

NRG's Answer Opposing the City of San Antonio's and
City of Austin's Petition to Intervene and Supplemental Contention (Aug. 25, 2023)

Exhibit A

Assignment and Assumption Agreement and Mutual Release (Oct. 1, 2018)

**ASSIGNMENT AND ASSUMPTION AGREEMENT
AND MUTUAL RELEASE**

This Assignment and Assumption Agreement and Mutual Release (this “**Agreement**”) is made and entered into as of the 1st day of October, 2018 (the “**Effective Date**”), by and among NINA Texas 3 LLC, a Delaware limited liability company (“**NINA 3**”), NINA Texas 4 LLC, a Delaware limited liability company (“**NINA 4**”), NRG South Texas LP, a Texas limited partnership (“**NRG**”), the City of San Antonio, Texas acting by and through the City Public Service Board of San Antonio, a Texas municipally owned utility (“**CPS**”), and the City of Austin, Texas, a Texas municipality (“**Austin**”).

RECITALS

A. WHEREAS, pursuant to that certain Amended and Restated South Texas Project Participation Agreement by and between CPS, Central Power and Light Company, Houston Lighting & Power Company, and Austin, dated effective as of November 17, 1997 (the “**Participation Agreement**”), NRG (as successor in interest to Central Power and Light Company and Houston Lighting & Power Company) and CPS (including as successor in interest to Central Power and Light Company) were owners of certain rights with respect to the construction and development of certain nuclear-fueled electric generation facilities (the “**South Texas Project**”) as described further therein (NRG, CPS and Austin are referred to collectively hereinafter as the “**Participants**”);

B. WHEREAS, NRG and CPS entered into that certain South Texas Project Supplemental Agreement, dated effective as of October 29, 2007 (as amended, the “**Supplemental Agreement**”), which set forth mutual understandings with respect to the development of two additional generating units (hereinafter referred to as “**STP 3 and STP 4**”) at the South Texas Project;

C. WHEREAS, NRG and CPS exercised their respective rights pursuant to Article 6 of the Participation Agreement to pursue development of STP 3 and STP 4, and Austin elected not to participate in the development of STP 3 and STP 4;

D. WHEREAS, by a series of assignments dated March 25, 2008, NRG assigned to NINA 3 and NINA 4 certain rights under the Participation Agreement and Supplemental Agreement with respect to the development of STP 3 and STP 4, respectively, and with respect to any future development;

E. WHEREAS, CPS entered into a Project Agreement, Settlement Agreement and Mutual Release (the “**Project Agreement**”), by and among CPS, Nuclear Innovation North America, a Delaware limited liability company (“**NINA**”), NINA 3 and NINA 4, dated effective as of March 1, 2010, in order to set forth certain rights and obligations of CPS, NINA 3 and NINA 4 with respect to licensing, development, construction, ownership and operation of STP 3 and STP 4 and to settle the pending legal action among the parties;

F. WHEREAS, CPS, NINA, NINA 3 and NINA 4 entered into that certain Owners Agreement (“**Owner’s Agreement**”), dated effective as of March 1, 2010, terminating the Supplemental Agreement except the rights and obligations of CPS and NRG South Texas as to the rights of first refusal (pursuant to Section 5.2 of the Project Agreement), and setting forth certain rights and obligations with respect to licensing, development, construction, ownership and operation of STP 3 and STP 4;

G. WHEREAS, NINA 3 currently owns a 92.375% undivided interest in STP 3 as tenant in common with CPS, which owns a 7.625% undivided interest in STP 3, and NINA 4 currently owns a 92.375% undivided interest in STP 4 as tenant in common with CPS, which owns a 7.625% undivided interest in STP 4;

H. WHEREAS, NINA 3 and NINA 4 have agreed to cease and abandon all development of STP 3 and STP 4 and withdraw the combined operating licenses (“**COLS**”) issued by the U.S. Nuclear Regulatory Commission in connection with STP 3 and STP 4, and CPS does not object to such cessation and abandonment of development and withdrawal of the licenses;

I. WHEREAS, the U.S. Nuclear Regulatory Commission terminated the COLs on July 13, 2018; and

J. WHEREAS, CPS, NINA 3 and NINA 4, as the current owners of all of the rights relating to STP 3 and STP 4, desire to assign to the Participants all of their respective current or future rights in connection with STP 3 and STP 4, as applicable, and NINA 3 and NINA 4 desire to assign to NRG all of their rights relating to any other future development, such that the rights of the Participants in connection with the South Texas Project shall be as they existed prior to the execution of the Supplemental Agreement, Project Agreement and Owners Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein set forth, which are hereby incorporated as terms of this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties to this Agreement, intending to be legally bound, do hereby agree as follows:

1. Capitalized Terms. Any capitalized term used but not defined in this Agreement shall have the meaning ascribed to such term in the Participation Agreement.

