainly some nations that  
11 could pose, as laid out in the Standard Review Plan,  
12 there are some nations that could pose a problem, even  
13 if they had only minimal foreign involvement in a  
14 nuclear power plant. And we'd be unable to make a  
15 positive conclusion.

16 Certainly, that's not the case here.  
17 However, you know, again, the nationality is not  
18 important. What's important is if the foreign  
19 entity's exercising control in terms of FOCD  
20 conclusion.

21 Now, the TMI case, it's true the staff  
22 addressed the nationality in the safety evaluation,  
23 although it was not a conclusive fact. And they made  
24 the FOCD analysis based on the strength of the  
25 negation action plan.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1                   And although it was true that they could  
2                   make a statement that Britain was an ally of the  
3                   United States, you know, really their conclusion was  
4                   based on the fact that there was an effective negation  
5                   action plan to negate control by British Energy. And  
6                   that's different than the case here.

7                   CHAIR GIBSON: Do you have an opinion  
8                   about whether Toshiba poses a non-proliferation  
9                   threat?

10                  MS. SIMMONS: I mean, I'm not an expert in  
11                  non-proliferation. But certainly, at this moment in  
12                  time, there's no concern that the staff has that  
13                  Japan, from a nationality perspective, would pose any  
14                  inimicality concerns.

15                  CHAIR GIBSON: Thank you. Are you aware,  
16                  as we sit here today, of any situation in which TANE  
17                  or NINA has acted inconsistently with National defense  
18                  and security?

19                  MS. SIMMONS: No, I have no awareness that  
20                  they have acted inconsistent with National defense or  
21                  security.

22                  CHAIR GIBSON: Okay.

23                  (Pause)

24                  CHAIR GIBSON: As TANE has structured this  
25                  deal, the TANE director on the NINA board is excluded

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701



1 from the security committee. Is that correct?

2 MS. SIMMONS: That's correct.

3 CHAIR GIBSON: And the security committee,  
4 as it has been structured here, has control over  
5 nuclear safety and security decisions, correct?

6 MS. SIMMONS: Yes. That's consistent with  
7 their proposed negation action plan.

8 CHAIR GIBSON: And as NINA has structured  
9 this deal, NINA will have a nuclear advisory committee  
10 made up exclusively of U.S. citizens to oversee safety  
11 and security practices, correct?

12 MS. SIMMONS: That's correct.

13 CHAIR GIBSON: And NINA's also structured  
14 this deal so that, prior to establishment of the  
15 security committee and the nuclear advisory committee,  
16 the CEO of NINA, who must be a U.S. citizen, is to  
17 have control over nuclear safety and security  
18 decisions, correct?

19 MS. SIMMONS: That's my understanding.

20 (Pause)

21 CHAIR GIBSON: If we could turn to  
22 Exhibit, well, no, we don't need to do that. We  
23 previously discussed the NRG Energy's SEC filing. And  
24 I believe that's Exhibit NRC 121. I'm actually going  
25 to ask you some questions about your testimony. We

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 may get to that document.

2 MS. SIMMONS: Okay.

3 CHAIR GIBSON: On Page 5 of your rebuttal  
4 testimony at Answer 8, you assert that NRG Energy's  
5 non-cash contributions were not included. We don't  
6 have to worry about anything on this, do we?

7 MR. FRANTZ: Only the amount of the  
8 contribution.

9 CHAIR GIBSON: Thank you. Don't talk  
10 about the amount.

11 MS. SIMMONS: Okay.

12 CHAIR GIBSON: You know, I have to say,  
13 Mr. Frantz, this case has been very interesting.  
14 Since the fiasco we had and this one, it's very hard  
15 to sort of walk that fine line sometimes. But we're  
16 trying to find ways, Your Honor.

17 MR. FRANTZ: Yes, sir.

18 CHAIR GIBSON: Okay. You assert that NRG  
19 Energy's non-cash contributions were not included in  
20 any of its statements to the Securities and Exchange  
21 Commission, correct?

22 MS. SIMMONS: I think my testimony is  
23 specific to the docketed information from the SEC  
24 filings.

25 CHAIR GIBSON: Okay. And in the docketed

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 information for the SEC filings, it was your testimony  
2 that NRG Energy's non-cash contributions were not  
3 included in those statements.

4 MS. SIMMONS: That's true, yes.

5 CHAIR GIBSON: Okay. But you're not  
6 disputing that those contributions were made, are you?

7 MS. SIMMONS: I think the best thing to do  
8 would be to pull up the actual exhibit about that,  
9 which is STP 00068, just to clarify a little bit,  
10 something about the non-cash contributions.

11 MR. FRANTZ: Your Honor, I think the  
12 substance of that exhibit is proprietary.

13 MS. SIMMONS: Oh, okay.

14 (Off the record comments)

15 CHAIR GIBSON: Does the redacted version  
16 just black out the amount?

17 (Off the record comments)

18 MR. FRANTZ: The amounts in these  
19 particular aspects are the non-cash equity  
20 contributions.

21 CHAIR GIBSON: Why don't we just postpone  
22 this. This is getting too --

23 MS. SIMMONS: Well, I can just add maybe  
24 one sentence of clarification without going into any  
25 of the details.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 CHAIR GIBSON: Please, please.

2 MS. SIMMONS: You know, yesterday we  
3 talked at length about it. And we certainly should  
4 cover this in the closed session.

5 I think there was maybe some confusion,  
6 because the non-cash contributions were largely  
7 rights, okay, as you can see on my testimony, rights  
8 to participate in the development of the project,  
9 rights to acquire a percentage ownership, okay.

10 MR. FRANTZ: I think we're getting --

11 MS. SIMMONS: Oh, we're still getting into  
12 it?

13 CHAIR GIBSON: Yes.

14 MS. SIMMONS: Okay.

15 CHAIR GIBSON: I think so.

16 MS. SIMMONS: Then I'll stop.

17 CHAIR GIBSON: Sorry. We'll just have to  
18 talk about this. I thought the SEC filings would be,  
19 you know, pretty okay. But I see now why they're not.  
20 When you talk about what's not in the filings, then  
21 you start getting into some other stuff.

