

INT000065
July 22, 2013

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD PANEL

In the Matter of

**South Texas Project Nuclear Operating Co.
Application for the South Texas Project
Units 3 and 4 Combined Operating License**

**Docket Nos. 52-012, 52-013
July 22, 2013**

**PREFILED REBUTTAL TESTIMONY OF MICHAEL F. SHEEHAN, Ph.D.
ON BEHALF OF INTERVENORS SUSTAINABLE ENERGY AND
ECONOMIC DEVELOPMENT COALITION (SEED), SUSAN DANCER,
THE SOUTH TEXAS ASSOCIATION FOR RESPONSIBLE ENERGY,
PUBLIC CITIZEN, DANIEL A. HICKL AND BILL WAGNER
REGARDING CONTENTION FC-1**

I. INTRODUCTION

A. Qualifications

**Q1. PLEASE STATE YOUR NAME AND ADDRESS FOR THE
RECORD.**


A1. My name is Michael F. Sheehan. My address is Sheehan & Sheehan
Economics LLC, 33126 Callahan Road, Scappoose, Oregon, 97056.

Q2. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

A2. I am a partner in the firm of Sheehan & Sheehan Economics LLC.

Q3. PLEASE DESCRIBE YOUR PROFESSIONAL BACKGROUND.

A3. I hold BS, MA and Ph.D. degrees in economics from the University of
California at Riverside and a Juris Doctorate degree from the College of Law at the

United States Nuclear Regulatory Commission Official Hearing Exhibit	
In the Matter of:	NUCLEAR INNOVATION NORTH AMERICA LLC (South Texas Project Units 3 and 4)
	ASLBP #: 09-885-08-COL-BD01 Docket #: 05200012 05200013 Exhibit #: INT000065-00-BD01 Admitted: 1/6/2014 Rejected: Other:
	Identified: 1/6/2014 Withdrawn: Stricken:

University of Iowa. I taught for a number of years at the Graduate Program in Urban and Regional Planning at the University of Iowa specializing in public utility policy and planning, planning economics, energy planning and development finance. I have testified as an expert witness in a number of cases before state public utility commissions, and in a number of cases before the ASLB on nuclear issues. I am the co-author of a report on the New Mexico uranium industry which focused in part on the issue of foreign dominance in the nuclear fuel industry. Further details of my qualifications are set forth in my resume as attached to Intervenors' Initial Statement of Position.

B. Purpose of Testimony

Q4. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A4. The purpose of this rebuttal testimony is to respond to NINA's Initial Statement of Position as supported by the direct testimony presented by NINA witnesses Collins, Wood, Seely and McBurnett, with respect to the level of domination or control Toshiba exercises, or has the power to exercise, either directly or indirectly, over the activities of the applicant in this case, Nuclear Innovation North America, LLC (NINA or Applicant).

Q5. WHAT MATERIALS HAVE YOU REVIEWED IN THE COURSE OF YOUR EVALUATION.

A5. A list of the materials I have previously reviewed is set forth in my direct testimony as Exhibit INT000056 and in the various footnotes to that testimony. Since then I have reviewed NINA's Initial Statement of Position, the testimony of the witnesses listed above, the Staff testimony presented by Anneliese Simmons as well as the Staff's

Initial Statement of Position.

II. SUMMARY OF THE ELEMENTS OF NINA'S CLAIM THAT FOREIGN CONTROL OR DOMINATION OF THE APPLICANT IS NOT A MATTER OF CONCERN IN THIS CASE

Q6. WOULD YOU PLEASE PROVIDE A SUMMARY OF NINA'S CLAIMS AS TO WHETHER NINA IS SUBJECT TO FOREIGN DOMINATION OR CONTROL WITH RESPECT TO THE SOUTH TEXAS 3 & 4 PROJECTS?

