

February 21, 2014

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

NRC STAFF MOTION FOR THE BOARD TO TAKE  
JUDICIAL NOTICE OF ADDITIONAL RELEVANT FACTS

INTRODUCTION

Pursuant to 10 C.F.R. §§ 2.323 and 2.337(f), the U.S. Nuclear Regulatory Commission (NRC) staff (Staff) requests the Atomic Safety and Licensing Board (Board) take official notice of facts relating to the finalization of DOE loan guarantees for Vogtle Units 3 and 4, that occurred subsequent to the Staff's February 18, 2014 filing. The Staff brings this information to the Board's attention in light of its duty to keep the Board, the Commission, and other litigants apprised of "relevant new developments" that are material to the proceeding. *See USEC, Inc.* (American Centrifuge Plant), CLI-06-10, 63 NRC 451, 470 (2006). As discussed in more detail below, the new information is material to this proceeding, its inclusion will ensure the existence of a complete and accurate record, and the information can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned. Therefore, the Staff requests that the Board take official notice of this information.

LEGAL STANDARDS

According to the NRC rules of practice and procedure, a presiding officer may "take official notice of any fact of which a court of the United States may take judicial notice or of any technical or scientific fact within the knowledge of the Commission as an expert body." 10

C.F.R. § 2.337(f)(1). Facts of which a court of the United States may take judicial notice are those that are “not subject to reasonable dispute” because they are “generally known within the trial court’s territorial jurisdiction; or can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b). Judicial notice may be taken at any stage of the proceeding, including the period after the evidentiary record has been closed. Fed. R. Evid. 201(f). See also *Lussier v. Runyon*, 50 F.3d 1103, 1105 (1st Cir. 2005) (recognizing that, even though a court may not ordinarily receive additional factual information once the evidentiary record is closed unless it fully reopens the record, information “susceptible to judicial notice” is an exception and may be received). The Federal Rules of Evidence recognize that a court “shall take judicial notice if a party requests it and the court is supplied with the necessary information.” Fed. R. Evid. 201(d).

#### DISCUSSION

On February 19, 2014, the Department of Energy (DOE) announced that it was issuing \$6.5 billion in loan guarantees for the construction of two new nuclear reactors at the Alvin W. Vogtle Electric Generating Plant in Waynesboro, Georgia. Press Release, Dept. of Energy, Sec. Moniz to Georgia, Energy Department Scheduled to Close on Loan Guarantees to Construct New Nuclear Power Plant Reactors (Feb. 19, 2014), at <http://www.energy.gov/articles/sec-moniz-georgia-energy-department-scheduled-close-loan-guarantees-construct-new-nuclear> (Staff Attachment 1). DOE stated that this \$6.5 billion is part of the \$8.3 billion conditional commitments made in 2010 to the project, and that DOE continues to work on finalizing the remaining \$1.8 billion. *Id.* On February 20, 2014, it was confirmed that the Secretary of Energy did sign the loan agreement issuing \$6.5 billion in loan guarantees. See Meg Mirshak, Energy Secretary Moniz Visits Vogtle to Finalize Loan Guarantee, THE AUGUSTA CHRONICLE, Feb. 20, 2014, available at <http://chronicle.augusta.com/news/metro/2014-02-20/energy-secretary-moniz-visits-vogtle-finalize-loan-guarantee> (Staff Attachment 2).

In its response to Nuclear Innovation North America, LLC's (NINA's) new license conditions, the Staff referenced the \$8.3 billion conditional DOE loan guarantees for the Vogtle units, but stated that those loan guarantees were not yet finalized. Staff Memorandum in Response to NINA's New License Conditions, at 9 n.7 (Feb. 18, 2014). At that time, the Staff was unaware that a large portion of these commitments were about to be finalized, and therefore did not include that information in its memorandum to the Board. This information is material to the Staff's argument that DOE loan guarantees are not an endless source of funds, and that a significant portion of the \$18.5 billion in loan guarantee authority for new reactor construction is no longer available.

Since these facts are not subject to reasonable dispute, are generally known and can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned, the Staff respectfully requests that the Board take judicial notice of these facts.