2. Conveyance and Assignment. CPS, NINA 3 and NINA 4 (collectively, the “**Assignors**” and each an “**Assignor**”) hereby assign, convey, transfer and deliver unto the Participants and their successors and assigns, and the Participants hereby assume, the following:

a. *STP 3 and STP 4 Development Rights*. Any and all rights, exercised or not exercised, under the Participation Agreement and Owners Agreement to develop, and to elect to participate in the development of, STP 3 and STP 4, including (i) the right to use Common Station Facilities under such agreement as such rights related to STP 3 and STP 4, (ii) the rights under Section 6.5.2 of the Participation Agreement to own an undivided interest in a portion of the South Texas Plant Site, the Railroad Strip and the Common Station Facilities as a result of the development of STP 3 or STP 4, and (iii) the beneficial interest in all contract rights, permit

applications (including COLs) and all other intangible rights held by STP Nuclear Operating Company and its successors and assigns (“OPCO”) as agent for the Participants in STP 3 or STP 4 (collectively, the “**STP 3 & 4 Rights**”);

b. *Future Development Rights.* Any and all rights to develop Additional Generating Units (other than STP 3 and STP 4) including all rights under the Participation Agreement with respect thereto (the “**Future Development Rights**”); and

c. *STP 3 and STP 4 Documents.* Any and all rights to records, studies and other documents relating to the development of STP 3 and STP 4 in the possession of STP Nuclear Operating Company (the “**STP 3 & 4 Documents**”).

TO HAVE AND TO HOLD the STP 3 & 4 Rights, the Future Development Rights, and the STP 3 & 4 Documents unto the Participants and their successors and assigns forever, together with all rights and appurtenances belonging or pertaining thereto; each Assignor hereby binds itself and its successors and assigns to warrant and forever defend the title to the STP 3 & 4 Rights, the Future Development Rights and the STP 3 & 4 Documents unto the Participants, their successors and assigns from all claims that would constitute a breach of a representation or warranty herein.

3. Assignment of Rights Only / Hold Harmless. The foregoing conveyance and assignment is of rights only. The Assignors do not assign, and the Participants do not assume, any current or future duties, obligations, or liabilities under the Project Agreement or Owners Agreement. CPS and NRG agree to hold Austin harmless from all obligations, liabilities, or effects arising out of the Project Agreement or Owners Agreement. All rights of the Participants in connection with the South Texas Project shall be as they existed prior to the execution of the Project Agreement and Owners Agreement, and prior to Austin’s election not to participate in the Assignors’ development of STP 3 and STP 4.

4. Waiver of Claims Related to STP 3 and STP 4. For valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties to the Agreement, on behalf of themselves, and each of their respective successors, assigns, parent companies, subsidiaries, divisions, officers, directors, employees, agents, subcontractors and attorneys do hereby release, acquit, and forever discharge each of the other parties hereto and their successors, assigns, subsidiaries, divisions, officers, directors, employees, agents, and attorneys, of and from all claims of every kind or character, accrued or unaccrued, known or unknown, ripe or contingent, that arose out of any acts or omissions occurring prior to the date hereof and that are related to STP 3 and STP 4 (“**Released Claims**”). However, nothing herein should be deemed to or will release, acquit, or discharge each Party's right to enforce the terms of this Agreement or to bring an action for the breach of this Agreement.

5. Representations and Warranties of Assignors. Each Assignor hereby represents and warrants to the other parties that, as of the date hereof:

a. *Organization and Authority.* NINA 3 and NINA 4 are duly organized under its jurisdiction of formation that is validly existing and in good standing under the laws thereof, and each Assignor has all requisite power and authority to conduct its business as now being conducted;

b. *Authority Relative to Agreement.* Each Assignor has all requisite organizational power and authority to enter into this Agreement, and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement by each Assignor and the transactions contemplated hereby and thereby have been duly authorized by all necessary organizational action on the part of such Assignor, and no other entity proceeding on the part of such Assignor is necessary to authorize such execution, delivery and performance. This Agreement has been duly executed and delivered by each Assignor and, assuming the due authorization, execution and delivery by the other parties thereto, constitutes the legal, valid and binding obligation of such Assignor, enforceable against such party in accordance with its respective terms;

c. *Due Authorization.* The execution, delivery and performance by each Assignor is within the scope of such party's organizational powers and has been duly authorized by all necessary action on the part of such party. This Agreement constitutes a valid and binding agreement of each such party;

d. *No Conflicts.* The execution, delivery and performance by each Assignor shall not (i) violate the organizational or governing documents of such Assignor; (ii) violate any applicable law; or (iii) violate any agreement to which such Assignor is a party or by which such Assignor is bound;

e. *Legal Proceedings.* There are no proceedings pending or, to the knowledge of Assignors, threatened (a) with respect to the STP 3 & 4 Rights or Future Development Rights or (ii) that seek to restrain, prohibit or obtain damages or other relief in connection with this Agreement or the transactions contemplated hereby.

