
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549**

FORM 8-K

**CURRENT REPORT PURSUANT
TO SECTION 13 OR 15(D) OF THE
SECURITIES EXCHANGE ACT OF 1934**

Date of report (Date of earliest event reported) **March 1, 2010**

NRG Energy, Inc.

(Exact Name of Registrant as Specified in Its Charter)

Delaware

(State or Other Jurisdiction of Incorporation)

001-15891

(Commission File Number)

41-1724239

(IRS Employer Identification No.)

211 Carnegie Center

(Address of Principal Executive Offices)

Princeton, NJ 08540

(Zip Code)

609-524-4500

(Registrant's Telephone Number, Including Area Code)

Not Applicable

(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (*see* General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 1.01 Entry into a Material Definitive Agreement

On March 1, 2010, Nuclear Innovation North America LLC (“NINA”), an 88% percent owned indirect subsidiary of NRG Energy, Inc. (the “Company”), entered into a Project Agreement, Settlement Agreement and Mutual Release (the “Settlement Agreement”), by and among the City of San Antonio acting by and through the City Public Service Board of San Antonio, a Texas municipal utility (“CPS Energy”), NINA Texas 3 LLC (“NINA 3”) and NINA Texas 4 LLC (“NINA 4”, and together with NINA 3, the “NINA Parties”), and solely for purposes of certain sections of the Settlement Agreement, by the Company and NRG South Texas LP (“NRG South Texas”). The Settlement Agreement memorializes NINA’s February 17, 2010 agreement in principle with CPS Energy to acquire a controlling interest in the project to construct STP Units 3 and 4 through a settlement of all outstanding litigation among the parties. As part of the resolution of this dispute, on March 1, 2010, the NINA Parties and the City of San Antonio also entered into the STP 3 & 4 Owners Agreement (the “Owners Agreement”).

The Owners Agreement replaces the interim agreement previously reached among the parties on October 29, 2007. The Owners Agreement: (i) finalizes the ownership percentages for the STP 3 & 4 project at 92.375% for NINA and 7.625% for CPS Energy, (ii) provides that NINA will assume all management and control of the STP 3 & 4 project, (iii) specifies that NINA will be responsible for all development costs incurred after January 31, 2010, and (iv) provides that CPS Energy will withdraw its loan guarantee application with the U.S. Department of Energy (“DOE”) and fully support NINA’s loan guarantee application with the DOE. The Settlement Agreement dismisses all litigation with prejudice and obligates NRG to pay CPS Energy \$80 million upon the receipt by NINA of a term sheet for a conditional commitment for a loan guarantee with the DOE. The first \$40 million is due after receipt of the term sheet for a conditional commitment for a loan guarantee and the remaining \$40 million is payable six months thereafter. The Company also committed to donate \$10 million in equal installments over four years to the Residential Energy Assistance Partnership in San Antonio.

A copy of the Settlement Agreement is attached as Exhibit 10.1 and a copy of the Owners Agreement is attached as Exhibit 10.2 to the Current Report on Form 8-K. The description of the material terms of the Settlement Agreement and the Owners Agreement is qualified in its entirety by reference to such exhibits.

Item 9.01 Financial Statements and Exhibits

<u>Exhibit No.</u>	<u>Document</u>
10.1	Project Agreement, Settlement Agreement and Mutual Release, dated March 1, 2010, by and among by and among Nuclear Innovation North America LLC, the City of San Antonio acting by and through the City Public Service Board of San Antonio, a Texas municipal utility, NINA Texas 3 LLC and NINA Texas 4 LLC, and solely for purposes of certain sections of the Settlement Agreement, by NRG Energy, Inc and NRG South Texas LP

<u>Exhibit No.</u>	<u>Document</u>
10.2	STP 3 & 4 Owners Agreement, dated March 1, 2010, by and among Nuclear Innovation North America LLC, the City of San Antonio, NINA Texas 3 LLC and NINA Texas 4 LLC (Portions of this Exhibit have been omitted pursuant to a request for confidential treatment)

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

NRG Energy, Inc.
(Registrant)

By: /s/ Michael R. Bramnick
Michael R. Bramnick
Senior Vice President and General Counsel

