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Ms. Cindy Bladey
Office of Administration
U.S. Nuclear Regulatory Commission
OWFN-12-H08
11555 Rockville Pike
Rockville, MD 20852-2738

81 FR 33556
5/26/2016
(8)

Comments Regarding
Draft Standard Review Plan on Foreign Ownership, Control
Or Domination, Revision 1 and Draft Regulatory Guide on
“Foreign Ownership, Control and Domination of Nuclear Power,
And Non-Power Production or Utilization Facility”
Docket ID NRC -2016-0088

Nuclear Innovation North America LLC (NINA) is the licensee for South Texas Project Units 3&4 and has had substantial experience with the NRC review of Foreign Ownership, Control and Domination (FOCD). Accordingly, we offer the following comments on the subject draft Standard Review Plan (SRP) and draft Regulatory Guide (RG) based on our experience and review of the documents. We have also participated with NEI in development of industry comments and fully endorse the comments submitted by NEI.

As discussed in detail in NEI’s comments, the draft SRP and RG fail to satisfy the underlying intent of the Commission’s direction in the May 5, 2014 Staff Requirements Memorandum (SRM) for a “fresh assessment” of the FOCD guidance. FOCD reviews have become exceedingly complex, time consuming, opaque and uncertain without clear correlation to national defense or security. These draft documents continue this trend. We urge the staff to reconsider the direction for a “fresh assessment” to provide a more flexible and contemporary approach to meeting the FOCD statute.

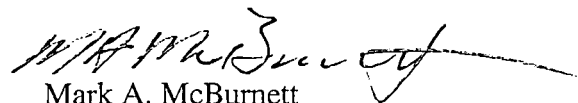
We find no technical bases for the revisions to the SRP and RG, and contrary to good regulatory principles, they continue to rely on individual reviewer’s opinions regarding the “totality of the facts”. We recognize that the Commission endorsed the use of the “totality of the facts” as an acceptance criterion. However, the documents’ continued extensive reliance on an individual reviewer’s assessment of the “totality of the facts” as the sole acceptance criteria is not appropriate and perpetuates these reviews in a “bring me a rock” fashion.

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Add= S. Harwell (SWH2)

The FOCD review as implemented by the NRC is unique in including a reviewer's investigation and independent development of information from outside sources (draft SRP section 3.3.1) rather than relying on a review of the applicant's submittal made under oath and affirmation. There is no clear basis and no established safety basis to support the need for conduct of this review in the context of an investigation. There appears to be a presumption that the applicant is less than truthful and that US citizens are not complying or will not comply with US law, and that corporations or individuals will not adhere to corporate governance documents and other legally binding requirements. This blending of investigation, review and enforcement is contrary to sound regulatory principles.

The regulatory basis for the FOCD provision in the Atomic Energy Act is to safeguard national defense and security, and NRC precedent has focused on ensuring that ownership limitations were met and that activities affecting safety, security and reliability were under control of US citizens. We believe the FOCD SRP and RG can readily focus on ensuring these activities are under control of US citizens in a direct and transparent manner, and in conjunction with the inimicality requirement, NRC can clearly ensure the safeguarding of national defense and security. The nuclear industry today is global; substantial safety-related design, engineering and manufacturing occur overseas under the control of foreign entities. In perspective, NRC's regulation and oversight plus licensee management and control are designed to effectively ensure that plants are safe independent of ownership and national origin. These processes are designed to detect potential safety consequential issues and behaviors long before they have safety consequences independent of ownership. We see no benefit to the expansion of the FOCD review beyond straight forward confirmation that ownership has the appropriate limits and decisions affecting safety, security and reliability are under control of US citizens. The draft SRP and RG establish a complex review that is inconsistent with the statutory purpose of FOCD.

We urge NRC to consider these comments in conjunction with those provided by NEI on behalf of the industry, withdraw and revise the documents and republish them for public comment.



Mark A. McBurnett
Chief Executive Officer
Nuclear Innovation North America

smh

cc:

The Honorable Stephen G. Burns, Chairman
The Honorable Kristine L. Svinicki, Commissioner
The Honorable Jeff Baran, Commissioner
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