

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

Stephen G. Burns, Chairman
Kristine L. Svinicki
William C. Ostendorff
Jeff Baran

In the Matter of

NUCLEAR INNOVATION NORTH AMERICA, LLC

(South Texas Project Units 3 and 4)

Docket Nos. 52-012-COL
52-013-COL

CLI-15-07

MEMORANDUM AND ORDER

The Sustainable Energy and Economic Development Coalition, the South Texas Association for Responsible Energy, Public Citizen, and Susan Dancer (together, Intervenors) seek review of the Atomic Safety and Licensing Board's third partial initial decision in this combined license proceeding.¹ The Board resolved Intervenors' Contention FC-1 in favor of the applicant, Nuclear Innovation North America, LLC (NINA) and held that NINA is not subject to impermissible foreign ownership, control, or domination. We find that Intervenors have not met the standards for review, and we accordingly deny review.

I. BACKGROUND

A. Prohibitions on Foreign Ownership, Control, or Domination

Section 103d. of the Atomic Energy Act of 1954, as amended (AEA), prohibits the NRC from issuing a utilization or production facility license to any "alien or any corporation or other

¹ LBP-14-3, 79 NRC 267 (2014).

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.”² The NRC regulation implementing this provision, 10 C.F.R. § 50.38, provides:

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.³

The Staff has also developed a Standard Review Plan on foreign ownership and control issues, which the Commission approved in 1999, for use in its review of reactor license applications and license transfer applications.⁴ The Standard Review Plan provides that “the foreign control determination is to be made with an orientation toward the common defense and security.”⁵ It also states that while “exertion of control over the ‘safety and security aspects’ of reactor operations . . . can be an important factor in the foreign ownership or control analysis . . . it may not be the only important factor.”⁶

² Atomic Energy Act of 1954, § 103d., 42 U.S.C. § 2133(d). A parallel provision, Section 104d., imposes the same restriction on licenses for medical therapy and research and development facilities. *Id.* § 2134(d).

³ 10 C.F.R. § 50.38.

⁴ Ex. NRC000106, “Final Standard Review Plan on Foreign Ownership, Control, or Domination,” 64 Fed. Reg. 52,355 (Sept. 28, 1999) (Standard Review Plan). In the Staff Requirements Memorandum (SRM) on SECY-12-0168, the Commission directed the Staff to “provide a fresh assessment on issues relating to foreign ownership including recommendations on any proposed modifications to guidance or practice on foreign ownership, domination, or control that may be warranted.” Staff Requirements-SECY-12-0168—Calvert Cliffs 3 Nuclear Project, LLC & UniStar Nuclear Operating Services, LLC (Calvert Cliffs Nuclear Power Plant, Unit 3), Docket No. 52-016-COL, Petition for Review of LBP-12-19 (Mar. 11, 2013) (ML13070A150), at 1. The Commission is currently considering the Staff’s fresh assessment, which is found in SECY-14-0089. As the hearing below was conducted under the existing Standard Review Plan and our decision is limited to the specific facts of this case, we are not committing ourselves to any outcome with respect to the Staff’s fresh assessment.

⁵ *Id.* at 52,357.

⁶ *Id.*

Intervenors claim that a foreign, minority owner of NINA has effectively taken control of the project because it has loaned NINA the funds necessary to complete the final stages of licensing (but not construction) for the proposed South Texas Project, Units 3 and 4. In LBP-14-3, the Board concluded that NINA had demonstrated that these loans do not give the minority partner, Toshiba America Nuclear Energy Corporation (TANE), improper control over NINA.⁷

B. License Application Revisions and Contention FC-1

Intervenors first proposed Contention FC-1 in 2011.⁸ The third partial initial decision in this adjudication, LBP-14-3, resolved Contention FC-1, its last active contention.⁹ Because the Board's decision fully describes the complicated circumstances leading to the evidentiary hearing on Contention FC-1, we need only briefly summarize them here.¹⁰

⁷ LBP-14-3, 79 NRC at 272.

⁸ See *Intervenors' Motion for Leave to File a New Contention Based on Prohibitions Against Foreign Control* (May 16, 2011) (Motion for New Contention).

⁹ Two other contentions were resolved in favor of the Staff and NINA following evidentiary hearings. See LBP-11-38, 74 NRC 817 (2011) (First Partial Initial Decision); LBP-12-5, 75 NRC 227 (2012) (Second Partial Initial Decision). A proposed "waste confidence" contention was dismissed pursuant to our direction in CLI-14-8, 80 NRC 71 (2014). See LBP-14-14, 80 NRC 144 (2014). Subsequently, the Sustainable Energy and Economic Development Coalition joined in two petitions, filed in multiple dockets, relating to the continued storage of spent fuel. See *Petition to Suspend Final Decisions in All Pending Reactor Licensing Proceedings Pending Issuance of Waste Confidence Safety Findings* (Sept. 29, 2014); *Petition to Supplement Reactor-Specific Environmental Impact Statements to Incorporate by Reference the Generic Environmental Impact Statement for Continued Spent Fuel Storage* (Jan. 28, 2015); see also *Petitioners' Motion for Leave to File a New Contention Concerning the Absence of Required Waste Confidence Safety Findings in the Licensing Proceeding at South Texas Project Units 3 & 4 Nuclear Power Plant* (Sept. 29, 2014); *Motion to Reopen the Record for South Texas Project 3 & 4 Nuclear Power Plant* (Sept. 29, 2014). We recently addressed the "Waste Confidence Safety Findings" filings. *DTE Electric Co.* (Fermi Nuclear Power Plant, Unit 3), CLI-15-4, 81 NRC __ (Feb. 26, 2015) (slip op.). The "Petition to Supplement the Reactor-Specific Environmental Impact Statements" is pending before us and will be resolved separately.

¹⁰ See LBP-14-3, 79 NRC at 272-76.