22 MS. SIMMONS: True.

23 CHAIR GIBSON: So, okay, that's fine.  
24 Hold on, just read this.

25 (Pause)

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 CHAIR GIBSON: Okay. Weren't they talking  
2 about a CPS Energy and its funding, correct?

3 MR. FRANTZ: That's correct.

4 CHAIR GIBSON: Okay, good.

5 (Off the record comments)

6 MR. FRANTZ: Again, the fact that they've  
7 made contributions, and it was publicly available, I'm  
8 not sure the amount is, ultimately.

9 CHAIR GIBSON: Mr. Burdick, you need to  
10 look at that. It's okay. You know, one of my  
11 obligations, and Judge Arnold and Judge Charbeneau, is  
12 to try to make sure the public has an opportunity to  
13 see as much of this as possible. But I realize that  
14 if we can't, we can't.

15 (Off the record comments)

16 MR. FRANTZ: Yes. I believe that the  
17 actual amount is proprietary. But the fact that the  
18 contributions were made is not proprietary.

19 CHAIR GIBSON: Okay. Fair enough. Please  
20 don't talk about the amount.

21 MS. SIMMONS: Okay.

22 CHAIR GIBSON: CPS Energy, okay. So, CPS  
23 Energy has provided funding to the project, correct?

24 MS. SIMMONS: That's correct.

25 CHAIR GIBSON: And CPS Energy owns a

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 certain percentage.

2 MR. FRANTZ: I believe the percentage of  
3 ownership is publicly available.

4 CHAIR GIBSON: 7.625 percent of Units 3  
5 and 4. Is that correct?

6 MS. SIMMONS: That's correct.

7 CHAIR GIBSON: And CPS Energy's reached an  
8 agreement with NINA whereby CPS Energy is no longer  
9 obligated to provide additional funding for the  
10 project until operation is complete. Is that correct?

11 MS. SIMMONS: That's correct.

12 CHAIR GIBSON: Does your analysis of  
13 foreign ownership, control and domination for STP  
14 Units 3 and 4 account for the fact that CPS Energy has  
15 already paid for its share of the licensing activities  
16 for the project?

17 MS. SIMMONS: Yes. The FOCD analysis  
18 included the facts about CPS Energy's participation in  
19 financing to the project.

20 CHAIR GIBSON: How did your analysis  
21 account for this fact?

22 MS. SIMMONS: Well, it accounted for it,  
23 and I'm trying to find it specifically in my  
24 testimony. It accounted for the fact that CPS Energy,  
25 of course, is a U.S. entity, okay.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1           And initially, when the application was  
2 received they were a 50 percent participant. And  
3 there was significant participation.

4           So we looked at the amount and the  
5 current, not only the amount that had been provided  
6 but also as a result of the change in ownership  
7 structure that occurred probably in the 2009 time  
8 frame, 2010 time frame, where CPS Energy dramatically  
9 reduces participation in the project down from the 50  
10 percent to 7.62 percent.

11           We analyzed the reasoning behind that and  
12 what that meant for the project going forward. So CPS  
13 Energy, like NRG, ceased future funding of the  
14 project, ceased any more funding of the project,  
15 although they've retained that investment, you know,  
16 that 7.2 percent ownership interest.

17           So in light of all the facts and  
18 circumstances, as we've mentioned a number of times,  
19 the fact that they have a diminished ownership  
20 participation, diminished financial participation, and  
21 some of CPS Energy's annual reports, you know, have  
22 also indicated that they do not intend to provide  
23 additional funding going forward.

24           Given those facts and circumstances, we  
25 did not see that CPS Energy's participation as a U.S.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 entity was sufficient to negate, again, Toshiba's  
2 control.

3 CHAIR GIBSON: And by the way, you said  
4 7.2 percent, it's 7.625 percent.

5 MS. SIMMONS: Thank you. Yes, that's  
6 correct. I just couldn't find it in my testimony.

7 CHAIR GIBSON: It's all right. On Page 6  
8 and 7 of your direct testimony, Answer 14, you opine  
9 as to the different ways that a foreign entity could  
10 control an applicant.

11 And the first and most straight forward  
12 way would be for direct control as in a wholly owned  
13 U.S. sub of a foreign corporation. Is that correct?

14 MS. SIMMONS: That's correct.

15 CHAIR GIBSON: And I think we can all  
16 agree that NINA is not a wholly owned U.S. sub of a  
17 foreign corporation, correct?

18 MS. SIMMONS: That's correct.

19 CHAIR GIBSON: The second way would be for  
20 the control of the indirect, such as an operating  
21 agreement stipulating that all business decisions  
22 require unanimous vote, the ownership giving the  
23 minority owner negative control through a veto power.  
24 Is that correct?

25 MS. SIMMONS: That's correct.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701



1 CHAIR GIBSON: And again, we can agree  
2 that the operating agreement for NINA does not require  
3 a unanimous vote for all business decisions, correct?

4 MS. SIMMONS: No. It requires a unanimous  
5 vote for just some business decisions.

6 CHAIR GIBSON: Right, but not for all?

7 MS. SIMMONS: That's correct.

8 CHAIR GIBSON: The third way is the  
9 situation where a combination of many factors may lead  
10 to impermissible control, correct?

11 MS. SIMMONS: That's correct.

12 CHAIR GIBSON: And you would place NINA in  
13 this third category. Is that a fair statement?

14 MS. SIMMONS: Yes, sir.

15 CHAIR GIBSON: Are you aware of any  
16 instances in which the NRC has rejected a new reactor  
17 project based on foreign control in this third  
18 category?

19 MS. SIMMONS: I know the only situation  
20 where we have recommended that a license not be issued  
21 was for the Calvet decision. And that was primarily  
22 related to the 100 percent ownership structure of that  
23 applicant.

24 CHAIR GIBSON: Okay. In the past, the NRC  
25 staff has approved negation action plans where either

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 a foreign entity or both entities together have the  
2 power to decide whether to shut down. Is that right?