A6. NINA's argument that there is no domination or control of NINA by a foreign entity is based on claims that:

1. All the applicants for the STP 3 & 4 licenses are U.S. entities.¹
2. NINA is 90% owned by NRG, a U.S. corporation, and NRG exercises 90% voting control over NINA.²
3. The CEO of NINA supervises NINA's CFO, and so the CFO though appointed by TANE, cannot make independent decisions binding NINA.
4. TANE is providing only a small percentage of the overall funding for the project through loans to fund the remaining licensing efforts. As of December 2011, [REDACTED] had been invested in the project (including cash and non-cash equity contributions and loans). Of that, [REDACTED] of the cash and non-cash contributions was supplied by NRG and [REDACTED] by CPS Energy.³
5. TANE as of December 2011 has provided only about 25% of the investment in the project through equity and loans, with the remainder being

1. McBurnett Prefiled Direct Testimony, p.8 Exh. STP000036.

2. Id. p.8.

3. Id. p.8.

provided by CPS Energy and Shaw.⁴

6. Since NRG made its decision to cease further funding of NINA, it has provided ██████████ to cover “wind-down” expenses associated with the layoff of most of the NINA staff and the suspension of engineering and other preconstruction activities.⁵

7. The existing loans from TANE will be extinguished as part of “Project Finance” prior to construction, with loans to cover “approximately 75-80% of the total project cost, and these loans would primarily come from the U.S. Government.”⁶

8. NINA will adopt a Negation Action Plan (NAP) which provides that once construction activities begin the Security Committee of the NINA Board will make all decisions “affecting nuclear safety, security, or reliability.”

A Nuclear Advisory Committee (NAC) will also be established by NINA prior to the first pouring of safety-related concrete, to provide broad oversight over all aspects of NINA to ensure that inappropriate FOCD is not occurring.

9. The primary FOCD concern is that is that a foreign investor might use its role in a US project to gain inappropriate access to nuclear technology or special nuclear material that could be a concern from a non-proliferation perspective.

However, in a situation such as here, where the foreign participant already

4 Id. p.9.

5 Seely Prefiled Direct testimony, p.11 Exh. STP000038.

6 McBurnett op.cit. p.11.

possesses the nuclear technology and has majority ownership of a entity (Westinghouse) that has access to special nuclear material, there is **no genuine concern regarding non-proliferation**. “(I)t is not reasonable to postulate the use of financial control or influence for inappropriate purposes where the foreign investor already possesses the nuclear technology, such as is the case with STP Units 3 and 4.”⁷ Therefore, based on the FOCD SRP and precedent, FOCD negation measures should be viewed as adequate as long as they vest ultimate control and authority over nuclear safety, security, or reliability in US hands.⁸ (Emphasis added).

10. While Toshiba is a Japanese corporation, Japan is an ally of the United States and therefore any FOCD concerns involving Toshiba should be of minimal concern.

III. RESPONSE TO NINA’S CLAIMS

Q7. PLEASE PROVIDE A SUMMARY OF THE FACTUAL SITUATION RELATING TO NINA AND CURRENT STATUS OF THE STP 3 AND 4 PROJECT.

A7. NINA is the license applicant in this case. It is 90% owned by NRG Energy and 10% owned by Toshiba America Nuclear Energy Corp. (TANE), a wholly owned subsidiary of Toshiba, a Japanese corporation, through its U.S. subsidiary, Toshiba America.

Prior to Fukushima (March 2011) entities providing funding for the project were NRG, TANE, CPS Energy, and Shaw. In light of the Fukushima disaster, however, CPS,

7 Collins and Wood, op.cit. pp.38-9 Exh. STP000037.

8 Collins and Wood Prefiled Direct Testimony, pp.38-9.

NRG and Shaw each made it clear they would provide no further funding to advance the project.⁹ This left Toshiba as the only remaining source of funding for the project going forward.

Q8. WHAT WAS NRG’S RATIONALE FOR REFUSING TO PROVIDE FURTHER FUNDING TO ADVANCE THE PROJECT?