In 2007, NINA's predecessor, South Texas Project Nuclear Operating Company (STPNOC), applied for a combined license to build and operate South Texas Project Units 3 and 4 on the Matagorda County, Texas site where South Texas Project Units 1 and 2 are currently operating.¹¹ NINA replaced STPNOC as the lead applicant for the project in January 2011.¹² The license application now contemplates that NINA will construct and, indirectly through its subsidiaries, own a 92.375% interest in each of the two proposed units, while STPNOC will be the operator.¹³ NRG Energy, Inc. (NRG Energy), a U.S. corporation, owns ninety percent of NINA through its wholly-owned subsidiary, Texas Genco Holdings, Inc., another U.S. corporation.¹⁴ The remaining ten percent of NINA is owned, ultimately, by the Japanese Toshiba Corporation (Toshiba), through its subsidiary TANE, a U.S. corporation.¹⁵

After the accident at Fukushima Dai-ichi in March 2011, NRG Energy announced that it would no longer finance NINA's efforts to license and build South Texas Project Units 3 and 4

¹¹ "STPNOC is a Texas nonprofit corporation and is controlled by a board of four directors. Three of the four directors are appointed by the City of Austin, CPS Energy, and NRG South Texas LP, an indirect wholly owned subsidiary of NRG Energy, Inc." See Ex. NRCR00101, *Prefiled Direct Testimony of Anneliese Simmons on Contention FC-1* (July 1, 2013), at 14 (Staff Direct Testimony).

¹² See Order (Revising Case Caption) (Feb. 7, 2011) (unpublished). STPNOC remains an applicant.

¹³ NINA is the sole parent company of NINA Investments Holdings LLC, which is in turn the parent company of NINA 3 Texas 3, LLC and NINA Texas 4, LLC. NINA Texas 3, LLC will own 92.375% of South Texas Project Unit 3, and NINA Texas 4, LLC will own 92.375% of South Texas Project Unit 4. The remaining 7.625% of each reactor is to be owned by CPS Energy, a Texas municipal utility, which has no stake in NINA itself. See Ex. STP000036, *Direct Testimony of Applicant Witness Mark A. McBurnett Regarding Contention FC-1* (July 1, 2013), at 15-17 (McBurnett Direct Testimony).

¹⁴ *Id.* at 17.

¹⁵ Toshiba is the parent of the U.S. corporation, Toshiba America, Inc., which is the parent of TANE. The Board adopted the phrase "Toshiba, through TANE" to clarify that the actual issue before it was whether the foreign parent, Toshiba, is exerting control over NINA through its U.S. subsidiary, TANE. See LBP-14-3, 79 NRC at 271 n.3. We adopt the Board's nomenclature here.

and that it would write down its investment in NINA.¹⁶ According to an NRG Energy press release, NINA would focus its efforts on obtaining the combined license from the NRC and a loan guarantee from the U.S. Department of Energy for construction costs.¹⁷ TANE would fund ongoing costs to continue the licensing process.¹⁸ Since 2011, NINA's sole source of funds has been a \$20 million capital contribution from NRG Energy and loans from TANE.¹⁹

In response to NRG Energy's announcement, Intervenors proposed a new contention in which they argued that the application violated AEA § 103d.²⁰ Intervenors argued that Toshiba, through TANE, controlled NINA because it was, at that point, the only "contributing" member of the joint venture and the combined license application would allow TANE to increase its ownership interests in proportion to its financial contributions.²¹ The NRC Staff did not oppose admission of the contention, and it requested information on the issue of foreign control from the applicant.²² The Board admitted the contention as follows:

Contention FC-1: Applicant, [NINA], has not demonstrated that its STP Units 3 and 4 joint venture with Toshiba, is not owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government contrary to 42 U.S.C. § 2133(d) and 10 C.F.R. § 50.38.²³

¹⁶ Ex. STP000078, NRG Press Release, "NRG Energy, Inc. Provides Greater Clarity on the South Texas Nuclear Development Project (STP 3&4)" (Apr. 19, 2011).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Ex. STP000036, McBurnett Direct Testimony, at 10-11.

²⁰ See Motion for New Contention.

²¹ *Id.* at 5-6.

²² *NRC Staff's Answer to Intervenors' Motion for Leave to File a New Contention Based on Prohibitions Against Foreign Control* (June 10, 2011); *NRC Staff's Brief on Applicant's Filing Related to the Foreign Control Contention* (July 29, 2011); see also E-mail from Joseph, Stacy, Project Manager, Office of New Reactors, NRC, to Richard Sheide, STPNOC (July 19, 2011), attaching Joseph, Stacy, letter to Scott Head, Manager, Regulatory Affairs, Nuclear Innovation North America, LLC (July 13, 2011), attaching in turn Request for Additional Information No. 5856 Rev. 5 (ML11203A211).

²³ LBP-11-25, 74 NRC 380 (2011).

Between 2011 and 2013, NINA attempted to resolve the Staff's concerns about potential foreign control. In response to several Staff requests for additional information, NINA adopted a Negation Action Plan designed to limit TANE's control over the South Texas Project 3 and 4 joint venture.²⁴ In December 2011, the Staff notified NINA that its first Negation Action Plan was insufficient to negate foreign control.²⁵ NINA revised the Negation Action Plan several more times.²⁶ In its ninth revision to its application, NINA included commitments in its Negation Action Plan to ensure at least 50% of the construction funding would be U.S. sourced.²⁷ NINA also revised its application to ensure that TANE's ownership share of NINA would not exceed its current ten percent without the NRC's prior approval.²⁸

None of NINA's proposed measures, however, resolved the Staff's concerns. In April 2013, the Staff issued a second formal determination, informing NINA that the ninth combined license application revision was insufficient to negate TANE's control and domination of NINA.²⁹

²⁴ The Standard Review Plan provides that a Negation Action Plan may effectively negate control. See Ex. NRC000106, Standard Review Plan, § 4.4, 64 Fed. Reg. at 52,359. NINA's first proposed Negation Action Plan is in appendix 1D to its application. See Ex. STP000045, "South Texas Project Units 3 & 4 Combined License Application, Rev. 6," (Aug. 30, 2011) (COL Application Rev. 6).

²⁵ See Ex. NRC000118, Matthews, David, Director, Division of New Reactor Licensing, NRC, letter to Mark McBurnett, Vice President, Regulatory Affairs, NINA (Dec. 13, 2011), at 1.