3 MS. SIMMONS: Yes. We've approved those  
4 types of situations.

5 CHAIR GIBSON: Would you agree that a  
6 decision to shut down operations is more significant  
7 than a decision to withhold further funding?

8 MS. SIMMONS: I think it would depend on  
9 the circumstances. I guess if you were, depending on  
10 who had the decision to shut down a reactor that might  
11 be, if there was a conflict, for example, there's  
12 always this concern about safety versus production.

13 Certainly, it would be pertinent if you  
14 were concerned that one entity would have an economic  
15 interest to continue operations of a safe plant, of an  
16 unsafe plant, okay. That would be something that  
17 would be of greater concern than the decision to  
18 withhold funding.

19 But I think it would just depend on the  
20 circumstances. Both of those factors would certainly  
21 be something that would be important in the FOCD  
22 analysis, who's controlling those types of decisions.

23 CHAIR GIBSON: But you can't really just  
24 make the blanket statement that it's more important,  
25 one is more important than the other?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 MS. SIMMONS: No. You can't make that  
2 blanket statement.

3 CHAIR GIBSON: Okay.

4 CHAIR GIBSON: On Page 30 of your direct  
5 testimony, Answer 62, you state that, as indicated by  
6 Section 4.2 of the STP, control may be established and  
7 exercised via contractual, dead-end contractual or  
8 financial arrangements. Do you see that?

9 MS. SIMMONS: Yes, sir.

10 CHAIR GIBSON: If we could turn to Exhibit  
11 NRC 106 in which you referenced, in this sentence I  
12 just quoted from your redirect testimony, where can I  
13 find this language in the Section 4.2 of the foreign  
14 ownership, control or domination, Standard Review  
15 Plan?

16 MS. SIMMONS: My testimony was referring  
17 to Standard Review Plan, Section 4.2, Number 3 which  
18 reads, "Whether the applicant is indebted to foreign  
19 interests or has contractual or other agreements with  
20 foreign entities that may affect control of the  
21 applicant."

22 CHAIR GIBSON: Hold on just one second.  
23 Hold on. Can you find that, there, thank you. Okay,  
24 I'm sorry. So that's what we're talking about right  
25 here, in the middle of the column?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 MS. SIMMONS: Yes. My testimony was  
2 paraphrasing that portion of Section 4.2 of this SRP.

3 CHAIR GIBSON: So this was your attempt  
4 then to paraphrase that requirement?

5 MS. SIMMONS: Yes. That was just my  
6 summary of some of the, in terms of this portion of my  
7 testimony, we are providing examples from the SRP  
8 about the ways that control could be exercised.

9 CHAIR GIBSON: There is something about  
10 that else that may be instructed there. I think it's  
11 in the preceding part, if you go back down that page  
12 so, I think, look at 4.2. Can we do that?

13 We could go to the fact, there you go, the  
14 end of that paragraph before we get to Number 1, "The  
15 fact that some of the below listed conditions may  
16 apply does not necessarily render the applicant  
17 ineligible for a license." Is that right?

18 MS. SIMMONS: That's true.

19 CHAIR GIBSON: On Page 20 of your direct  
20 testimony, Answer 39, you state that NINA has  
21 requested a Part 70 license for special nuclear  
22 material, and the control of special nuclear material  
23 is an area of foreign ownership, control or domination  
24 concern. Is that right?

25 MS. SIMMONS: Let me just find the, it's

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 Question 39?

2 CHAIR GIBSON: There you go, right there.

3 MS. SIMMONS: Okay.

4 CHAIR GIBSON: Answer 39?

5 MS. SIMMONS: Yes.

6 CHAIR GIBSON: Has STP Nuclear Operating  
7 Company also applied for a Part 70 license for STP  
8 Units 3 and 4?

9 MS. SIMMONS: Yes. It's my understanding  
10 that's part of their application.

11 CHAIR GIBSON: Okay. So if we could go to  
12 the COL application, Section 1.1, Part 1. Okay.  
13 "This application limits the NINA Part 70 license to  
14 the period as needed to construct the utilization  
15 facility and transition the utilization facility to  
16 STPNOC for operation." Did I read that correctly?

17 MS. SIMMONS: Yes, you did.

18 CHAIR GIBSON: Now as this deal's been  
19 structured, "The receipt, possession and use of  
20 special nuclear material is to be controlled at all  
21 times under STPNOC's security programs." Is that  
22 correct?

23 MS. SIMMONS: That's consistent with the  
24 applicant's statements, yes.

25 CHAIR GIBSON: Now, your testimony does

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 not address these facts, does it?

2 MS. SIMMONS: My testimony addresses the  
3 issuance of a Part 70 license and simply states that  
4 the fact of control of special nuclear material is of  
5 concern of the Commission.

6 In terms of the FOCD analysis of NINA, it  
7 is true that because special nuclear material wouldn't  
8 come into play until after issuance of the license,  
9 it's not particularly pertinent to the current facts  
10 and circumstances whereby Toshiba's exercising  
11 control.

12 CHAIR GIBSON: So I understand your answer  
13 to be, ma'am, that no, you did not address it, but  
14 the reason was it doesn't come into play yet.

15 MS. SIMMONS: Correct.

16 CHAIR GIBSON: Okay. Do you know if Part  
17 70 contains a foreign ownership, control and  
18 domination restriction similar to the one in 10 CFR  
19 50.38?

20 MS. SIMMONS: Part 70 does not contain the  
21 same prohibition that is under the regulations in Part  
22 50 or Part 52.

23 CHAIR GIBSON: Okay. Mr. Frantz, NRG  
24 Energy's May 2011 10Q filing, is that something we  
25 need to take up in closed session? Or are we okay to

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 talk about it.