A8. As set forth by Seely, “As a result of the then-ongoing accident, NRG foresaw diminished prospects for STP3 & 4. Given the extraordinary challenges facing U.S. nuclear development under such circumstances, NRG did not believe that it could justify to its shareholders any further financial participation in the development of the STP project.”¹⁰

Q9. HOW MUCH OF THE INVESTMENT IN THE PROJECT IN TERMS OF EQUITY AND LOANS HAS BEEN PROVIDED BY NRG?

A9. As of March 31, 2011 NRG’s equity interest in NINA was approximately \$466 million.¹¹ NINA estimates that as of December 31, 2011 approximately [REDACTED] had been invested in the project, including cash and non-cash equity contributions and loans. Of that amount, [REDACTED] had been supplied through cash and non-cash equity contributions by NRG Energy.¹²

Q10. WHAT DO YOU CONCLUDE FROM THIS?

A10. If we count the “non-cash equity contributions” as part of NRG’s financial

9 Though NRG provided approximately [REDACTED] to fund “reduction in workforce and other wind-down expenses.” Seely, Prefiled Direct Testimony, p.6, STP000038.

10 Seely Prefiled Direct Testimony, A14, p.12.

11 Response of Kirkland Andrews, Executive Vice President and Chief Financial Officer of NRG Energy, to the SEC, June 14, 2012, p.5. Exh. NRC000121.

<http://www.sec.gov/Archives/edgar/data/1013871/000110465912043513/filename1.htm>.

12 McBurnett Prefiled Direct Testimony, p.9.

contribution to the project (including, e.g., the value of the land, water rights, etc., associated with the site), then NRG's [REDACTED] investment in the STP 3&4 project is very substantial and not something to be walked away from. With this in mind I would conclude that NRG would like to minimize the risk associated with further funding out of its own pocket, while maximizing the opportunity of having the project successfully completed.

Q11. HOW MUCH HAS TOSHIBA INVESTED IN THE PROJECT IN TERMS OF EQUITY AND LOANS?

A11. Toshiba through TANE has invested approximately [REDACTED] in terms of equity and loans to NINA.

Q12. DOES TOSHIBA HAVE AN INTEREST IN HAVING THE PROJECT GO FORWARD AND SUCCEED?

A12. Yes. Toshiba not only has a [REDACTED] investment in the project through the credit agreement, which investment would be lost if the project is not brought to fruition, but NINA (i.e. NRG) also awarded Toshiba (together with Shaw) the EPC contract, a contract probably involving somewhere between [REDACTED]. This is undoubtedly very important to Toshiba given the ABWR market problems it faces post-Fukushima.

Q13. IS TOSHIBA PROVIDING ALL THE FUNDS TO MOVE THE PROJECT FORWARD AT THIS POINT?

A13. Yes, though witnesses for NINA have argued that NINA has also contributed [REDACTED]. Yet this [REDACTED] from NINA was not to move the project forward but to “fund NINA obligations that existed in April 2011, including the reduction in workforce and other wind-down activities that were required to reposition the STP

Units 3 and 4 project after Fukushima.”¹³

Q14. HAS NINA ACKNOWLEDGED THAT TOSHIBA, ACTING THROUGH TANE, HAS DE FACTO–IF NOT NOMINAL–CONTROL OF THE PROJECT AT THIS POINT?

A14. Currently no, but previously yes. For example, NRG’s response to questions from the SEC included the following:

“As a result of the events that occurred in March 2011 . . . the Company applied the guidance of ASC 810-10-25-5 in determining whether Toshiba’s noncontrolling right would overcome the presumption of consolidation by the Company as the majority owner of NINA. In relevant part, we evaluated under that guidance “ . . . **whether the noncontrolling rights, individually or in the aggregate, provide for the noncontrolling shareholder to effectively participate in significant decisions that would be expected to be made in the ordinary course of business. Effective participation means the ability to block significant decisions proposed by the investor who has the majority voting interest.** That is, control does not rest with the majority owner because the investor with the majority voting interest cannot cause the investee to take an action that is significant in the ordinary course of business if it has been vetoed by the noncontrolling shareholder. . . .” (Emphasis added).

