



**PR-52  
(76FR03540)**

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April 5, 2011

U7-C-NINA-NRC-110058

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

U. S. Nuclear Regulatory Commission  
Attention: Document Control Desk  
One White Flint North  
11555 Rockville Pike  
Rockville, MD 20852-2738

**Nuclear Innovation North America LLC**  
**Comments on the Proposed Rulemaking on ABWR AIA**

Reference: U.S. Advanced Boiling Water Reactor Aircraft Impact Design Certification  
Amendment, Proposed Rule, 76 FR 3540 (January 20, 2011)

Nuclear Innovation North America LLC (NINA), is pleased to provide comments on the referenced proposed rule on behalf of itself and the other applicants for Combined Licenses for South Texas Project Units 3 and 4 (STP 3&4) - STP Nuclear Operating Company (STPNOC), NINA Texas 3 LLC, NINA Texas 4 LLC, and the City of San Antonio, Texas, acting by and through the City Public Service Board (CPS Energy). As noted in the referenced rulemaking notice, STPNOC is the applicant for certification of the amendment to the U.S. ABWR design. For the reasons described below, NINA urges the Nuclear Regulatory Commission (NRC) to adopt the proposed rule in substantially the same form as proposed in the Notice of Proposed Rule.

The application for Combined Licenses for STP 3&4 (COLA) was filed on September 20, 2007. When 10 CFR 50.150 (the AIA rule) was adopted on June 12, 2009, the NRC review of the COLA was well underway. To comply with the AIA rule, STPNOC could either seek an amendment of the certified ABWR design or amend the COLA to address the requirements of the rule directly. STPNOC selected the option of seeking an amendment of the ABWR design, and submitted its application for this amendment on June 30, 2009. Amendment of the certified ABWR design would have the advantage of constituting final NRC approval that can be referenced by other COL applications. This would be a significant benefit to NINA if it decides to develop other ABWRs, in addition to STP 3&4.

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The STP 3&4 COLA references the application for amendment of the certified ABWR design. Without NRC adoption of the proposed rule, the STP 3&4 COLA would not meet the requirements of the AIA rule. Consequently, adoption of the proposed rule is of vital importance to the success of STP 3&4.

The Notice of Proposed Rule states that the NRC's review confirmed that the proposed amendment complies with the AIA rule, and achieves NRC's objectives in adopting that rule. Adoption of the proposed rule also would be consistent with the standardization objective that underlies 10 CFR Part 52. Its adoption obviously would increase standardization if other COL applicants that reference the certified ABWR design also reference the STPNOC amendment. At the same time, however, such COL applicants would have the option of addressing the AIA rule directly in their COL applications, and would not be required to reference the STPNOC amendment. Providing this option does not further standardization, but it does provide assurance that adoption of the amendment will not disadvantage any supplier of the certified design. In fact, adoption of the proposed rule as an option will be a benefit to every potential supplier of the certified ABWR design because it will demonstrate to entities that may be considering selection of the certified ABWR design for a new facility that it is feasible to modify that design to meet the requirements of the AIA rule.

Adoption of the proposed rule also would be consistent with the NRC's desire to provide the vendor whose design is certified with some assurance against "arbitrary amendment" of the certification rule. See 54 Fed. Reg. at 15375 (Apr. 18, 1989). In adopting the AIA rule, the NRC decided to require that certified designs be amended to comply with the AIA rule, either through rulemaking or departure from the certified design in any COL application that references that design. Thus, the proposed amendment would not be arbitrary, and since it would only provide an optional design alternative, it would not impose an amendment on the certified design.

The Notice of proposed rule discusses policy issues that arise from having multiple suppliers for a single certified design, concludes that the "branches" alternative should be adopted, and provides the rationale for concluding that this alternative meets all of the NRC's regulatory objectives. The notice also explains the factors which support approval of the options approach for the STPNOC amendment. For the reasons explained in the Notice, use of the options approach is the only feasible rulemaking approach that would support application of the proposed amendment to STP 3&4 without jeopardizing the schedule for COL issuance. The notice also explains that the options approach is consistent with the NRC regulations and meets all of the NRC's safety and regulatory objectives. Consequently, application of the options approach to the proposed STPNOC amendment is fully justified.

For these reasons, NINA urges the NRC to adopt the proposed rule substantially as it is proposed in the notice, but with a few changes to improve consistency and clarity. The suggested changes are provided in the attachment to this letter.

If you have any questions regarding these comments, please contact me at 361-972-7206 or Scott Head at 361-972-7136.