2 MR. FRANTZ: You're okay to talk about  
3 that. It's publicly available.

4 CHAIR GIBSON: Thank you. If we really  
5 need it, if your answer, to be totally complete, needs  
6 to involve something that we shouldn't be talking  
7 about, the closed session, to be sensitive of that,  
8 and we'll talk about it --

9 MS. SIMMONS: Absolutely.

10 CHAIR GIBSON: -- in closed session.  
11 Okay. On Answer 13 on Page 11 of your rebuttal  
12 testimony, refers to NRG Energy's May 2011 10Q filing.

13 MS. SIMMONS: Just let me get to the right  
14 page.

15 CHAIR GIBSON: Okay, I'm sorry.

16 MS. SIMMONS: Excuse me. Yes.

17 CHAIR GIBSON: And the 10Q filing, I  
18 believe, was Exhibit NRC 129.

19 MS. SIMMONS: I think that's right.

20 CHAIR GIBSON: As you quote from that 10Q  
21 as follows, "As a result of the events stemming from  
22 the nuclear incident in Japan, the company no longer  
23 believes it probable that the conditional U.S. DOE  
24 loan guarantee will be received or accepted. Is that  
25 right?"

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 MS. SIMMONS: That's correct.

2 CHAIR GIBSON: Have you formed an opinion  
3 as to whether this statement in NRG Energy's May 2011  
4 10Q filing referred to the short-term prospects for  
5 DOE loan guarantee for the project or for a long-term?  
6 Or did you not make that distinction?

7 MS. SIMMONS: I didn't make a distinction  
8 as to whether that was a short-term or a long-term  
9 prospect.

10 CHAIR GIBSON: If NRG Energy says it only  
11 referred to short-term prospects, would you dispute  
12 that?

13 MS. SIMMONS: How I would dispute it is  
14 that typically, if you're going to file something with  
15 the SEC, it has to meet a materiality standard and get  
16 a NOC, a CPA or a securities analyst.

17 Materiality would probably impact at least  
18 a year's worth. It has to encompass a year's worth of  
19 financial statements or a year's worth of likelihood.  
20 So I guess it just depends. I mean, it's maybe just  
21 a difference of opinion about what's short-term or  
22 long-term.

23 I think that we have to look at the  
24 statement in context of since this filing, okay, we  
25 haven't seen any other information to either modify or

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701



1 amend this opinion as expressed by NRG.

2 So because so much time has passed, and  
3 there's no new evidence or no new information provided  
4 to the NRC on the docket or in their SEC filings,  
5 which we continue to monitor, it could be difficult  
6 for me to agree with an assessment that this is only  
7 a short-term situation.

8 CHAIR GIBSON: Okay. And just to make  
9 sure that, if the record is clear, what comes into  
10 your mind when the term short-term comes up?

11 MS. SIMMONS: Short-term for me, from a  
12 financial perspective, is anything less than a year.

13 CHAIR GIBSON: Anything less than a year.  
14 So if NRG was only talking about a year, you all would  
15 probably be in agreement. If they were talking about  
16 something longer than that, that's not really what you  
17 would think of as being short-term?

18 MS. SIMMONS: Correct. Yes. Given that  
19 they did not qualify this statement, nor have they  
20 amended their statements and they did a de-  
21 consolidation, I think that those facts are pertinent  
22 to, you know, to these previous statements.

23 CHAIR GIBSON: Okay. There is nothing in  
24 NRG Energy's May 2011 10Q filing that refers to the  
25 prospects for a DOE loan guarantee following issuance

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 of the COLs for Units 2 and 3, correct?

2 MS. SIMMONS: No. There's no information  
3 to that effect.

4 CHAIR GIBSON: Right. But you didn't look  
5 that far into the future, or you weren't concerned  
6 with that far into the future for purposes of doing  
7 your analysis, correct?

8 MS. SIMMONS: Well, you know, we've  
9 continued to monitor your SEC filings and look to see  
10 if there's any, you know, additional information about  
11 any forthcoming financing. They didn't present that  
12 information to the NRC.

13 I think it's important to look at this in  
14 conjunction with their other SEC filings which discuss  
15 the viability of the project.

16 In my personal view, if there was a  
17 likelihood of a DOE loan guarantee, their statements  
18 about the viability of the project and Shaw's  
19 statements about the viability of the project would be  
20 different.

21 But since we have multiple SEC filings  
22 regarding their own assessment as a partner and an  
23 insider to this project about the viability of the  
24 project, their write-down, their deconsolidation, were  
25 indications to me that they themselves had no

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 information of any forthcoming DOE loan guarantee or  
2 any other financing.

3 CHAIR GIBSON: Okay. In NRG Energy's May  
4 2011 10Q filing, which is NRC 129, on Page 12 NRG  
5 states, "NINA going forward will be focused solely on  
6 securing a combined operating license from the NRC and  
7 on obtaining the loan guarantee from the U.S. DOE, two  
8 items that are essential to the success of any future  
9 project development." Are you familiar with that  
10 statement?

11 MS. SIMMONS: Yes, that's correct.

12 CHAIR GIBSON: In your rebuttal testimony  
13 on Page 13, Answer 18, you state that, "Without  
14 identified sources of funds for the project, the staff  
15 is unable to assess the potential impacts on foreign  
16 ownership, control and domination, because the staff  
17 would need to determine if the U.S. source of funds  
18 had any foreign involvement." Is that your testimony?

19 MS. SIMMONS: That's part of my testimony,  
20 yes.

21 CHAIR GIBSON: Rebuttal. Well, you  
22 testified about a lot of things, I agree. But when I  
23 ask you a question and you say that's part of it,  
24 sometimes it's a little hard to figure out, you know,  
25 what we need to talk about.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 MS. SIMMONS: Okay.

2 CHAIR GIBSON: I don't want your answer to  
3 be incomplete. But if we go wander all over creation,  
4 it's kind of like trying to nail Jello to a tree, you  
5 know. So how are we going to, I just want to make  
6 sure I'm asking you a question. I don't want it to be  
7 incomplete.

8 MS. SIMMONS: It is correct, what your  
9 statement, that one of the issues, one of the concerns  
10 the staff has without an identified source of funds is  
11 that there potentially could be an FOCD concerned with  
12 new or additional funding. There are other concerns.