²⁶ Relevant portions of NINA's application revisions including the proposed Negation Action Plans (as appendix 1D) are in the record as: Ex. STP000045, COL Application Rev. 6; Ex. STP000048, "South Texas Project Units 2 & 3 Combined License Application, Rev. 7" (Feb. 1, 2012); Ex. STP000052, "South Texas Project Units 2 & 3 Combined License Application, Rev. 8" (Sept. 17, 2012) (COL Application Rev. 8); Ex. STP000054, "South Texas Project Units 2 & 3 Combined License Application, Rev. 9" (Apr. 17, 2013) (COL Application Rev. 9); see *also* Ex. STP000053, Head, Scott, Regulatory Affairs Manager, STP Units 3 & 4, letter to NRC, "Proposed Update to [COL Application] Part 1 Information" (Jan. 31, 2013).

²⁷ See Ex. STP000054, COL Application Rev. 9, at 1D-16.

²⁸ See Ex. STP000052, COL Application Rev. 8, § 1.2, at 1.0-6; see *also* Ex. STP000049, Head, Scott, Manager Regulatory Affairs, STP Units 3 & 4, letter to NRC, Supplemental Responses to RAI 01-22 and 01-24, attachment at 8 (July 1, 2013).

²⁹ Ex. NRC000103, Matthews, David, Director, Division of New Reactor Licensing, NRC, letter to Mark McBurnett, Vice President, Regulatory Affairs, NINA (Apr. 29, 2013), at 1 (Staff Second

The Staff's April 2013 determination concluded that Toshiba, through TANE, could exert significant control over NINA because it was at that time the project's sole source of funding.³⁰

The Staff also found that the proposed Negation Action Plan was not sufficient to neutralize Toshiba's control.³¹ The Staff joined with Intervenors at the evidentiary hearing in the position that foreign control bars NINA from obtaining a license.

C. The Evidentiary Hearing

The Board held an evidentiary hearing on Contention FC-1 in January 2014. Financial Analyst Anneliese Simmons testified for the NRC Staff in prehearing testimony and at the hearing. According to Ms. Simmons's prefiled written testimony, NRG Energy notified the Securities and Exchange Commission that it was withdrawing further financial support of the project and that it no longer had "controlling financial interest" in NINA as of March 31, 2011.³² Ms. Simmons also testified that TANE has the power to approve a budget for remaining loans to NINA.³³ The Staff maintained that because all of the current funding for the project is coming from TANE, TANE's actual control over the project exceeds its ten percent ownership interest.³⁴

Determination Letter); Ex. NRC000105, Evaluation by the Office of Nuclear Reactor Regulation on Behalf of the Office of New Reactors, South Texas Project, Units 3 and 4, Docket Nos. 52-012 and 52-013, at 24 (July 1, 2013) (Staff 2013 Evaluation) (enclosure to Ex. NRC000103). The Staff continued its review of other portions of the combined license application, although it indicated that a license would not be issued until applicants satisfy the requirements of AEA Section 103d. and 10 C.F.R. § 50.38. *Id.* at 2.

³⁰ See Ex. NRC000105, Staff 2013 Evaluation, at 24.

³¹ *Id.*

³² Ex. NRCR00101, Staff Direct Testimony at 27 (citing Ex. NRC000129, NRG Energy, Inc., Form 10-Q, Quarterly Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 (May 5, 2011), at 12-13).

³³ *Id.* at 35.

³⁴ *Id.* at 41; see also Ex. NRC000103, Staff Second Determination Letter, at 2 ("The staff has found that, although TANE owns about 10 percent of NINA, its overwhelming financial contributions give it significantly more power than is reflected by this ownership stake.").

Intervenors presented the testimony of an economist, Michael Sheehan.³⁵ In summary, Dr. Sheehan testified that Toshiba, through TANE, controls NINA because it is the project's "banker," it has the right to nominate one of two NINA board members, and it has the right to nominate NINA's Chief Financial Officer.³⁶

NINA argued that TANE has no power to control NINA and only has limited rights as a minority owner and as a lender. NINA's CEO, Mark McBurnett, explained that NINA is governed by a board of managers, with NRG Energy and TANE each appointing one manager.³⁷ The votes are apportioned between these two managers in accordance with the appointer's ownership share.³⁸ Therefore, the NRG Energy-appointed manager (who must be a U.S. citizen) controls all decisions requiring a simple majority or supermajority vote.³⁹ The TANE-appointed manager's agreement is needed only in certain matters that require the NINA board's unanimous consent.⁴⁰ Mr. McBurnett further testified that he personally controls all licensing decisions on behalf of NINA and that TANE has no additional authority over licensing-related decisions by virtue of the loans.⁴¹ Jamey Seely, Senior Vice President of NRG Energy,

³⁵ See Ex. INT000056, *Filed Direct Testimony of Michael F. Sheehan, Ph.D. on Behalf of Intervenors Sustainable Energy and Economic Development Coalition (SEED), Susan Dancer, the South Texas Association for Responsible Energy, Public Citizen, Daniel A. Hickl and Bill Wagner Regarding Contention FC-1* (July 1, 2013) (Sheehan Direct Testimony); Ex. INT000065, *Filed 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* (July 22, 2013).

³⁶ Ex. INT000056, Sheehan Direct Testimony, at 11, 13.

³⁷ See Ex. STP000036, McBurnett Direct Testimony, at 30.

³⁸ *Id.*; see also Ex. STP000054, COL Application Rev. 5, § 1D.2.1, 1D-5 to 1D-6 (the board also includes two independent managers (or directors), who must be U.S. citizens and have no voting rights).

³⁹ Ex. STP000036, McBurnett Direct Testimony, at 30.