“Under the NINA Operating Agreement, Toshiba had the right to approve the budget and operating plans of NINA. The Company had previously concluded that this was a protective right; however, when the nuclear incident at Fukushima Daiichi Nuclear Power Station happened in March of 2011, **this was deemed to be a substantive participating right, as the circumstances resulting from the nuclear incident significantly impacted NINA’s viability and created an urgency to drastically curtail operating plans and make significant changes to the annual budget to a level which Toshiba was willing to provide liquidity for.** (Emphasis added).”¹⁴

Q15. ARE YOU FAMILIAR WITH THE STATUTE AND RULE DEALING WITH THE PROHIBITION OF FOREIGN OWNERSHIP, CONTROL OR DOMINATION OF NUCLEAR FACILITIES?

13 Seely Prefiled Direct Testimony, op.cit. A30, p.20.

14 Andrews, op. cit. p.4.

A15. Yes. The relevant statute is set forth at 42 USC 2133(d):

“No license may be issued to an alien or any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government. In any event, no license may be issued to any person within the United States if, in the opinion of the Commission, the issuance of a license to such person would be inimical to the common defense and security or to the health and safety of the public.”

The NRC’s rule is set forth at 10 CFR 50.38:

“Any person who is a citizen, national, or agent of a foreign country, or any corporation, or other entity which the Commission knows or has reason to believe is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government, shall be ineligible to apply for and obtain a license.”

Q16. ARE YOU FAMILIAR WITH THE STANDARD REVIEW PLAN (SRP)?

A16. Yes.

Q17. DOES THE SRP SET FORTH A STANDARD FOR WHEN AN APPLICANT IS FOREIGN OWNED, CONTROLLED OR DOMINATED?

A17. Yes. Section 3.2 sets forth the following standard:

An applicant is considered to be foreign owned, controlled, or dominated whenever a foreign interest has the ‘power,’ direct or indirect, whether or not exercised, to direct or decide matters affecting the management or operations of the applicant. The Commission has stated the words “owned, controlled, or dominated” mean relationships where the will of one party is subjugated to the will of another.

Q18. WHAT IS YOUR CONCLUSION WITH RESPECT TO WHETHER NINA, THE LICENSE APPLICANT IN THIS CASE, IS SUBJECT TO FOREIGN CONTROL OR DOMINATION?

A18. As set forth in my direct testimony, my conclusion from my analysis is that NINA is subject to foreign domination or control.

Q19. PLEASE SUMMARIZE THE BASIS FOR YOUR CONCLUSION.

A19. The NRC’s Final Standard Review Plan (SRP) sets forth the following five factors to consider in determining whether the applicant is foreign owned, controlled, or dominated:

1. Whether any foreign interests have management positions such as directors, officers, or executive personnel in the applicant’s organization.
2. Whether any foreign interest controls, or is in a position to control, the election, appointment, or tenure of any of the applicant’s directors, officers, or executive personnel.
3. Whether the applicant is indebted to foreign interests or has contractual or other agreements with foreign entities that may affect control of the applicant.
4. Whether the applicant has interlocking directors or officers with foreign corporations.
5. Whether the applicant has foreign involvement not otherwise covered by items 1-4 above.

The answer to each of these questions is yes.

As to factors 1, 2, and 4 Toshiba through TANE has the right to appoint a member of NINA’s board of directors, as well as name NINA’s CFO. It has done the former by appointing as the non-US citizen director of NINA Kiyoshi Okamura who, according to Toshiba’s annual report, is also Executive Officer and Corporate Vice President of Toshiba Corporation.¹⁵ Interlocking directors may be an avenue of foreign control or domination because the directors have influence over board decisions, participate in voting, and may pursue the interests of the foreign entity.

¹⁵ Letter from Matthews, NRC, to McBurnett, “South Texas Project Units 3 and 4 Combined License Application Foreign Ownership, Control or Domination Review.” April 30, 2013) pp.11-12. Exh.INT000060.