Dated: March 2, 2010

EXHIBIT INDEX

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10.1	Project Agreement, Settlement Agreement and Mutual Release, dated March 1, 2010, by and among by and among Nuclear Innovation North America LLC, the City of San Antonio acting by and through the City Public Service Board of San Antonio, a Texas municipal utility, NINA Texas 3 LLC and NINA Texas 4 LLC, and solely for purposes of certain sections of the Settlement Agreement, by NRG Energy, Inc and NRG South Texas LP
10.2	STP 3 & 4 Owners Agreement, dated March 1, 2010, by and among Nuclear Innovation North America LLC, the City of San Antonio, NINA Texas 3 LLC and NINA Texas 4 LLC (Portions of this Exhibit have been omitted pursuant to a request for confidential treatment)

PROJECT AGREEMENT, SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This project agreement, settlement agreement and mutual release (this "**Agreement**") is made and entered into as of the 1st day of March, 2010 by and among the City of San Antonio acting by and through the City Public Service Board of San Antonio, a Texas municipal utility ("**San Antonio**"), Nuclear Innovation North America LLC, a limited liability company formed under the laws of Delaware ("**NINA**"), NINA Texas 3 LLC, a limited liability company formed under the laws of the State of Delaware ("**NINA 3**") and NINA Texas 4 LLC, a limited liability company formed under the laws of the State of Delaware ("**NINA 4**"), and together with NINA 3, the "**NINA Parties**") and is joined in the execution hereof solely for purposes of Sections 3.1, 3.2, 4.2, 6.1, 6.2, 6.3 and 6.5 (and such provisions of Section 8 as are necessary to give effect thereto), by NRG Energy, Inc., a Delaware corporation ("**NRG**") and, solely for purposes of Sections 4.1.1 through 4.1.4 and Section 5.2 (and such provisions of Article 8 as are necessary to give effect thereto), NRG South Texas LP, a Texas limited partnership ("**NRG South Texas**"), with reference to the following facts (each of San Antonio, NINA, the NINA Parties, and, for purposes of Sections 4.1.1 through 4.1.4 and Section 8, NRG South Texas and for purposes of Sections 3.1, 3.2, 4.2, 6.1, 6.2, 6.3, 6.5 and Article 8, NRG, are sometimes referred to individually as a "**Party**" and collectively as the "**Parties**");

RECITALS

A. Each of San Antonio and NRG South Texas are parties to: (i) the Amended and Restated South Texas Project Participation Agreement, dated effective as of November 17, 1997, by and among The City of Austin ("**Austin**"), San Antonio and NRG South Texas (as successor in interest to Houston Lighting & Power Company ("**Houston**") and Central Power and Light Company ("**Central**")) (as amended from time to time, the "**Participation Agreement**"); as supplemented by the South Texas Project Supplemental Agreement (as amended from time to time, the "**Supplemental Agreement**") dated as of October 29, 2007 between NRG South Texas and San Antonio; (ii) the South Texas Project Operating Agreement (as amended from time to time, the "**STP Operating Agreement**") among San Antonio, NRG South Texas (as successor in interest to Houston and Central), Austin and STP Nuclear Operating Company, a Texas non-profit corporation ("**OPCO**"), and (iii) the agency agreement, dated as of October 30, 2007 among San Antonio, NRG South Texas and OPCO (as amended from time to time, the "**Agency Agreement**");

B. NRG South Texas subsequently assigned its rights under the Participation Agreement, the Agency Agreement and the Supplemental Agreement to NINA. NINA is developing STP 3 (defined below) through NINA 3 and STP 4 (defined below) through NINA 4. NINA 3 and NINA 4 are wholly owned indirectly by NINA, which is owned directly or indirectly by each of NRG and Toshiba Corporation ("**Toshiba**");

C. Each of San Antonio, NINA 3 and NINA 4 are parties to the Master Engineering, Procurement and Construction Agreement, dated as of February 24, 2009 among OPCO (as agent for San Antonio, NINA 3, and NINA 4) and Toshiba America Nuclear Energy Corporation

("TANE") (as amended from time to time, the "EPC Agreement" and, together with the Participation Agreement, the Supplemental Agreement, the Agency Agreement and the STP Operating Agreement, the "Principal Operative Agreements");

D. Each of San Antonio and NRG South Texas exercised their respective rights pursuant to Article 6 of the Participation Agreement to pursue development of the third ("STP 3") and fourth ("STP 4") additional electric generating units to be built and operate at the South Texas Project;

E. By its letter dated February 20, 2009, Austin has acknowledged that it has elected not to participate in the Project in response to valid notice from the participating owners;