Mark McBurnett  
Senior Vice President, Oversight & Regulatory Affairs  
Nuclear Innovation North America LLC

lee

Attachment: Detailed Comments of NINA on the Proposed Rule U.S. ABWR Aircraft Impact Assessment Amendment 76 Fed. Reg. 3540 (January 20, 2011)

cc: w/o attachment except\*  
(paper copy)

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**Detailed Comments of NINA on the Proposed Rule U.S. ABWR Aircraft Impact Assessment  
Amendment 76 Fed. Reg. 3540 (January 20, 2011)**

**Comment 1:**

Suggested change:

At Page 3559, third column, in the next to last line of proposed revised section “I. Introduction” and in the 10th line of proposed revised section III.A.2, change “the South Texas Project Nuclear Operating Company” to “STP Nuclear Operating Company.”

Reason for suggestion:

“STP Nuclear Operating Company” is the full official name of STPNOC, the applicant for the amendment.

**Comment 2:**

Suggested change:

At Page 3560, first column, delete proposed new paragraph III.E.

Reason for suggestion:

This proposed new provision is unnecessary, and is not clear. It is unnecessary because, even without any such new provision, existing paragraph III.B will continue to state that the applicant is required to comply with the GE DCD, except to the limited extent otherwise provided in Appendix A to part 52. As a result, the only changes to the GE DCD that will be authorized by the proposed amendment are the changes described in the STPNOC DCD.

The notice indicates that the purpose of proposed new III.E is to address the situation in which an applicant discovers unintended consequences or unaddressed issues resulting from STPNOC’s amendment, and that in such a situation the applicant would be expected to notify the NRC if the situation is not reportable under 10 CFR 21 or sections 52.6, 50.72 or 50.73. 76 Fed. Reg. at 3551, 3rd column. The notice does not explain, however, why there would be a regulatory need for the NRC to receive notice of information that does not meet any of these broad reporting requirements (e.g., 10 CFR 52.6 requires notice to the NRC of information that has “a significant implication for public health and safety or common defense and security”).

Proposed new paragraph III.E is not clear because it uses the undefined term “a design matter which implements the STPNOC certified design option but is not specifically described in the STPNOC DCD.” In particular, NINA is not aware of any definition of “design matter” or of any common understanding of this term. In addition, it is not clear how the proposed paragraph III.E could be interpreted as imposing the reporting requirement that the rulemaking notice describes as its purpose, when it does not even mention notice to the NRC. The purpose of the STPNOC DCD is to identify the necessary changes to the GE DCD to meet 10 CFR 50.150(a). Each such change represents a conflict between the GE DCD and the STPNOC DCD. Uncertainties about the meaning of “design matter” and the level of detail required for an item to be “described specifically” have the potential to lead to compliance issues that are not reasonably related to safety.

**Comment 3:**

Suggested change:

At Page 3560, first column, delete proposed new paragraph IV.A.4.

Reason for suggestion:

Proposed new IV.A.4 would require an application to include information that already is required by 10 CFR § 52.73(a), and does not appear to be necessary to effect NRC approval of STPNOC’s proposed amendment.

**Comment 4:**

Suggested change:

At Page 3560, second column, revise existing paragraph VI.A. as follows (proposed added language is in **bold font**):

The Commission has determined that the structures, systems, components, and design features of the U.S. ABWR design **as contained in the GE DCD** comply with the provisions of the Atomic Energy Act of 1954, as amended, and the applicable regulations identified in Section V.A.1 of this appendix; and therefore, provide adequate protection to the health and safety of the public. **The Commission has determined that the U.S. ABWR design as contained in the STPNOC DCD comply with the provisions of the Atomic Energy Act of 1954, as amended, and the applicable regulations identified in Section V.A.2 of this appendix; and therefore, provide adequate protection to the health and safety of the public and achieve the Commission’s objectives of enhanced public health and safety and enhanced common defense and security through improvement of the facility’s inherent robustness at the design stage.** A conclusion that a matter is resolved

includes the finding that additional or alternative structures, systems, components, design features, design criteria, testing, analyses, acceptance criteria, or justifications are not necessary for the U.S. ABWR design **or the STPNOC design option.**

Reason for suggestion:

Existing paragraph VI.A contains a reference to Section V that is not consistent with the proposed revision of Section V, which would renumber paragraph V.A to V.A.1, and add a new paragraph V.A.2. New paragraph V.A.2 refers to the NRC regulations as they will exist on the date of adoption of the proposed amendment. Those regulations will apply to the STPNOC DCD, but not to the GE DCD. The regulations that apply to the GE DCD are those that existed on May, 2, 1997.