13 CHAIR GIBSON: Sure.

14 MS. SIMMONS: And so I don't have to go  
15 into those in detail. But, of course, terms and  
16 conditions would have to be looked at in the context  
17 of the current facts and circumstances with Toshiba.

18 CHAIR GIBSON: Sure. And in fairness, Ms.  
19 Simmons, I'm hoping that we've addressed all of the  
20 concerns that you have. Because we've asked a whole  
21 lot of questions. You may even be getting tired of  
22 it. But, you know, I want to be sure that we do  
23 address all the concerns you have.

24 I'm not trying to isolate them and say  
25 this is the only one. And that's just, sometimes it's

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 a little hard to ask these questions when the answer  
2 I get back is, yes, among other things. Then it's  
3 kind of like, okay, well then how significant is that?  
4 And then we go down a whole 'nother rabbit trail. So  
5 we all recognize this is not your only reason.

6 Let's turn to STP 54, the COL application.  
7 And on 1.0-13, NRC has proposed a license condition  
8 stating, "The United States Department of Energy or  
9 other agency of the United States Government will  
10 either loan the funding for or guarantee loans for at  
11 least 50 percent of the construction funding to be  
12 provided through loans." Do you see that?

13 MS. SIMMONS: Yes, sir.

14 CHAIR GIBSON: Would you agree that the  
15 Department of Energy and other agencies of the U.S.  
16 Government are not subject to foreign control?

17 MS. SIMMONS: I would agree that they're  
18 not subject to foreign control, to my knowledge.

19 CHAIR GIBSON: Okay. All right, not since  
20 the days of Joe McCarthy and people like that. Okay.  
21 And you would also agree that the NRC has the  
22 authority to impose conditions on licenses and has  
23 done so in the past for FOCD issues, correct?

24 MS. SIMMONS: Yes. Although I believe  
25 this license condition was related to financial

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 qualifications. But you're absolutely correct. We  
2 have imposed license conditions related to FOCD.

3 CHAIR GIBSON: Okay, great. Let's go back  
4 in your answer. Because I want to make sure that I  
5 understand the full impact of what you're saying.  
6 You're saying that this proposed license condition  
7 related to financial qualifications as if it needed to  
8 relate to something else for it to have significance.

9 And if you didn't say that, that was sort  
10 of the music behind the words I was picking up. And  
11 I want to make sure that I understand what your  
12 concern is in that regard, with this proposed license  
13 condition.

14 MS. SIMMONS: Just to clarify, and we can  
15 go back to the proposed license condition.

16 CHAIR GIBSON: Just one second.

17 MS. SIMMONS: Okay.

18 CHAIR GIBSON: She'll do that in a second.  
19 I believe it is STP 54, 1.0-13. There we go.

20 MS. SIMMONS: I'm with you. Scroll up --

21 CHAIR GIBSON: I believe that's Number 1,  
22 correct?

23 MS. SIMMONS: Yes.

24 CHAIR GIBSON: That's the proposed  
25 provision to which we have been referring, correct?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 MS. SIMMONS: Yes. Now, just to clarify,  
2 the applicant proposed a license condition to address  
3 FOCD which they were assuring that 50 percent of the  
4 funding would come from U.S. sources, okay.

5 This one addresses, I mean, they have a  
6 separate review related to financial qualifications.  
7 But, yes, they essentially have asserted that they  
8 will, through a license condition, be able to  
9 guarantee that 50 percent of the funding moving  
10 forward will come from U.S. sources, correct.

11 CHAIR GIBSON: Okay, okay. And on Page 24  
12 of your rebuttal testimony, at Answer 26, you refer to  
13 transfer of control. And in that testimony, you refer  
14 to NRC regulatory issue summary 2001-06. Is that  
15 correct?

16 MS. SIMMONS: That's correct.

17 CHAIR GIBSON: Okay. When you refer to  
18 transfer of control. Let's turn to the first example  
19 you provide in your rebuttal testimony of a transfer  
20 of control. And that is the decision to continue  
21 operation or shut down for repairs. Is that right?

22 MS. SIMMONS: Yes. That's consistent,  
23 yes.

24 CHAIR GIBSON: That's your first rebuttal  
25 up there. Now, as this deal's been structured, if

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 decisions are to be made by STPNOC as to whether STP  
2 Units 3 and 4 will continue to operate or will be shut  
3 down for repairs, is that correct?

4 MS. SIMMONS: Could you just repeat that?

5 CHAIR GIBSON: Absolutely. Now, as this  
6 deal has been structured, decisions are to be made by  
7 STPNOC as to whether STP Units 3 and 4 will continue  
8 to operate or will be shut down for repairs. Is that  
9 correct?

10 MS. SIMMONS: That's correct.

11 CHAIR GIBSON: And as such, TANE lacks  
12 authority to make those decisions. Is that correct,  
13 as the deal has been structured?

14 MS. SIMMONS: That's correct.

15 CHAIR GIBSON: Okay. In your second  
16 example, indicating a transfer of control, you list  
17 the decision to defer repairs on safety related  
18 equipment.

19 Now, as this deal's been structured,  
20 decisions about whether STP Units 3 and 4 will defer  
21 repairs on safety related equipment are to be made by  
22 STPNOC. Is that correct?

23 MS. SIMMONS: Yes.

24 CHAIR GIBSON: And as a result, as the  
25 deal has been structured, TANE lacks authority to make

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701



1 those decisions. Is that correct?

2 MS. SIMMONS: That's correct.

3 CHAIR GIBSON: Okay. Your third example  
4 indicating the transfer of control is budget setting  
5 and spending authority.

6 Now, as this deal has been structured,  
7 decisions about whether to spend money are to be  
8 controlled by the CEO and the NINA board which is  
9 controlled by the vote of the NRG board member. Is  
10 that correct?