Respectfully submitted,

**/signed (electronically) by/**  
Richard S. Harper  
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U.S. Nuclear Regulatory Commission  
Mail Stop O-15 D21  
Washington, DC 20555-0001  
(301) 415-5236  
Richard.harper@nrc.gov

Dated at Rockville, Maryland  
This 21st day of February 2014

**CERTIFICATION**

I certify that I have made a sincere effort to contact the other parties to this proceeding to explain to them the factual and legal issues raised in this motion, and to resolve those issues. I certify that after this consultation, the Intervenors do not object to this motion, while NINA takes no position on this motion and does not plan to file a response.

Respectfully submitted,

**/signed (electronically) by/**

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# NRC Staff Attachment 1



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# Sec. Moniz to Georgia, Energy Department Scheduled to Close on Loan Guarantees to Construct New Nuclear Power Plant Reactors

February 19, 2014 - 1:30pm



Washington D.C. — Building on President Obama’s State of the Union address to Congress and the American public last month, U.S. Secretary of Energy Ernest Moniz today announced at the National Press Club that he will be traveling to Waynesboro, Georgia tomorrow, February 20, to mark the issuance of approximately \$6.5 billion in loan guarantees for the construction of two new nuclear reactors at the Alvin W. Vogtle Electric Generating Plant. The project represents the first new nuclear facilities in the U.S. to begin construction and receive NRC license in nearly three decades. In addition, the deployment of two new 1,100 megawatt Westinghouse AP1000® nuclear reactors is a first-mover for a new generation of advanced nuclear reactors.

“The construction of new nuclear power facilities like this one - which will provide carbon-free electricity to well over a million American energy consumers - is not only a major milestone in the Administration’s commitment to jumpstart the U.S. nuclear power industry, it is also an important part of our all-of-the-above approach to American energy as we move toward a low-carbon energy future,” said Secretary Moniz. “The innovative technology used in this project represents a new generation of nuclear power with advanced safety features and demonstrates renewed leadership from the U.S. nuclear energy industry.”

The two new 1,100 megawatt Westinghouse AP1000 nuclear reactors at the Alvin W. Vogtle Electric Generating Plant will supplement the two existing reactor units at the facility. According to industry projections, the project will create approximately 3,500 onsite construction jobs and approximately 800 permanent jobs once the units begin operation. When the new nuclear reactors come on line, they will provide enough reliable electricity to power nearly 1.5 million American homes.

Project partners include Georgia Power Company (GPC), Oglethorpe Power Corporation (OPC), the Municipal Electric Authority of Georgia (MEAG), and the City of Dalton, Georgia (Dalton).

President Obama announced the Energy Department’s conditional commitments for the project in 2010, saying “To meet our growing energy needs and prevent the worst consequences of climate change, we need to increase our supply of nuclear power and today’s announcement helps to move us down that path.” At that time, the Energy Department made conditional commitments for a total of \$8.33 billion in loan guarantees. Tomorrow, the Department is scheduled to issue loan guarantees to GPC and OPC for a total of approximately \$6.5 billion. The Department continues to work on the remaining conditional commitment for a \$1.8 billion loan guarantee to MEAG.

The Energy Policy Act of 2005 authorized the Department to issue loan guarantees for projects that avoid, reduce or sequester greenhouse gases and employ new or significantly-improved technologies as compared to technologies in service in the United States at the time the guarantee is issued.

The nuclear facility is eligible for loan guarantees since it is expected to avoid nearly 10 million metric tons of carbon dioxide emissions annually, which is the equivalent of removing more than two million vehicles from the roads. In addition, the Westinghouse AP1000® reactor has incorporated numerous innovations resulting in significant operational and safety improvements.

Currently, the Department’s Loan Programs Office (LPO) supports a large, diverse portfolio of more than \$30 billion in loans, loan guarantees, and commitments, supporting more than 30 closed and committed projects. The projects that LPO has supported include one of the world’s largest wind farms; several of the world’s largest solar generation and thermal energy storage systems; and more than a dozen new or retooled auto manufacturing plants across the country.