⁴⁰ *Id.* Decisions requiring unanimous consent include changing the type of business venture, declaring bankruptcy, and extending an interest in NINA to a Toshiba competitor. *Id.* at 31-32.

testified that NRG Energy continues to exercise its majority voting authority over NINA and continues to support development of South Texas Project Units 3 and 4.⁴²

NINA argued that TANE's financial contribution (both equity and loans) is only a small part of the project's overall costs.⁴³ Mr. McBurnett testified that most of the money invested in the project so far has come from U.S. sources.⁴⁴ While TANE has a contractual right to approve a budget for the loans it provides, Mr. McBurnett testified that this right is "similar to what would be typical for any lender."⁴⁵ He also testified that TANE's loans will be extinguished prior to the start of construction as a condition of project finance.⁴⁶

In addition, NINA argued that its corporate governance structure and the Negation Action Plan prevent Toshiba, through TANE, from influencing any decision relating to nuclear safety, security or reliability. As summarized in NINA's testimony, the Negation Action Plan contains the following provisions to negate potential foreign control with respect to matters involving nuclear safety, security, or reliability of South Texas Project Units 3 and 4:

- The Chairman of the Board, and anyone acting for the Chairman, must be a U.S. citizen.
- The Chief Executive Officer (CEO), anyone acting for the CEO, and the Chief Nuclear Officer of NINA must be U.S. citizens.
- The CEO and Chief Nuclear Officer each must execute a certificate that acknowledges a special duty to the U.S.

⁴¹ *Id.* at 39.

⁴² Ex. STP000038, *Direct Testimony of Applicant Witness Jamey S. Seely Regarding Contention FC-1*, at 7, 19 (July 1, 2013) (Seely Direct Testimony); *see also id.* at 14 (NRG Energy continues to participate in the project due to a potential return on investment).

⁴³ *See* Ex. STP000036, McBurnett Direct Testimony, at 9-10. According to Mr. McBurnett's testimony, TANE's financial contribution to the project is only 25%, considering both loans and equity. *Id.* at 11; *see also* Tr. at 2496.

⁴⁴ Ex. STP000036, McBurnett Direct Testimony, at 9.

⁴⁵ *Id.* at 32.

⁴⁶ *Id.* at 10-11.

Government to protect against and negate the potential for any foreign ownership, control, or domination of NINA.

- NINA will establish a Security Committee.
- NINA will establish a Nuclear Advisory Committee.
- The Chief Nuclear Officer exercises U.S. control and oversight of nuclear safety issues through control of the NINA Quality Assurance Program and Safeguards Information ('SGI') Program.
- The Negation Action Plan provides that any person involved in the licensing, design, construction, or operation of South Texas Project Units 3 and 4 may raise safety concerns or any potential foreign ownership, control, or domination issues.
- The Negation Action Plan prescribes actions by NINA to ensure U.S. control if any concern related to foreign ownership, control, or domination were to arise.
- Prior to implementation of the Security Committee and Nuclear Advisory Committee, the CEO has ultimate authority on decisions affecting nuclear safety, security, or reliability.⁴⁷

NINA argued that neither the Staff nor Intervenors had identified any instance where Toshiba or TANE had influenced or attempted to influence a decision relating to nuclear safety or security and that they had offered only "unsupported speculation" that such influence was possible.⁴⁸

D. The Board's Decision

The Board in LBP-14-3 found in favor of NINA. In so doing, the Board made several foundational legal rulings governing its analysis and factual conclusions. The Board found that the Standard Review Plan directs that, where the indirect foreign ownership interest is less than 100%, it is appropriate for the Staff's analysis to focus on potential impacts to nuclear safety, security, or reliability.⁴⁹ The Board relied on an early Atomic Energy Commission (AEC) decision in the *SEFOR* matter, where the AEC found that the foreign ownership, control, or

⁴⁷ Ex. STP000036, McBurnett Direct Testimony, at 43-44 (citing Ex. STP000054, COL Application Rev. 9, at app. 1D (Negation Action Plan)).

⁴⁸ See Tr. at 2497-99.

⁴⁹ LBP-14-3, 79 NRC at 280 (citing Ex. NRC000106, Standard Review Plan, 64 Fed. Reg. at 52,357).

domination analysis “should be given an orientation toward safeguarding the national defense and security.”⁵⁰ The AEC further held that the phrase “owned, controlled or dominated” “refers to relationships in which the will of one party is subjugated to the will of another.”⁵¹

The Board further noted that where the applicant is not 100% indirectly foreign owned, an applicant may negate the control of a foreign investor through a Negation Action Plan.⁵² Applying these principles to NINA, the Board found, as a matter of law, that if NINA’s Negation Action Plan “can successfully wall off the foreign entity from influencing [its] decisionmaking regarding nuclear safety, security, and reliability concerns, then the AEA’s prohibition on foreign control or domination will not stand in the way” of NINA’s application.⁵³

The Board then considered whether foreign ownership, control, or domination manifested in NINA’s ownership, corporate governance, or financing. It found that none of these considerations showed that NINA is subject to foreign ownership or control. First, noting that the NRC had previously approved license transfers involving indirect, minority foreign ownership, the Board found that Toshiba’s ten percent indirect ownership interest would not preclude NINA from obtaining a license.⁵⁴

⁵⁰ *Id.* (citing *General Electric Co. and Southwest Atomic Energy Associates* (Southwest Experimental Fast Oxide Reactor (SEFOR)), 3 AEC 99, 101 (1966)).

⁵¹ *SEFOR*, 3 AEC at 101. This definition was incorporated into the Standard Review Plan. Ex. NRC000106, Standard Review Plan, 64 Fed. Reg. at 52,358.

⁵² LBP-14-3, 79 NRC at 281.

⁵³ *Id.* at 307.

⁵⁴ *See id.* at 284-86. The Board considered several relevant prior examples in this area. In particular the Board looked to several licensing actions where indirect minority ownership was approved, including the indirect acquisition by foreign companies of a 9.9% interest in the Seabrook facility (see Ex. STP000088, Safety Evaluation by the Office of Nuclear Reactor Regulation, Proposed Merger of New England Electric System and the National Grid Group, PLC, Seabrook Station, Unit 1 (Dec. 10, 1999) (excerpt)); a 12.2% interest in Millstone Unit 3 (see Ex. STP000086, Northeast Nuclear Energy Company, et al. (Millstone Nuclear Power Station, Unit 3); Order Approving Application Regarding Merger of New England Electric System and the National Grid Group, PLC, 64 Fed. Reg. 72,367 (Dec. 27, 1999)); and a 2.5% interest in the Trojan Nuclear Plant (see Ex. STP000077, Safety Evaluation by the Office of Nuclear