As to factor 3 NINA is indebted to foreign entities and has other agreements with foreign entities, including the following:

- a. TANE Credit Agreement and Amendments—as of December 31, 2011 the applicant was indebted to Toshiba for approximately [REDACTED], and Toshiba has provided virtually all financial support to the project since April 2011 and appears to be willing to continue to provide all financial support for the foreseeable future.
- b. NINA Operating Agreement—The Third Amended and Restated Operating Agreement of NINA was executed May 8, 2009 between the two members, the NRG Member (Texas Genco) and the Toshiba member (TANE).
- c. Shaw Credit Agreement—As part of the ABWR Alliance between Toshiba and Shaw, which provides Shaw certain exclusive opportunities to provide EPC services for new Toshiba ABWR nuclear power plants, Shaw committed to investing \$250 million for the ABWR alliance, \$100 million of which was to be available as a credit facility for NINA.¹⁶ Shaw is currently a subsidiary of CB&I, a Netherlands company and is thus a “foreign interest” as defined in section 3.2 of the SRP.¹⁷

And as to factor 5, on November 29, 2010, NINA announced the award of the engineering, procurement and construction (EPC) contract for STX Units 3 and 4 to a restructured EPC consortium formed between TANE (Toshiba) and Shaw, a wholly owned subsidiary of CBI, a foreign corporation, with a third major participant being

¹⁶ Letter from D. Matthews, NRC, to M. McBurnett, “South Texas Project Units 3 and 4 Combined License Application Foreign Ownership, Control or Domination Review,” at 11 *citing* Shaw, Current Report/8-K filing, Jan 6, 2010. Exh. INT000060.

¹⁷ *Id.*

Westinghouse Electric, a subsidiary of Toshiba.¹⁸ Thus all three of the major contractor beneficiaries of NINA's EPC contract award are associated "foreign interests" as defined in SRP section 3.2.

Q20. HOW DO NINA'S ARGUMENTS SET FORTH IN SECTION II ABOVE RELATE TO THE FIVE SRP FACTORS?

A20. NINA's arguments fall into four overarching categories. The first is that the analysis should focus first on whether the foreign entity has a strong enough **ownership** position to effect formal control of the applicant; this dismisses financial control of the applicant by assuming that ownership control will always trump financial control. Second, if it were determined that there is such ownership control, then the argument is that the focus should shift to whether the control poses a direct threat "affecting nuclear safety, security, or reliability." If not, then even if there is foreign domination or control, it is not a problem. Third, since the licensing phase comes before the construction phase, under NINA's approach it will be difficult to show at the time of licensing that there is a direct threat "affecting nuclear safety, security, or reliability," since construction has yet to begin and nuclear materials are not on site. And finally, fourth, it is assumed that officers of the applicant corporation and the people they hire to serve on part time oversight NACs as part of a NAP will be fully committed to the public interest and not compromised by concerns about the financial prosperity of the licensee that hired them, especially in light of the fact that the majority of the information they will receive will come from executives of the licensee.

Q21. WHAT IS YOUR RESPONSE TO VARIOUS FACTORS SET FORTH

18 NRG Annual Report/10K filing, February 22, 2011. Exh. NRC000120.

IN SECTION II ABOVE?

A21. The **first factor** is that all the STP 3 and 4 licensees are U.S. entities.

This is useful but doesn't tell us about who owns the licensee, or any of the information relevant to the SRP §4.2 five factor test.

The second factor is that NINA is 90% owned by NRG, a U.S. corporation, and NRG exercises 90% voting control over NINA. This too is useful, but it doesn't tell us anything about the five SRP §4.2 factors.

The third factor is that the CEO of NINA supervises NINA's CFO, and so the CFO, though appointed by TANE, cannot make independent decisions binding NINA. Again this is useful, but to the extent that TANE does have financial power vis-a-vis NINA, then the TANE appointed NINA CFO together with the TANE appointed member of the board would be an important source of information to TANE, and perhaps on the spot control for decisions of importance to TANE.