***Tomorrow: Energy Secretary Ernest Moniz to Waynesboro, Georgia***

WHO	U.S. Secretary of Energy Ernest Moniz
WHAT	U.S. Secretary of Energy Ernest Moniz will travel to Waynesboro, Georgia to mark the issuance of approximately \$6.5 billion in loan guarantees for the construction of two new nuclear reactors at the Alvin W. Vogtle Electric Generating Plant.
WHERE	Media should arrive at the Vogtle 3 and 4 construction entrance and follow the signs.  7825 River Road  Waynesboro, GA 30830

WHEN	1:00 PM EST, media set-up (Please arrive no later than 1:40 PM EST)  2:00 PM EST, ceremonies begin
RSVP	Please call (404) 506-7676, or (800) 282-1696

At 2:00 PM EST, media may listen to a live audio broadcast of the ceremonies. Please call (404) 506-7676 or (800) 282-1696 for broadcast access information.

NOTE: All callers will be placed in listen-only mode during this broadcast.

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# NRC Staff Attachment 2

## Energy Secretary Moniz visits Vogtle to finalize loan guarantee

By [Meg Mirshak](#)  
Staff Writer

Thursday, Feb. 20, 2014 9:28 PM

Last updated Friday, Feb. 21, 2014 1:53 AM

WAYNESBORO, Ga. — U.S. Energy Secretary Ernest Moniz signed loan agreements Thursday backing the first two nuclear reactors built in the U.S. in more than three decades.

Following a tour of Plant Vogtle nuclear facility, Moniz completed approval of a \$6.5 billion federal loan guarantee to help Southern Co. and Oglethorpe Power finance the new reactors, finalizing an offer first extended in 2010.

Investing in nuclear energy helps ensure the nation's energy infrastructure competes with China and other countries building nuclear reactors, the secretary said.

"If we don't move out with these kinds of projects, we are not going to be at the head of the train," Moniz said. "We, in the United States, should not be running to catch up to the caboose."

Moniz said nuclear is part of diversifying the nation's energy portfolio with alternative sources to reduce carbon emission with clean, advanced technology.

"We are advancing getting projects done across the board to serve the clean energy needs in our country," he said.

The Energy Department has not finalized a \$1.8 billion loan guarantee with MEAG, one of the partners building Vogtle's new reactors about 30 miles south of Augusta. In 2010, an \$8.3 billion government offer included up to \$3.46 billion for Georgia Power, which owns 45.7 percent of the two Westinghouse AP1000 units, and up to \$3.05 billion for Oglethorpe, which owns 30 percent. The project's remaining 1.6 percent is owned by Dalton Utilities.

A day before his Vogtle visit, Moniz announced at the National Press Club in Washington that years of negotiations with Atlanta-based Southern Co. had ended, although the details of the deal were never made public.

Loan guarantees, in which the government promises to assume a company's debt if the company defaults, were developed in 2005 as an incentive to help build new nuclear reactors. Plunging natural gas prices have stalled other proposed nuclear projects.

The \$14 billion reactors under construction at the Burke County site are scheduled to go online in 2017 and 2018.

Georgia Power said the federal loan guarantees lower interest rates for the project and represent cost-savings for Georgia Power customers.

"This financial tool provides \$250 million of savings and financing costs directly to our customers that benefit from this plant being built," said Georgia Power President and CEO Paul Bowers.

Antinuclear activists criticized the nation's investment in nuclear energy, saying the loan program passes on costs to taxpayers without transparency.

"Despite the dangers nuclear reactors pose and the lack of any sustainable solutions for nuclear waste disposal, President Obama's commitment to nuclear energy succeeds only in condemning future generations to live with the fallout," said Katherine Fuchs, nuclear campaigner for Friends of the Earth.

The Southern Alliance for Clean Energy called upon Congress to investigate the loan guarantee program and filed a Freedom of Information Act request for the terms and conditions of the loans.

“How the agency can finalize a large portion of this deal without providing the full details and terms of the loan offers to American taxpayers before they’re on the hook is beyond unacceptable,” said Sara Barczak, of the Southern Alliance for Clean Energy.

Southern Co. President and CEO Tom Fanning said conditions of the loans were specific to Georgia Power and publishing them would impact other projects seeking similar loans.

“I don’t think they necessarily need to be shared with anybody else that may be competing for these funds,” Fanning said.

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CERTIFICATE OF SERVICE

I hereby certify that the "NRC Staff Motion for the Board to Take Judicial Notice of Additional Relevant Facts," has been filed through the E-Filing system this 21st day of February 2014.

**/signed (electronically) by/**  
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