F. On December 6, 2009, San Antonio filed a suit at Cause Number 2009-CI-19492 in the 37th Judicial District Court of Bexar County, Texas against NINA, NINA 3 and NINA 4 with respect to the Project (the "Pending Action");

G. Thereafter, San Antonio added NRG, as an additional defendant, and NINA, NINA 3 and NINA 4 filed counterclaims in the Pending Action;

H. Pursuant to the Principal Operative Agreements, San Antonio, NINA 3 and NINA 4 have jointly pursued the development of STP 3 and STP 4 through the date of this Agreement, each of San Antonio and NINA have funded the Development Costs of STP 3 and STP 4 equally;

I. San Antonio will retain a Unit Ownership Interest in the Project to reflect its funding of a portion of the Development Costs and other considerations;

J. The Parties desire that the Principal Operative Agreements, other than the Supplemental Agreement, shall remain in full force and effect, unless otherwise amended in accordance with the provisions of this Agreement; and

K. The Parties desire to enter into this Agreement to, among other things, more fully set forth certain rights and obligations of each of San Antonio, NINA 3 and NINA 4 (and any permitted transferee of such Person in the Project) (each, an "Owner") with respect to the licensing, development, construction, ownership and operation of STP 3 and STP 4 (the "Project") and to address and settle the Pending Action.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereby acknowledge and agree as follows:

ARTICLE I DEFINITIONS

1.1 Defined Terms. Capitalized terms used in this Agreement but not otherwise defined herein shall have the meanings specified in this Article I.

"*Abandonment*" shall have the meaning ascribed to such term in the Owners Agreement.

“*Additional Agreements*” shall have the meaning set forth in Section 7.2 hereof.

“*Agency Agreement*” shall have the meaning set forth in the recitals hereto.

“*Agreed Order of Dismissal*” shall have the meaning set forth in Section 6.5 hereof.

“*Agreement*” shall have the meaning set forth in the preamble to this Agreement.

“*Assignment and Assumption Agreement*” shall have the meaning set forth in Section 7.2 hereof.

“*Austin*” shall have the meaning set forth in the recitals hereto.

“*Business Day*” shall mean any day other than a Saturday, a Sunday or any other day on which commercial banks in the State of Texas are authorized or obligated to be closed.

“*Cash Payment*” shall have the meaning set forth in Section 3.1 hereof.

“*Central*” shall have the meaning set forth in the recitals hereto.

“*City Initiative*” shall refer to the Residential Electric Assistance Partnership (otherwise known as “*REAP, Inc.*”) which such corporation is a partnership among San Antonio, Bexar County and the City of San Antonio, and whose purpose is to help those in financial distress pay their utility bills.

“*City Initiative Contribution*” shall have the meaning set forth in Section 3.2 hereof.

“*City Initiative Contribution Payment Date*” shall have the meaning set forth in Section 3.2 hereof.

“*Closing*” shall have the meaning set forth in Section 7.1 hereof.

“*Closing Date*” shall mean the date on which this Agreement is executed by all parties hereto.

“*COL Application*” shall mean the Combined Operating License Application (Docket no. PROJO749) for the Project filed with the U.S. Nuclear Regulatory Commission by OPCO dated September 20, 2007, as amended or supplemented.

“*Common Station Facilities*” shall have the meaning ascribed to such term in the Participation Agreement.

“*Conveyance Date*” shall mean the date on which the deeds and conveyance instruments contemplated by Section 2.1.2 are executed and delivered by San Antonio to the NINA Parties.

“*Default Interest*” shall have the meaning set forth in Section 3.1 hereof.

“*Defendants’ Released Claims*” shall have the meaning set forth in Section 6.2 hereof.

“Development Costs” shall have the meaning ascribed to *“Total Project Costs”* in the Owners Agreement.

“DOE” shall have the meaning set forth in Section 7.2 hereof.

“Enforcement Costs” shall have the meaning set forth in Section 3.1 hereof.

“EPC Agreement” shall have the meaning set forth in the recitals hereto.

“Existing STP Units” means the first two electric generating units operating at the South Texas Project site.

“Financial Closing” shall have the meaning ascribed to such term in the EPC Agreement.

“Governmental Authority” shall mean any federal, state or local governmental entity, authority or agency, court, tribunal, regulatory commission or other body, whether legislative, judicial or executive (or a combination or permutation thereof), including the Nuclear Regulatory Commission.