The fourth factor is the claim that since TANE has provided only a small percentage of the overall total funding for the project through loans to fund the remaining licensing efforts, that this implies that TANE cannot have any sort of **current** financial control. There are three logical problems with this claim. First, TANE's total investment in the project (including equity and loans to NINA) is about [REDACTED], which is a hefty sum in dollar terms even were it only a "small percentage" overall. Second TANE is currently providing **all** the ongoing financing of the project. And third, NINA's witness has increased the value of "total funding" provided by NINA by adding in things like "common" existing site assets, land, water rights, cooling reservoir, etc. at the existing

STP site so as to be able to reduce the apparent percentage of TANE’s cash investment in the project.

The fifth factor is the claim that TANE as of **December 2011** has provided only about 25% of the investment in the project through equity and loans, with the remainder being provided by CPS Energy and Shaw. All the other investors (NRG, CPS, Shaw) have said they will provide no further funding for the project. TANE is the only one currently providing funding for the project. The question is whether this gives TANE a significant level of dominance or control over NINA.

The sixth factor is the claim that TANE is **not** providing **all** the current funding for the project because since NRG made its decision to cease further funding of NINA, it has provided ██████████ to cover “wind-down” expenses associated with the layoff of most of the NINA staff and the suspension of engineering and other preconstruction activities.¹⁹ Yet TANE indeed has been providing 100% of the funding in the post “wind-down” period including ongoing requests for additional funds for current expenses.

The seventh factor is the claim that the existing loans from TANE will be extinguished as part of “Project Finance” prior to construction, with loans to cover “approximately 75-80% of the total project cost, with these loans coming primarily from the U.S. Government.”²⁰ The implication of this claim is that if NINA can obtain substantial U.S. government loans then some of that money would be used to pay off the loans issued by TANE. This seems very speculative and uncertain since project leaders

19 Seely, op.cit. p.11.

20 McBurnett op.cit. p.11.

have been negotiating with the U.S. Government for several years now with no resulting loan agreements.

The eighth factor is the claim that NINA will adopt a Negation Action Plan (NAP) which provides that once construction activities begin the Security Committee of the NINA Board will make all decisions “affecting nuclear safety, security, or reliability.” A Nuclear Advisory Committee (NAC) will also be established by NINA prior to the first pouring of safety-related concrete, to provide broad oversight over all aspects of NINA to ensure that inappropriate FOCD is not occurring. Here the implication is that “inappropriate” FOCD is defined only as domination or control that results in bad decisions that “affect nuclear safety, security, or reliability.” Under this way of thinking, for example, foreign domination or control that only facilitated contracting practices that awarded way too expensive contracts to vendors providing a good product at way too high a price would be OK.

The ninth factor is the claim that the primary FOCD concern is that a foreign investor might use its role in a U.S. project to gain inappropriate access to nuclear technology or special nuclear material that could be a concern from a non-proliferation perspective. However, in a situation such as here, where the foreign participant (Toshiba) already possesses the nuclear technology and has majority ownership of a licensee (Westinghouse) that already has access to special nuclear material, there is **no genuine concern regarding non-proliferation.** “(I)t is not reasonable to postulate the use of financial control or influence for inappropriate purposes where the foreign investor already possesses the nuclear technology, such as is the case with STP Units 3 and 4.”

This appears to imply that any entity that already has access to nuclear technology and nuclear material should be entitled to a license on those grounds alone because the only relevant issue is non-proliferation.²¹ Yet as noted above, foreign domination or control could have adverse impacts in a number of ways that compromise the public interest, including adverse economic impacts.

The tenth and final factor is the claim that while Toshiba is a Japanese corporation, Japan is an ally of the United States and therefore any FOCD concerns involving Toshiba should be of minimal concern. On the other hand, Toshiba has contracts to build nuclear plants around the world including in China, and has partnered with Chinese companies in bidding on projects and acquisitions in parts of Europe. Given Toshiba's worldwide connections and affiliations it probably is overly optimistic to assume that just because Japan is an ally that whatever Toshiba does will never be adverse to U.S. interests.

