

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)		Docket Nos. 52-012-COL
NUCLEAR INNOVATION NORTH AMERICA LLC))	52-013-COL
(South Texas Project Units 3 and 4)))	February 12, 2014

**ANSWER OF NUCLEAR INNOVATION NORTH AMERICA LLC (NINA)
TO JOINT MOTION TO ENLARGE PAGE LIMIT**

On February 12, 2014, the Nuclear Regulatory Commission (“NRC”) Staff and Intervenors filed a Joint Motion to Enlarge the Page Limit (“Motion”) for their responses to the proposed license conditions in Nuclear Innovation North America LLC’s Proposed Findings of Fact and Conclusions of Law for Contention FC-1 (Feb. 7, 2014) (“NINA’s Proposed Findings”). Pursuant to 10 C.F.R. § 2.323, NINA hereby submits its Answer to the Motion. For the reasons set forth below, the Motion should be denied.

I. PROCEDURAL BACKGROUND

Contention FC-1 alleges that NINA has not demonstrated that its STP Units 3 and 4 joint venture with Toshiba is not owned, controlled, or dominated by a foreign entity. Hearings on the contention were held on January 6-8, 2014, including questions by the Licensing Board on NINA’s proposed license condition in its combined license application (“COLA”). During the hearings, the Licensing Board invited NINA to propose license conditions in its proposed findings to address the concerns of the NRC Staff, and NINA expressed its willingness to do so.¹ The NRC Staff then asked for a right to file a response to NINA’s proposed license conditions.

¹ Tr. 2494.

The Licensing Board agreed, while limiting any responses to five pages and providing NINA with a reciprocal right to respond to the filings by the NRC Staff and the Intervenors.² The ruling was memorialized in the Licensing Board's Orders of January 10 and 22, 2014.

II. DISCUSSION

Pursuant to 10 C.F.R. § 2.1209, the parties are required to file their respective proposed findings of fact and conclusions of law within 30 days after the close of the hearings. There is no right of any party to respond to the proposed findings of another party.

At the request of the NRC Staff, the Licensing Board generously granted the Staff and Intervenors a right to respond to NINA's proposed license conditions. Initially, the Board proposed a one-page limit to such responses, but subsequently enlarged it to five pages.³

The NRC Staff and Intervenors now seek to increase the page limit to 10 pages, claiming this is necessary due to the number and complexity of the proposed license conditions.⁴ For several reasons, an increase in the page limit is not warranted and the NRC Staff and Intervenors have not demonstrated good cause for such an increase:

- It is contrary to the intent of 10 C.F.R. § 2.1209 for the parties to engage in lengthy responses and replies to the other parties' proposed findings. Furthermore, it is contrary to the apparent intent of the Board in granting the right to file a brief response, and in light of the time limits imposed on the Board itself for issuing an initial decision.⁵

² Tr. 2559-63.

³ Tr. 2561-63.

⁴ Motion at 1-2.

⁵ *See, e.g.*, Tr. 2563.

- The Board could impose its own license conditions without any briefing by the parties. Therefore, there is no need to extend the briefing that the Board already has generously allowed on NINA’s proposed license conditions.
- The NRC Staff has suggested more pages are needed, because NINA has proposed nine “complex” license conditions.⁶ However, the first five proposed license conditions involve concepts that have been previously proposed by NINA and discussed at the hearing.⁷ Moreover, the remaining four proposed license conditions are based upon prior license conditions previously imposed by the NRC Staff in other proceedings and discussed in the hearing exhibits, with only minor changes to conform to the specific facts relating to NINA.
- The proposed license conditions are less than two pages and the entire discussion of the proposed license conditions in NINA’s Proposed Findings was about five pages, much of which summarizes the discussion in the testimony and information in exhibits (such as the COLA, which sets forth a proposed license condition).⁸ The NRC Staff and Intervenors are now each requesting about twice as many pages to respond to NINA’s proposed license conditions, despite the fact that either party could have addressed, but chose not to, license conditions in their proposed findings. Their request is disproportionate. Moreover, as already noted, about half of the proposed license conditions simply repeat license conditions used previously by the Staff.⁹

⁶ Motion at 1-2.

⁷ In one case (proposed license condition “d”), NINA has revised the license condition proposed in the COLA to address concerns articulated by the NRC Staff at the hearing. *See* NINA’s Proposed Findings at 125-26.

⁸ NINA’s Proposed Findings at 123-29.

⁹ *Id.* at 126-27.

Finally, counsel for the NRC Staff has informed the undersigned counsel for NINA that the Staff intends to oppose NINA's proposed license conditions, and that the Staff does not intend to offer any alternative license conditions. As counsel for the Staff stated, the Staff's position is not changing based upon NINA's proposed license conditions. As a result, there is no apparent reason to give the Staff the right to file additional pages simply to repeat its previous arguments.

III. CONCLUSIONS

For the reasons set forth above, the Motion should be denied. If the Motion is granted, NINA should be afforded reciprocal rights (*i.e.*, the right to file a 10 page reply within 10 days of the responses by the NRC Staff and Intervenors).

Respectfully submitted,

Executed in Accord with 10 C.F.R. § 2.304(d)

/s/ Steven P. Frantz

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Counsel for Nuclear Innovation North America LLC

Dated in Washington, D.C.
this 12th day of February 2014

CERTIFICATION

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

Executed in Accord with 10 C.F.R. § 2.304(d)

/s/ Steven P. Frantz

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CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of “Answer of Nuclear Innovation North America LLC (NINA) to Joint Motion to Enlarge Page Limit” was submitted through the NRC’s E-filing system.

Signed (electronically) by Stephen J. Burdick

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