With respect to NINA's corporate governance structure, the Board determined that NRG Energy controls the NINA board of managers by virtue of having "90% of the votes on most decisions and exclusive control of all decisions involving nuclear safety, security, and reliability."⁵⁵ It found the corporate governance provisions NINA has in place to restrict foreign control to be comparable to those in other license applications that the NRC has approved.⁵⁶ Although TANE has "veto power" over some financial and business decisions, the Board found that these powers are "typical of provisions in prior licensing matters where there was foreign involvement acceptable to the NRC."⁵⁷

The Board found no indication that Toshiba, through TANE, either has attempted to control NINA through finances in the past, or that it has the ability to do so. The Board agreed with NINA that the Staff and Intervenors had provided "no record evidence of any instance where NINA has sought approval from Toshiba or TANE for strategic decisions in order to avoid threats of Toshiba or TANE withholding further loans."⁵⁸ The Board further determined that the terms of the loans do not give TANE control over NINA. Specifically, the Board found that when placed "in context," the power to approve a budget for the loans is "quite narrow" because TANE has only the "fleeting ability" to prepare a budget for the loans, but it has no control over how the

Reactor Regulation, Proposed Merger of Pacificorp and Scottishpower PLC, Trojan Nuclear Plant (Nov. 10, 1999)).

⁵⁵ LBP-14-3, 79 NRC at 291.

⁵⁶ *Id.* at 291-92 (discussing Ex. NRC000153, NRC, Safety Evaluation for the Proposed Transfer of Clinton Power Station Operating License from Illinois Power Company to AmerGen Energy Company, LLC (Nov. 24, 1999), at 12, and Ex. NRC000154, NRC, Revised Safety Evaluation by the Office of Nuclear Reactor Regulation, Direct and Indirect Transfers of Control or Renewed Facility Operating Licenses due to the Proposed Corporate Restructuring Calvert Cliffs Nuclear Power Plant, Units Nos. 1 and 2; Nine Mile Point Nuclear Station, Unit Nos. 1 and 2; and R.E. Ginna Nuclear Power Plant (Oct. 30, 2009), at 22-28).

⁵⁷ *Id.* at 292-93. TANE's minority owner consent rights are designed to protect its business. For example, the majority owner cannot enter into business transactions with affiliates that might dilute the value of the minority owner's interests in the company.

⁵⁸ *Id.* at 301.

money is spent.⁵⁹ Ultimately, the Board found it “difficult to understand how the NRC Staff ‘knows or has reason to believe’ that NINA is controlled or dominated by Toshiba or TANE within the meaning of the AEA section 103(d) or 10 C.F.R. § 50.38,” given the “absence of any particular examples where Toshiba, through TANE, has exercised control, and in the absence of any corporate or contractual methods by which Toshiba, through TANE, could exercise control over a decision related to nuclear safety, security, or reliability.”⁶⁰ The Board declined to infer control from the amount of TANE’s loans and observed that the Standard Review Plan expressly allows a foreign entity to provide more than 50% of the funding for a project, where an adequate Negation Action Plan is in place.⁶¹

Moreover, the Board held that NINA’s Negation Action Plan would prevent Toshiba, through TANE, from exerting control or domination over NINA in the future.⁶² It found that NINA’s Negation Action Plan was “consistent with or more restrictive than” other such plans that the NRC has approved in the past.⁶³ The Board noted the Staff’s acknowledgment at the hearing that absent the Staff’s perceived financial control issue, the corporate governance provisions of the Negation Action Plan would have been consistent with other plans the Staff

⁵⁹ *Id.* at 302 (citing Ex. STP000036, McBurnett Direct Testimony, at 74); *see also id.* at 293 n.156.

⁶⁰ *Id.* at 303-04.

⁶¹ *Id.* at 304 (citing Ex. NRC000106, Standard Review Plan, 64 Fed. Reg. at 52,358). Intervenors argued before the Board—as they do before us—that such control can be inferred because “he who has the gold, makes the rule.” *See id.* at 301; *Intervenors’ Petition for Review of Licensing Board Memorandum and Order LBP-14-03* (May 5, 2014), at 21 (Petition for Review).

⁶² LBP-14-3, 79 NRC at 304-09. In evaluating the Negation Action Plan, the Board specifically considered revision 9 of the combined license application. The Board found the provisions calling for a Security Committee and a Nuclear Advisory Committee, both composed entirely of United States citizens, particularly significant. *Id.* at 306 (citing Ex. STP000054, COL Application Rev. 9, at 1D-5 to 1D-6).

⁶³ *Id.* at 304.

has deemed sufficient.⁶⁴ The Board also held, in response to Judge Arnold's concurring opinion, that because the Negation Action Plan has been incorporated into NINA's license application, it is a legally binding commitment.⁶⁵ The Board observed that NINA's Negation Action Plan addresses not only how NINA avoids foreign ownership, control and domination now, but how such concerns will be avoided "throughout the entire license period."⁶⁶ The Board concluded that NINA had met its burden to show that it is not under foreign ownership, control, or domination.

Intervenors' petition for review followed. The Staff supports Intervenors' petition, in part, because the Staff contends that the Board's ruling could be interpreted to hold that foreign control must have already been exercised before it would bar the issuance of a license.⁶⁷ NINA argues that Intervenors do not show either a legal or factual error in the Board's decision that would warrant our review.⁶⁸

⁶⁴ *Id.* at 306 (citing Tr. at 2135 (Simmons): "[I]n any situation where we didn't have financial control, this would be a sufficient Negation Action Plan.").

⁶⁵ *Id.* at 308. Judge Arnold opined that the majority reached beyond what was necessary to find that NINA is not subject to foreign control. See *id.* at 314-15. In his view, the Board did not need to make a finding concerning the adequacy of the Negation Action Plan because it had already found that NINA is not currently under foreign control or domination. He explained that "the [foreign ownership, control, or domination] determination is based on current conditions, not hypothetical future conditions. This is different from the [Negation Action Plan] which is primarily to ensure that [foreign ownership, control, or domination] issues do not arise in the future." *Id.* at 314.

⁶⁶ *Id.* at 308.

⁶⁷ *NRC Staff Answer to Intervenors' Petition for Review of the Licensing Board's Partial Initial Decision on Contention FC-1* (May 30, 2014), at 14, 16-18 (Staff Answer).