f. *Title to Assets.* Each Assignor is vested with good title to each item included in the STP 3 & 4 Rights and Future Development Rights.

g. *No Other Representations.* Except for those representations and warranties expressly set forth in this Agreement, each party has not relied upon any other representations or warranties made by any other party in executing this Agreement and that such party is relying solely on its own judgment in connection therewith; and

h. *No Assignment of Claims.* Each party has not assigned, transferred or otherwise conveyed any portion of its claims being released pursuant to Section 3.

The representations and warranties contained in this Section 4 shall survive the Effective Date.

6. Representations and Warranties of Participants. Each Participant hereby represents and warrants to the other parties that, as of the date hereof:

a. *Organization and Authority.* NRG is duly organized under its jurisdiction of formation that is validly existing and in good standing under the laws thereof, and each Participant has all requisite power and authority to conduct its business as now being conducted;

b. *Authority Relative to Agreement.* Each Participant has all requisite organizational power and authority to enter into this Agreement and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this by such Participant and the transactions contemplated hereby and thereby have been duly authorized by all necessary organizational action on the part of such Participant, and no other entity proceeding on the part of such Participant is necessary to authorize such execution, delivery and performance. This Agreement has been duly executed and delivered by such Participant and, assuming the due authorization, execution and delivery by the other parties thereto, constitute the legal, valid and binding obligation of such Participant, enforceable against such Participant in accordance with its respective terms;

c. *Due Authorization.* The execution, delivery and performance by such Participant of this Agreement is within the scope of such Participant's organizational powers and have been duly authorized by all necessary action on the part of such Participant. This Agreement constitutes a valid and binding agreement of each such Participant;

d. *No Conflicts.* The execution, delivery and performance by such Participant of this Agreement shall not (i) violate the organizational or governing documents of such Participant; (ii) violate any applicable Law; or (iii) violate any agreement to which such Participant is a party or by which such Participant is bound.

The representations and warranties contained in this Section 5 shall survive the Effective Date.

7. Covenants.

a. *Further Assurances.* Each party shall make, execute, endorse, acknowledge, file and/or deliver all instruments, documents, and other assurances, and take such further steps and actions as are reasonably necessary to carry out the intent, purpose, terms and provisions of this Agreement.

b. *Acknowledgement and Affirmation of Participation Agreement.* Each party agrees that the Future Development Rights of the Participants with respect to STP 3, STP 4 or any Additional Generating Units shall be governed solely by the provisions of the Participation Agreement.

8. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto as of the date of this Agreement and supersede any prior understandings, agreements, or representations by or between the parties, written or oral, to the extent they have related in any way to the subject matter hereof.

9. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

10. Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF STATE OF TEXAS.

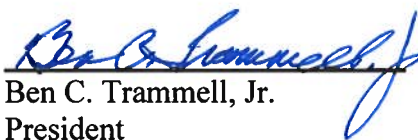
11. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

12. Severability. In the event any of the provisions hereof are held to be invalid or unenforceable under any law, the remaining provisions hereof shall not be affected hereby. In such event, the parties hereto agree and consent that such provisions and this Agreement shall be modified and reformed so as to effect the original intent of the parties as closely as possible with respect to those provisions which were held to be invalid or unenforceable.

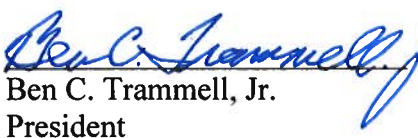
[Remainder of this page intentionally left blank; signatures on following page]

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the Effective Date.

NINA TEXAS 3 LLC,
a Delaware limited liability company

By: 
Name: Ben C. Trammell, Jr.
Title: President

NINA TEXAS 4 LLC,
a Delaware limited liability company

By: 
Name: Ben C. Trammell, Jr.
Title: President

CITY OF SAN ANTONIO, TEXAS
acting by and through the City Public Service Board of San

Antonio

By: _____
Name: Cris Eugster
Title: Chief Operating Officer

CITY OF AUSTIN, TEXAS

By: _____
Name: Pat Sweeney
Title: Vice President

NRG SOUTH TEXAS LP,
a Delaware limited partnership

By: _____
Name: Dudley Zahn
Title: Vice President

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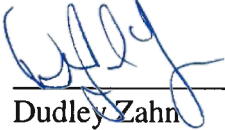
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