11 MS. SIMMONS: No. I disagree. First of  
12 all, I just want to say that the examples cited here  
13 are actually quoted from the RIS, the regulatory  
14 information summary. As --

15 CHAIR GIBSON: And that would be 2001-06?

16 MS. SIMMONS: That's correct.

17 CHAIR GIBSON: Which is NRC Exhibit 166.

18 MS. SIMMONS: That's correct.

19 CHAIR GIBSON: Okay.

20 MS. SIMMONS: So in the context of my  
21 testimony, the purpose of this testimony, of this  
22 answer, was to show examples of the NRC's views of  
23 control. And that that, in the context of a different  
24 regulation to NCFR 5080, indications of control and  
25 transfers of control can be related to, similarly to

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 the FOCD analysis, any number of factors.

2 But those factors in the final decision  
3 making authority include factors that are related to  
4 business decisions.

5 And I believe that this response on my  
6 testimony was specifically in response to NINA's  
7 assertion, from the testimony from Mr. Collins and Mr.  
8 Wood, that certain decisions are not related to the  
9 protection of public health and safety and that they  
10 can be made by foreign nationals without violating the  
11 FOCD prohibitions.

12 And this was just to draw into the  
13 response that when the NRC looks at transfers of  
14 control they look at many things, including business  
15 decisions. So you have to look at the whole picture.

16 So it is true that STPNOC, a U.S. entity  
17 is seeking a license to operate. It is true that they  
18 will have responsibility for the decisions listed in  
19 this RIS that relate to operations and the plant.  
20 Absolutely true.

21 But I think the purpose of my answer was  
22 not really about that. It was more about the cost of  
23 business decisions being something that can be  
24 incorporated into a control analysis.

25 CHAIR GIBSON: Fair enough. And in fact,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 you know, where we are at this point, in questions I  
2 think we've been asking you and the other witnesses,  
3 it has to do a great deal with the back and forth  
4 that's going on between the parties trying to go  
5 around these issues and pair them to something that we  
6 can all understand where our disagreements are so  
7 that, when we finally get to closing arguments, we  
8 know what the specific issues are that these attorneys  
9 are going to be addressing for us.

10 MS. SIMMONS: Absolutely.

11 CHAIR GIBSON: But by virtue of the fact  
12 that you were attempting to explain how this  
13 regulatory issue summary related to the concerns that  
14 were raised by these applicant witnesses, you raised  
15 these points.

16 And I'm merely trying to make sure the  
17 record is clear, that the things that you set out  
18 here, we understand how the deal has been structured  
19 here.

20 So getting back to my question, I asked  
21 you how the deal has been structured with respect to  
22 budget setting and spending authority. And your  
23 answer was, no, you disagree, that that is not, I  
24 believe that was your testimony, that whether to spend  
25 money, whether decisions about whether to spend money

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 are to be controlled by the CEO and the NINA board  
2 which is controlled by the vote of the NRG Energy  
3 member.

4 My question is, that's how they structured  
5 it, is that sufficient to meet this budget setting and  
6 spending authority requirement, okay? And you said,  
7 no, it's not. And I'm just trying to understand why.

8 MS. SIMMONS: I disagree with the second  
9 half of the sentence that states that budget setting  
10 and spending authority is established by the NINA  
11 board of directors which is determined by the NRG  
12 vote.

13 CHAIR GIBSON: By the NRG board member  
14 vote?

15 MS. SIMMONS: Yes, that second, it is true  
16 that the structure of this is determined by the NINA  
17 board, okay.

18 CHAIR GIBSON: Correct.

19 MS. SIMMONS: But my opinion and my  
20 conclusion is that that control is not established by  
21 the voting rights. That that control, because it is  
22 100 percent, and it is established by the terms, and  
23 conditions and covenants of the TANE credit agreement  
24 and the supplemental agreements, which we'll talk  
25 about in the closed session, that that is actually the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 basis upon which the staff is determining who is  
2 controlling the budget setting and spending authority.

3 Furthermore, NRG itself, in its letter to  
4 the SEC, indicated on June 14th, 2012, and that's,  
5 let's refer to that, NRC 121, in its own words, said  
6 that, on Page 5 of its filing, the basic --

7 CHAIR GIBSON: Let me get to Page 5 so I  
8 can follow you.

9 MS. SIMMONS: Oh, I'm sorry.

10 CHAIR GIBSON: No, no, it's okay. I just  
11 want to make sure we can, I think one more page. It's  
12 on Page 5. Is that right?

13 MS. SIMMONS: Yes, one more page. It's --

14 CHAIR GIBSON: There we go.

15 MS. SIMMONS: Yes. Okay, so it's the  
16 second paragraph. "Furthermore, based on the events  
17 that occurred in March of 2011, the NINA board of  
18 directors" -- so that's consistent with the first part  
19 of your sentence, that the NINA board of directors is  
20 involved here -- "made several decisions impacting the  
21 business, including" -- and this is where, I think,  
22 this is important to addressing the assertion that  
23 Toshiba credit facility would be used for licensing  
24 and construction costs up to an amount agreed by  
25 Toshiba.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1           So that phrase, up to an amount agreed to  
2 by Toshiba, is one indication to the staff that it is  
3 Toshiba setting the budget authority. Further, in the  
4 previous page --

5           CHAIR GIBSON: That would be on --

6           MS. SIMMONS: On Page 4, NRG described its  
7 assessment related to the deconsolidation.

8           MR. SPENCER: Your Honor, Michael Spencer  
9 for the staff. Just for the sake of clarifying the  
10 record, actually you all were talking previously on  
11 Page 6 of 6 of the exhibit. Now you're on Page 5 of  
12 6.

13           CHAIR GIBSON: It's very possible that  
14 there's a transmittal error. And then there's an  
15 attachment. And it's like Page 5 of the attachment,  
16 but Page 6 of the total document.

17           MR. SPENCER: In this case, having  
18 prepared the exhibit, that's not the case here.

19           CHAIR GIBSON: So somebody misnumbered  
20 them?

21           MR. SPENCER: No. At the top it says Page  
22 5 of 6.

23           CHAIR GIBSON: And then if you go down to  
24 the bottom what is the number?

25           MS. SIMMONS: I think --

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 CHAIR GIBSON: Hold on just a second. The  
2 number there is four.