⁶⁸ *Nuclear Innovation North America LLC's Answer Opposing Intervenors' Petition for Review of LBP-14-3* (May 30, 2014) (NINA Answer). Subsequently, NINA filed a motion for leave to reply to the Staff's answer with an accompanying reply brief. *Nuclear Innovation North America LLC's Motion for Leave to Reply to NRC Staff Answer to Intervenors' Petition for Review of LBP-14-03* (June 9, 2014) and *Nuclear Innovation North America LLC's Reply to NRC Staff Answer to Intervenors' Petition for Review of LBP-14-03* (June 9, 2014). While our rules do not provide for the filing of reply briefs in this circumstance, as a matter of discretion we have reviewed NINA's reply brief. See 10 C.F.R. § 2.341(b)(3) (providing for reply briefs by the petitioning party only).

II. DISCUSSION

A. Standard of Review

We will grant review, in our discretion, where the petition raises a “substantial question” whether

- (i) A finding of material fact is clearly erroneous or in conflict with a finding as to the same fact in a different proceeding;
- (ii) A necessary legal conclusion is without governing precedent or is a departure from or contrary to established law;
- (iii) A substantial or important question of law, policy or discretion has been raised;
- (iv) The conduct of the proceeding involved a prejudicial procedural error; or
- (v) Any other consideration which [we] deem to be in the public interest.⁶⁹

We review questions of law *de novo*, but we defer to the Board’s findings with respect to the underlying facts unless they are “clearly erroneous.”⁷⁰ The standard for showing “clear error” is a difficult one to meet: the petitioner must show that the Board’s determination is “not even plausible” in light of the record as a whole.⁷¹

B. Intervenors’ Petition Does Not Merit Review

Intervenors argue that errors of law led the Board to erroneous factual conclusions. First, they argue that the Board erred in ruling that the foreign control prohibition is primarily concerned with matters of nuclear safety, security, and reliability. They also claim that the Board failed to recognize that control may exist whenever the foreign entity has the power to control the applicant, without regard to whether the control is exercised or not. They then argue that these two misinterpretations of law caused the Board to erroneously conclude that NINA is

⁶⁹ 10 C.F.R. § 2.341(b)(4).

⁷⁰ *Honeywell International, Inc.* (Metropolis Works Uranium Conversion Facility), CLI-13-1, 77 NRC 1, 18-19 (2013); *David Geisen*, CLI-10-23, 72 NRC 210, 224-25 (2010).

⁷¹ *Honeywell*, CLI-13-1, 77 NRC at 18-19; *Geisen*, CLI-10-23, 72 NRC at 224-25.

not under Toshiba's control. As discussed below, we conclude that the Petition does not raise a substantial question of fact or law that warrants review.

1. *Intervenors' Claims of Legal Error Do Not Warrant Review*

Intervenors first claim that the Board erred in focusing its foreign ownership, control, or domination analysis on whether Toshiba, through TANE, controls NINA with respect to matters relating to nuclear safety, security, or reliability. In support of this claim, Intervenors argue that 10 C.F.R. § 50.38 “does not impose restrictions as to the types of foreign ownership, control, or domination that render an applicant ineligible to apply for and obtain[] a license.”⁷² They contend that the Board's ruling effectively permits a “type” of foreign ownership, control, or domination that does not relate to nuclear safety, security, or reliability. Because the statute and regulation do not distinguish between “impermissible” and “permissible” foreign ownership, control, or domination, they argue, both of these must be prohibited.⁷³

Both NINA and the Staff dispute Intervenors' claim that the Board's focus on nuclear safety, security, and reliability was improper. The Staff urges us to keep in mind that the statute and regulatory provisions must be read in the context of the AEA: “Nuclear safety, security and reliability’ broadly encompasses those matters within the NRC’s jurisdiction . . . and properly defines the scope of the foreign control prohibition.”⁷⁴ The Staff and NINA both argue that the Board's ruling on the scope of the foreign ownership, control or domination analysis is “consistent with the statutory text, Commission precedent, and Staff practice.”⁷⁵

We find that Intervenors have not made the case for our review of this legal ruling. Their arguments do not raise a “substantial question” with respect to whether a “necessary legal

⁷² Petition for Review at 11.

⁷³ *Id.* at 11-15.

⁷⁴ Staff Answer at 10.

⁷⁵ *Id.*; *see id.* at 10-13, NINA Answer at 14-15.

conclusion is without governing precedent or [is] contrary to established law.”⁷⁶ The Board applied guiding precedent; its legal rulings were consistent our longstanding case law, the Standard Review Plan, and established agency practice. In *SEFOR*, the Atomic Energy Commission found that a parallel provision in the AEA, Section 104d. relating to test or research facilities, “should be given an orientation toward safeguarding the national defense and security.”⁷⁷ That decision further held that whether a foreign entity has “[t]he ability to restrict or inhibit compliance with security or other regulations of the AEC” is of “greatest significance” to a foreign ownership, control, or domination review.⁷⁸ The Commission reaffirmed this principle in the 1999 Standard Review Plan.⁷⁹

The Board’s decision was also guided by, and consistent with, the NRC’s approval of licensing actions involving numerous other facilities.⁸⁰ As noted above, the Board considered the NRC’s approval of license transfers for the Seabrook, Millstone 3, Trojan, Clinton, and Calvert Cliffs nuclear plants, where appropriate measures barred the foreign owners from involvement in decisions that could affect safety or national security.⁸¹ The Board’s analysis is

⁷⁶ 10 C.F.R. § 2.341(b)(4)(ii).

⁷⁷ *SEFOR*, 3 AEC at 101.

⁷⁸ *Id.*

⁷⁹ Ex. NRC000106, Standard Review Plan, 64 Fed. Reg. at 52,357.

⁸⁰ See LBP-14-3, 79 NRC at 285-86, 291-92.