IV. CONCLUSIONS

Q22. WHAT DO YOU CONCLUDE BASED ON THE ANALYSIS PRESENTED ABOVE?

A22. I conclude that NINA is subject to foreign domination or control for the following reasons:

1. NINA is seriously in debt to TANE and has been unable to make even relatively small payments, which has led to multiple amendments to the Credit Agreement extending default deadlines and expanding the debt limits to allow further loans to NINA.
2. TANE is providing 100% of the ongoing funding for the project.

21 Collins and Wood Prefiled Direct Testimony pp.38-9.

3. NINA tests positive on all five of the Supplementary Review factors in Section 4.2 of the SRP.

4. Toshiba is part owner of the license applicant, has a third of the positions on NINA board of directors, and appoints NINA's chief financial officer.

5. NINA has awarded the Engineering Procurement and Construction contract for STX Units 3 & 4 to Toshiba and its subsidiary Westinghouse. Estimated cost between [REDACTED].

The combination of the need to have Toshiba continue funding the project, and the hope that if the U.S. Government loans are not approved Toshiba might step up as lender, both give Toshiba a tremendous amount of leverage with NINA and NRG.

Q23. HOW DOES THE PROPOSED NAP COMPARE WITH THE SIX EXAMPLES SET FORTH IN SECTION 4.4 OF THE SRP AS WAYS TO ELIMINATE FOCD?

A23. The first example suggests: "Modification or termination of loan agreements, contracts, and other understandings with foreign interests." The proposed NAP does not mention any modification of the "loan agreements, contracts, and other understandings" with Toshiba, that would in any way reduce its dominance on both the inside and outside of NINA.

The second example suggests: "Diversification or reduction of foreign source income." Loan revenue from Toshiba is the only "revenue" being received by the applicant NINA. All the other investors have stated they will not provide any further financing. Without Toshiba the project collapses.

The third example suggests: "Demonstration of financial viability

independent of foreign interests.” The other investors have backed out and no new ones have come forward. There would need to be a source of substantial income independent of Toshiba and there isn’t any.

The fourth example suggests: “Elimination or resolution of problem debt.” There is no alternative source of funding to refinance the current and future loan obligations to Toshiba.

The Fifth example: “Assignment of specific oversight duties and responsibilities to board members.” It is not clear how this would remove the comprehensive financial control and domination currently exercised by Toshiba in its functions as set forth above. Given its funding power and contractual rights, any threat to Toshiba could lead at any time to Toshiba’s withdrawal and the collapse of the project with the loss of the previous investments of other parties.

The Sixth example suggests: “Adoption of special board resolutions.” It is not clear what such resolutions could be that would eliminate Toshiba’s control and domination while not leading at any time to the collapse of the project and the loss of the previous investments of other parties.

In sum, the proposed NAP doesn’t appear to have addressed the problem of the type of control and domination in the current situation, and it is not clear what could remove Toshiba’s “domination and control” without posing a serious threat to ongoing financial participation by Toshiba.

July 22, 2013

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

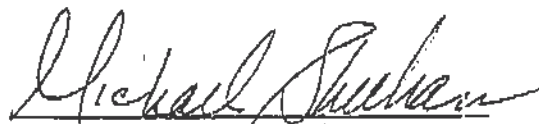
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:)
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Units 3 and 4 Combined Operating)
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AFFIDAVIT OF MICHAEL F. SHEEHAN, Ph.D.
CONCERNING HIS PREFILED REBUTTAL TESTIMONY
ON CONTENTION FC-1

I, Michael F. Sheehan, do declare under penalty of perjury that my statements in the "Prefiled Rebuttal Testimony of Michael F. Sheehan, Ph.D. on Contention FC-1" are true and correct to the best of my knowledge and belief.

DATE: July 17, 2013



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