3 MR. SPENCER: Oh, okay. So what happened  
4 is this. SEC filings from the SEC are on the SEC  
5 Website through EDGAR in PDF format.

6 CHAIR GIBSON: Okay.

7 MR. SPENCER: Filings from outside  
8 entities to the SEC are not in PDF format. So they're  
9 downloaded into HTML format. And so the four there,  
10 I guess this is a question of having the four at the  
11 bottom of the page represents the page number of the  
12 original filing to the SEC in whatever the original  
13 format was. But the page number at the top of the  
14 page represents the page of the exhibit that we  
15 submitted. So --

16 CHAIR GIBSON: Okay. Okay, let me just  
17 make sure for the record that we're clear. When  
18 you're referring to Page 4, you're referring to the  
19 number at the bottom of the page and not the number at  
20 the top of the page. Is that a fair statement?

21 MS. SIMMONS: Yes. If you'd like me to  
22 correct my --

23 CHAIR GIBSON: No, you don't need to.  
24 Just refer to the number of the bottom of the page.  
25 And then we'll know we're all talking about the same

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 thing. Okay?

2 MS. SIMMONS: So just to continue, at the  
3 bottom of the Page 4, the second paragraph from the  
4 bottom, we see NRG's assessment of the NINA operating  
5 agreement.

6 So under the NINA operating agreement, you  
7 talk about the change that happened after NRG's  
8 withdrawal, after the events in Fukushima which led to  
9 NRG's withdrawal of finances for participation in the  
10 project.

11 And very clearly here they discuss these  
12 rights, right? They say under the NINA operating  
13 agreement, Toshiba had the to approve the annual  
14 budget and operating plans of NINA. So they had this  
15 contractual right.

16 However, looking to the substance of what  
17 that right meant, the staff looked at NRG's assessment  
18 of this and said that, well, the company had  
19 previously, meaning NRG, had previously concluded that  
20 this was a protective right.

21 However, when the nuclear incident at  
22 Fukushima Daiichi Nuclear Power Station occurred in  
23 March of 2011, this was deemed to be a substantive  
24 participating right.

25 So the staff looked at that. Given that

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701



1 this is from the CFO of NRG, statements to the SEC are  
2 assumed to be complete and accurate. And back to my  
3 answer in my testimony, upon these set of facts the  
4 staff made the conclusion that the budget and  
5 operating plans of NINA are controlled by Toshiba.

6 CHAIR GIBSON: Okay. That was very  
7 helpful, thank you.

8 MS. SIMMONS: Yes.

9 CHAIR GIBSON: Let me ask you a follow-up  
10 question.

11 MS. SIMMONS: Sure.

12 CHAIR GIBSON: It sounds to me like we  
13 have a less than complete symmetry between what NRG  
14 reported to the SEC in this document you just  
15 testified about and what the applicant has put in its  
16 application with respect to how these budgetary  
17 decisions are going to be made. Is that a fair  
18 statement?

19 MS. SIMMONS: Yes. I think they are,  
20 they're different statements.

21 CHAIR GIBSON: Yes. Not that one of them  
22 is not telling the truth, just that, you know, it's  
23 sort of like they're looking at it maybe from a  
24 different perspective.

25 MS. SIMMONS: Yes. I think they're

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 addressing different facts, different components.

2 CHAIR GIBSON: And so you basically, in  
3 your analysis, gave more weight to NRG's statement to  
4 the SEC in this document than you did to the statement  
5 in the application about these budgetary and budget  
6 setting and spending authority claims. Is that a fair  
7 statement?

8 MS. SIMMONS: I think it would be probably  
9 more accurate to say that I looked at the statements  
10 in the application in light of what was reported to  
11 the SEC. And since the SEC statements were a little  
12 bit more specific, a little bit more complete, you  
13 know, that was a framework for me to make a conclusion  
14 about the meaning, the substance, of what was being  
15 reported.

16 CHAIR GIBSON: Okay. As laid out for you  
17 though, in the application, TANE lacks the authority  
18 to make these decisions about budget setting and  
19 spending authority, correct?

20 MS. SIMMONS: I think I would agree that  
21 that's NINA's assertion.

22 CHAIR GIBSON: And that's fine. I just  
23 want to make I understand what one party is saying,  
24 and what another party is saying and what you're using  
25 to try to get the whole picture with the many factors

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 that you consider in making your decision.

2 Okay. We could go back to the testimony  
3 on Page 24, A26 is I think, back up one, that goes  
4 with the bullets. Okay, good. Our last bullet there,  
5 transfer control is the decision to continue  
6 operations or permanently cease operation. That's one  
7 of the bullets, right?

8 MS. SIMMONS: Yes, that's one of the  
9 factors in the RIS.

10 CHAIR GIBSON: Now, as the deal has been  
11 structured, decisions about whether STP Units 3 and 4  
12 will continue to operate or permanently cease  
13 operations are to be made by the owners of STP Units  
14 3 and 4. Is that correct?

15 MS. SIMMONS: Yes, that's my  
16 understanding.

17 CHAIR GIBSON: And again, as the deal has  
18 been structured, TANE would lack authority to make  
19 those decisions. Is that correct?

20 MS. SIMMONS: No. I think that we're  
21 talking about, if we're talking about operations that  
22 would be post-licensing. So I think that's somewhat  
23 speculative since we don't know the future.

24 But as I understand it, yes. Since STPNOC  
25 is pursuing the operational license, you know, that is

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 an indication that they would generally have authority  
2 over this kind of a decision.

3 CHAIR GIBSON: Got it. And I know you  
4 don't like to project things in the future and make  
5 these breaks that we talked about earlier, but as it's  
6 structured, were things to go the way they've  
7 structured it, TANE would not have the authority to  
8 make decisions over whether to continue operations or  
9 permanently cease operations, would they?