⁸¹ These were not the only examples the Board could have cited. In addition to the Clinton facility, the Commission approved license transfers for three other facilities to AmerGen, an entity 50% owned by a British company, where the Staff found that license conditions would wall off the British owners from management decisions affecting nuclear safety and national security. See Ex. STP000072, Safety Evaluation by the Office of Nuclear Reactor Regulation, Transfer of Facility Operating License from General Public Utilities Nuclear, Inc. et. al., to AmerGen Energy, LLC, and Approval of Conforming Amendment, Three Mile Island Nuclear Station, Unit 1 (undated excerpt), at 17-18; Ex. STP000074, Pastis, Helen N., Senior Project Manager, Office of Nuclear Reactor Regulation, letter to T. Gary Broughton, President GPU Nuclear, Inc. and Gerald R. Rainey, Chief Executive Officer, AmerGen Energy Company, LLC (June 6, 2000) (enclosing *GPU Nuclear, Inc. and Jersey Central Power & Light Company* (Oyster Creek Nuclear Generating Station), Order Approving Transfer of License and Conforming Amendment

consistent with the NRC's usual practice, which prioritizes ensuring that decisions relating to safety at a licensed facility remain in the hands of U.S. citizens.

Intervenors further argue that the Board's ruling conflicts with the language of AEA Section 103d., which they argue provides for "two types of [foreign ownership, control, or domination] analyses."⁸² Intervenors point out that the first clause of the law prohibits issuance of a license to a foreign-owned or foreign-controlled entity, and a second sentence separately prohibits issuance of a license if doing so would be "inimical to the common defense and security or to the health and safety of the public."⁸³ Intervenors argue that because the second clause covers threats to national security and public health and safety, the first clause prohibits foreign ownership, control, or domination "in terms of rights and powers that would normally be indicative of ownership, control and domination."⁸⁴ Intervenors conclude that therefore, nuclear safety, security, and reliability "is not the exclusive measure" of whether an applicant is under foreign ownership, domination or control. The Staff and NINA disagree and instead argue that

(June 6, 2000) (see enclosure at 3-4)); Ex. STP000075, Croteau, Richard P., letter to Gerald R. Rainey, Chief Executive Officer, AmerGen Vermont, LLC and Ross P. Barkhurst, President, Vermont Yankee Nuclear Power Corp. (July 7, 2000) (enclosing *Vermont Yankee Nuclear Power Corporation* (Vermont Yankee Nuclear Power Station), Order Approving Transfer of License and Conforming Amendment (July 7, 2000) (see enclosure at 5-6).

⁸² Petition for Review at 15.

⁸³ *Id.* (citing AEA Section 103d.). Section 103d. provides the following:

No license may be issued to 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 the license to such person would be inimical to the common defense or to the health and safety of the public.

⁸⁴ *Id.*

the agency's foreign ownership, domination, or control analysis is limited to nuclear safety, security, and reliability.⁸⁵

But, even assuming that Intervenor's legal interpretation were correct, their argument is unavailing. Intervenor's argument mischaracterizes the Board's ruling. The Board did not find that nuclear safety and security were the only considerations in its examination of foreign ownership, control, or domination.⁸⁶ Rather, it found that these are the most significant considerations among the numerous factors it considered in its decision.⁸⁷ The Board found that TANE did not control or dominate NINA, either with respect to nuclear safety, security, or reliability concerns or with respect to any other concern.⁸⁸ In doing so, the Board examined various indicia of corporate control; it did not, as Intervenor suggest, hold that control should only be measured with respect to nuclear safety, security, and reliability. Therefore, Intervenor have not shown that the Board's ruling was "a departure from, or contrary to, established law."⁸⁹

Intervenor next argue that the Board erred by disregarding the directive in the Standard Review Plan that foreign control may exist even where the power to control has not been

⁸⁵ Staff Answer at 10; NINA Answer at 14.

⁸⁶ Intervenor's argument is similar to their argument that the Board crafted an exception to AEA § 103d. for "permissible" types of foreign ownership, control or domination. See Petition for Review at 11-12. As the Staff points out, although the Board referred to "impermissible [foreign ownership, control, and domination]," it did not use the term "permissible [foreign ownership, control, or domination]." Staff Answer at 11-12. We read the Board's terminology as simply referring to the impermissible nature of foreign ownership, control, or domination.

⁸⁷ See LBP-14-3, 79 NRC at 280 (citing the Standard Review Plan, the Board held that the NRC's "primary focus should remain on safeguarding security and the national defense, although the NRC Staff is to consider a variety of factors").

⁸⁸ LBP-14-3, 79 NRC at 309. ("[T]he Board finds no evidentiary support . . . that Toshiba, through TANE, has financial control of NINA"). As discussed above, the Board considered the ownership percentages and voting rights of the two parent entities, and the terms of the loans, among other things. See *supra* text accompanying notes 54-66.

⁸⁹ 10 C.F.R. § 2.341(b)(4)(ii); see *AmerGen Energy Co.* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235, 259 (2009).

exercised.⁹⁰ Intervenors assert that Toshiba could control NINA because “NINA would be willing to acquiesce to Toshiba’s demands in exchange for further financing or for not calling its loan.”⁹¹ The Staff agrees that the Board’s decision raises the issue of whether the Board erred by “requir[ing] evidence of actual, direct foreign control” over the applicant rather than potential control.⁹² The Staff argues that control may exist even where the foreign entity has not exercised that control.⁹³

We find that the Board’s decision does not raise the question Intervenors and the Staff pose. While the Board attached significance to the lack of past instances where Toshiba or TANE exerted control over NINA, it did not hold that unexercised, potential control would not constitute improper foreign ownership, control, or domination. Rather, the Board examined the record for avenues of “potential” control and found none.⁹⁴ Because Intervenors do not present a substantial question with respect to this issue and because the Board did not reach a “necessary legal conclusion” concerning “unexercised control” we need not take review of this issue.

2. *Intervenors’ Claim of Factual Error Does Not Merit Review.*

Intervenors also claim that the Board erred in its finding of fact that Toshiba, through TANE, does not financially control NINA. In challenging the Board’s factual conclusions, Intervenors reiterate their previous arguments that the Board improperly focused on issues of

⁹⁰ Petition for Review at 22 (citing Ex. NRC000106, Standard Review Plan, 64 Fed. Reg. at 52,358: “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.”).

⁹¹ *Id.* at 21.