Additionally, since the findings stated in paragraph VI.A form the basis for the resolution of issues in paragraph VI.B, paragraph VI.A should include findings sufficient to form the basis for the proposed provision in paragraph VI.B related to the STPNOC design option.

**Comment 5:**

Suggested change:

At Page 3560, second column, in the tenth and eleventh lines of the proposed revised paragraph VI.B.1, delete "other" and insert a comma after "requirements," so that these revised lines would read as follows (changes indicated by ~~strike through~~ and **bold** fonts):

nuclear safety issues, except for ~~other~~  
operational requirements, associated with the

Reason for suggestion:

The reason to delete "other" is that it has no antecedent in the revised sentence, and appears to have been inadvertently retained during drafting. The relevant portion of existing paragraph VI.B1 is: "nuclear safety issues, except for the generic technical specifications and other operational requirements, associated." There, "the generic technical specifications" is the antecedent of "other." Since there is no mention of the generic technical specifications in the proposed provision concerning the AIA amendment, there is nothing for the operational requirements to be "other than."

The comma should be inserted after "requirements," to indicate the end of the description of the exception. Without the comma, it would appear that the exception encompasses the information in the AIA FSER, Tier 1 or Tier 2. Inserting the comma will make it clearer that the matters that the

Commission considers to be resolved include all nuclear safety issues, except for operational requirements, addressed in the AIA FSER and the other records mentioned in the revised paragraph.

**Comment 6:**

Suggested change:

At Page 3560, third column, revise proposed new paragraph VIII.B.5.d. with the following deletions (indicated by ~~strike through~~) and additions (indicated by **bold**):

~~If an An applicant or licensee proposes to~~ **may** depart from the information required by 10 CFR 52.47(a)(28) to be included in the FSAR for the standard design certification, ~~then the applicant or licensee shall consider the effect of the changed feature or capability on the original assessment required by 10 CFR 50.150(a). The applicant or licensee must also document how~~ **only if** the modified design features and functional capabilities continue to meet the assessment requirements in 10 CFR 50.150(a)(1) ~~in accordance with Section X of this appendix.~~

Reason for suggestion:

These changes would delete the references to the requirements to consider the effect of the departures and to document how the modified design would continue to meet the relevant regulation. Eliminating these references would make Section VIII.B.5.d more consistent with Sections VIII.B.5.b and c, which specify the standards for determining whether a departure requires a license amendment, but do not explicitly impose a requirement for an evaluation or for documentation of its results. Since existing Section X.A.3 already requires an applicant or licensee to prepare and maintain written evaluations which provide the bases for determinations required by Section VIII, there is no need to duplicate these requirements in new Section VIII.B.5.d. Eliminating this duplication will prevent inconsistent interpretations of the requirements for evaluation and documentation associated with new Section VIII.B.5.d.



## Rulemaking Comments

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**From:** Gilles, Nanette  
**Sent:** Tuesday, April 12, 2011 9:05 AM  
**To:** Rulemaking Comments  
**Cc:** Ngbea, Evangeline; Joseph, Stacy  
**Subject:** FW: Transmittal of Letter U7-C-NINA-NRC-110058  
**Attachments:** U7-C-NINA-NRC-110058.pdf

Please process the attached comments on the proposed rule for the U.S. Advanced Boiling Water Reactor Aircraft Impact Design Certification Amendment, Proposed Rule, 76 FR 3540 (January 20, 2011). The commenter did not submit them properly.

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**From:** Joseph, Stacy  
**Sent:** Tuesday, April 05, 2011 3:40 PM  
**To:** Gilles, Nanette  
**Subject:** FW: Transmittal of Letter U7-C-NINA-NRC-110058

Just got this one...

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**From:** Elton, Loree [<mailto:leelton@STPEGS.COM>]  
**Sent:** Tuesday, April 05, 2011 3:38 PM  
**To:** Muniz, Adrian; Wunder, George; Tonacci, Mark; Eudy, Michael; Plisco, Loren; Anand, Raj; Foster, Rocky; Joseph, Stacy; Govan, Tekia; Tai, Tom  
**Subject:** Transmittal of Letter U7-C-NINA-NRC-110058

Attached is a courtesy copy of letter number U7-C-NINA-NRC-110058, which provides comments on U.S. Advanced Boiling Water Reactor Aircraft Impact Design Certification Amendment, Proposed Rule, 76 FR 3540 (January 20, 2011).

The official version of this correspondence will be mailed. Please call Fred Puleo at 361-972-8697 if you have any questions concerning this letter.

Thank you,

Loree Elton  
Licensing, STP 3 & 4  
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361-972-4644