10 MS. SIMMONS: You know, yes. If we agree  
11 that NINA's explanation that TANE, after construction,  
12 TANE would be really removed from the project, then  
13 yes. There wouldn't be any reason to have concern  
14 about TANE's control over these decisions.

15 CHAIR GIBSON: Even with respect to NINA  
16 itself, TANE cannot decide unilaterally to dissolve  
17 NINA can it?

18 MS. SIMMONS: That is my understanding,  
19 that it could not have, it does not have a contractual  
20 right to unilaterally dissolve NINA. However, you  
21 know, certainly complete withdrawal of funding would  
22 impact the future of NINA functionally.

23 CHAIR GIBSON: Yes, as things currently  
24 stand.

25 MS. SIMMONS: Correct.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 CHAIR GIBSON: On Page 25 of your rebuttal  
2 testimony, Answer 27. You state that Mr. McBurnett  
3 and Ms. Seely may not be aware of impermissible  
4 foreign ownership, control or domination, for example,  
5 in a case where additional foreign entities are  
6 acquired higher up in the ownership chain of NINA. Is  
7 that a fair statement?

8 MS. SIMMONS: That's correct.

9 CHAIR GIBSON: Now, as a theoretical  
10 matter, I suppose a RIS could be posed that the NINA  
11 CEO would not be aware of impermissible foreign  
12 ownership, control or domination. But such a  
13 theoretical RIS would exist for any kind of deal that  
14 has some foreign involvement, would it not?

15 MS. SIMMONS: Yes. And the difference is,  
16 let me just explain the difference here, in my view.  
17 First of all, we've had this situation. We've had  
18 situations where we've had FOCD concerns enter into a  
19 chain of ownership. And licensees are unaware of some  
20 sort of change in ownership that's occurred somewhere  
21 in the extensive corporate structure, okay.

22 The concern here is that, because we are  
23 very much concerned with whether they have crossed the  
24 line into impermissible FOCD, if we were to add in  
25 additional FOCD, you know, again it is a theoretical,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 if additional FOCD was added onto a situation where we  
2 already had concerns about the ability of the negation  
3 action plan to address FOCD, then the concern here  
4 would be that it would tip into a situation where the  
5 negation action plan would not be able to address it.

6 CHAIR GIBSON: Yes.

7 MS. SIMMONS: Okay. So I think it's just  
8 a matter of, you know, what's the baseline, how much  
9 foreign involvement do you have as a baseline? And  
10 certainly in any other situation we've been able to  
11 address it after the fact. But it has happened.

12 CHAIR GIBSON: Okay. As this deal's been  
13 structured, no additional foreign entity has been  
14 acquired higher up in the ownership chain of NINA. Is  
15 that correct?

16 MS. SIMMONS: Not to my knowledge.

17 CHAIR GIBSON: Descending from the  
18 theoretical to the practical, don't you think it's  
19 extremely unlikely that the CEO of NINA would not be  
20 aware of a foreign entity acquiring an indirect  
21 controlling interest in NINA?

22 MS. SIMMONS: I think that it would be  
23 unlikely certainly if there was a change in control,  
24 in the ownership change. What unfortunately, in my  
25 experience, is not unlikely is that management at the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 licensee level are often unaware of, say, foreign  
2 members added to the board of directors, affiliate  
3 foreign ownership changes, okay.

4 Because their concern, of course, is the  
5 operation of the nuclear reactor. They're not  
6 concerned with, you know, necessarily the corporate  
7 structure. So I can only speak to my experience. But  
8 we have had FOCD issues happen without the knowledge  
9 of a licensee.

10 I agree that wholesale changes would come  
11 to the attention of the CEO, because it would likely  
12 require a license transfer, at least assessment by the  
13 NRC.

14 CHAIR GIBSON: Yes, because were a foreign  
15 entity to acquire a significant share of NINA or one  
16 of its parents, NINA would be required to notify the  
17 NRC, wouldn't it?

18 MS. SIMMONS: Yes.

19 CHAIR GIBSON: Okay. Well, I think we  
20 have gone to the end of our questioning in the public  
21 session. So, what I would suggest we do is that we  
22 recess for lunch and that, when we come back from our  
23 lunch recess, anyone who's, you know, not a member of  
24 a party, who is here to view this from the public, is  
25 going to have to leave.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1                   And we'll just have to clear the  
2 courtroom. The only people that can be present are  
3 going to be parties, Counsel for parties, and  
4 witnesses. Okay?

5                   MR. FRANTZ: Judge Gibson, also I'm not  
6 sure that all of the representatives of the  
7 interveners have signed the non-disclosure agreement.  
8 I just want to make sure that whoever is retained here  
9 has signed the non-disclosure agreements.

10                  MR. EYE: We will follow that.

11                  CHAIR GIBSON: Good. I figured that Mr.  
12 Eye would be more than happy to accommodate you. So  
13 will you all make sure and work that out at lunch, so  
14 when we come back we don't have to worry about it.

15                  Mr. Matt Schmit is outside the courtroom.  
16 He might be able to make sure that we will be  
17 responsible for enforcing it. Though when he was  
18 present, he shouldn't be present.

19                  But if you all happen to see someone who  
20 should not be present, please notify him so we can  
21 take care of that. If there's nothing else, we stand  
22 in recess for lunch. You all need another hour and a  
23 half? Or is an hour going to be sufficient? What do  
24 we need?

25                  MR. SPENCER: Probably for us an hour and

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701



1 15 minutes to an hour and a half.

2 MR. EYE: Yes. That's fine with us as  
3 well, Your Honor.

4 CHAIR GIBSON: Mr. Frantz?

5 MR. FRANTZ: That's fine with us, sir.

6 CHAIR GIBSON: All right, we'll give them  
7 an hour and 15 minutes then. I don't want to squeeze  
8 you on time there. But if we can, that would be  
9 helpful. We've got a lot of ground to cover. All  
10 right, we stand in recess for an hour and 15 minutes.

11 (Whereupon, the above-entitled matter was  
12 concluded at 11:55 a.m.)

13

14

15

16

17

18

19

20

21

22

23

24

25