⁹² Staff Answer at 14. Although the Staff did not petition for review of the Board’s decision, it provided its views on indirect and unexercised control, should we elect to take review. See *id.* at 1 n.2.

⁹³ *Id.* at 17.

⁹⁴ See LBP-14-3, 79 NRC at 302-05.

nuclear safety, security, and reliability and improperly required evidence that control had been exercised.⁹⁵

There is a heavy burden to overturn a Board's findings of fact following an evidentiary hearing. The mere presence of evidence supporting both sides does not call for our review, where it appears that the Board considered all the evidence and arguments before it.⁹⁶

Intervenors present scant evidence to support the argument that NINA is under Toshiba's control. At bottom, Intervenors have not raised a "substantial question" that the Board's findings of fact are "clearly erroneous."⁹⁷

Initially, Intervenors claim that the Board failed to consider "aspects of control that do not affect nuclear safety or security."⁹⁸ They argue that "other important factors" include "stock ownership, voice in management, contractual rights to participate in [] design and construction of [the proposed facility], voice in day-to-day conduct of project activities, legal ownership or interest in the physical assets of the project, rights to use or direct the use of [the proposed facility], whether the foreign entity has a voice in the financial affairs of the applicant, and control of the expenditures of the applicant."⁹⁹ Intervenors then list factors—all of which the Board discussed in its decision—that they claim prove TANE's control over NINA.¹⁰⁰

⁹⁵ Petition for Review at 15-19.

⁹⁶ See, e.g., *Geisen*, CLI-10-23, 72 NRC at 225 ("In as hard-fought case as this, we would not expect the record to support one party only."); *Honeywell*, CLI-13-1, 77 NRC at 19 ("The presence of evidence in [petitioner's] favor . . . does not, without more, warrant reversal of the Board's decision.").

⁹⁷ 10 C.F.R. § 2.341(b)(4)(i).

⁹⁸ Petition for Review at 13-15.

⁹⁹ *Id.* at 13-14 (citing *SEFOR*, 3 AEC at 101-02).

¹⁰⁰ *Id.* at 16. These factors include TANE's right to appoint one Board manager (see 79 NRC at 287), TANE's right to nominate the Chief Financial Officer (see *id.* at 287-88), and the right to approve a budget (see *id.* at 290, 302).

Intervenors go on to argue that the Board's conclusion that TANE possessed only limited rights was erroneously skewed by its focus on nuclear safety and national security. Intervenors argue that because the proposed facilities are not yet under construction, and NINA will not be the operator, none of NINA's decisions have a potential safety impact.¹⁰¹ Therefore, Intervenors argue, the Board was "unjustified and arbitrary" in "narrowing" its decision to consider only those impacts.¹⁰²

However, Intervenors misconstrue the Board's conclusion. While NINA's evidence and the Board's findings both focused on showing that TANE had no control over matters involving nuclear safety, security, or reliability, the Board found that there was no control over any matter.¹⁰³ The Board's discussion of NINA's general corporate governance and its proposed Negation Action Plan concluded that, in light of all the evidence before it, Toshiba, through TANE, does not control matters pertaining to general corporate governance of issues specifically pertaining to nuclear safety.¹⁰⁴

Control exists in a relationship where the "will of one party is subjugated to the will of another."¹⁰⁵ In essence, Intervenors argue that Toshiba, through TANE, could coerce NINA into taking some action against NINA's will. The Board found this argument to be purely speculative.¹⁰⁶ The Board had evidence before it that neither Toshiba nor TANE had exerted such control in the past and that NINA would resist any attempt at improper control in the

¹⁰¹ See Petition for Review at 18.

¹⁰² *Id.* at 19.

¹⁰³ LBP-14-3, 79 NRC at 301.

¹⁰⁴ *Id.*; see Ex. STP000054, COL Application Rev. 9, at App. 1D (Negation Action Plan). Among the plan's provisions that pertain generally to corporate governance are that both the Chairman of the NINA board and NINA's CEO must be U.S. citizens (*id.* at 1D-5, 1D-11).

¹⁰⁵ Ex. NRC000106, Standard Review Plan, 64 Fed. Reg. at 52,358; see *also SEFOR*, 3 AEC at 101.

¹⁰⁶ LBP-14-3, 79 NRC at 301.

future.¹⁰⁷ In their petition for review, Intervenors do not explain how TANE has subjugated NINA to its will by loaning NINA the money to pursue the business venture that is NINA's primary purpose.¹⁰⁸ Nor do Intervenors specify what "demands" Toshiba might make upon NINA in the future, which are not already considered in the Negation Action Plan. Intervenors do not explain how Toshiba's interests and NINA's interests might diverge in such a way that would be material to this licensing decision. Thus, the petition for review does not articulate any specific errors in the Board's findings of fact or demonstrate that the Board's findings were "not even plausible" in light of the record as a whole.

In sum, we do not find that Intervenors have raised a substantial question of fact or law meriting full review of the Board's decision.

¹⁰⁷ With respect to Intervenors' argument that NINA would accede to Toshiba's "demands" in order to keep Toshiba from withdrawing funds, Mr. McBurnett testified during the hearing that he would rather lose Toshiba's funding than violate NRC regulations: "[if I were] asked to do something inappropriate from a safety, security, or reliability standpoint we're not going to do that. Consequences, for me, are far more severe for willingly failing to [comply with] NRC requirements than they are for losing Toshiba's funding." Tr. at 2042.

¹⁰⁸ See Ex. STP000052, COL Application Rev. 8, § 1.2, 1.0-5 (NINA's "focus is to market and promote ABWR nuclear technology and to develop and construct ABWR nuclear power generation facilities in the U.S.").

III. CONCLUSION

For the foregoing reasons, we *deny* Intervenors' petition for review of LBP-14-3.

IT IS SO ORDERED.

For the Commission

NRC SEAL

/RA/

Annette L. Vietti-Cook
Secretary of the Commission

Dated at Rockville, Maryland,
this 14th day of April, 2015

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **COMMISSION MEMORANDUM AND ORDER CLI-15-07** have been served upon the following persons by the Electronic Information Exchange.

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South Texas Project, Units 3 and 4
Docket Nos. 52-012-COL and 52-013-COL
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Dated at Rockville, Maryland
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