“Houston” shall have the meaning set forth in the recitals hereto.

“Initial Cash Payment” shall have the meaning set forth in Section 3.1 hereof.

“Initial Cash Payment Date” shall have the meaning set forth in Section 3.1 hereof.

“Joint Motion for Dismissal” shall have the meaning set forth in Section 6.5 hereof.

“Land and Improvements” shall have the meaning set forth in Section 2.1.2(i) hereof.

“Law” shall mean any statute, law, treaty, rule, code, ordinance, requirement, regulation, permit or certificate of any Governmental Authority, any interpretation of any of the foregoing by any Governmental Authority, or any binding judgment, decision, decree, injunction, writ, order or like action of any court, arbitrator or other Governmental Authority.

“Lien” shall have the meaning ascribed to *“Lien”* in the Owners Agreement.

“NINA” shall have the meaning set forth in the preamble to this Agreement.

“NINA 3” shall have the meaning set forth in the preamble to this Agreement.

“NINA 4” shall have the meaning set forth in the preamble to this Agreement.

“NINA Parties” shall have the meaning set forth in the preamble to this Agreement.

“NRG” shall have the meaning set forth in the preamble to this Agreement.

“NRG South Texas” shall have the meaning set forth in the preamble to this Agreement.

“Owner” shall have the meaning set forth in the recitals hereto.

“Owners Agreement” shall have the meaning set forth in [Section 7.2](#) hereof.

“Participation Agreement” shall have the meaning set forth in the recitals hereto.

“Party” and *“Parties”* shall have the respective meanings set forth in the preamble to this Agreement.

“Pending Action” shall have the meaning set forth in the recitals hereto.

“Person” means any individual, corporation, partnership, joint venture, association, joint stock company, trust, limited liability company, unincorporated organization, Governmental Authority or any other form of entity.

“Principal Operative Agreements” shall have the meaning set forth in the recitals hereto.

“Project” shall have the meaning set forth in the recitals hereto.

“REAP, Inc.” shall have the meaning set forth in the definition of “City Initiative” in this [Section 1.1](#).

“Released Defendant Parties” shall have the meaning set forth in [Section 6.3](#) hereof.

“Remaining Cash Payment” shall have the meaning set forth in [Section 3.1](#) hereof.

“Remaining Cash Payment Date” shall have the meaning set forth in [Section 3.1](#) hereof.

“Rule 408” shall have the meaning set forth in [Section 8.14](#) hereof.

“San Antonio” shall have the meaning set forth in the preamble to this Agreement.

“San Antonio Cease Funding Date” shall mean January 31, 2010.

“San Antonio Released Claims” shall have the meaning set forth in [Section 6.3](#) hereof.

“South Texas Project” shall have the meaning set forth in the Participation Agreement.

“STP 3” shall have the meaning set forth in the recitals hereto.

“STP 4” shall have the meaning set forth in the recitals hereto.

“STP Operating Agreement” shall have the meaning set forth in the recitals hereto.

“Supplemental Agreement” shall have the meaning set forth in the recitals hereto.

“TANE” shall have the meaning set forth in the recitals hereto.

“Toshiba” shall have the meaning set forth in the recitals hereto.

“Unit” shall have the meaning set forth in the EPC Agreement.

“Unit Ownership Interest” shall have the meaning ascribed to such term in the Owners Agreement.

ARTICLE II
PROJECT OWNERSHIP

2.1 Ownership Interest.

2.1.1 *Closing Date.* On the Closing Date, subject to the terms and conditions of this Agreement and the Additional Agreements, San Antonio shall have a 7.625% Unit Ownership Interest in the Project and the NINA Parties shall have a 92.375% Unit Ownership Interest in the Project.

2.1.2 *Determination of Interests.* To effect Section 2.1.1, the Parties shall, at the NINA Parties’ expense, do the following on or prior to the Initial Cash Payment Date as a condition precedent to the payment of the Initial Cash Payment and to the payment of the Remaining Cash Payment:

(i) engage a licensed land surveyor selected by OPCO for the purpose of preparing a survey of the land on which the Project will be located and any and all improvements located thereon (as described in the COL Application) (collectively, the “**Land and Improvements**”), which survey will be performed in accordance with the 2005 Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys as adopted by American Land Title Association and National Society of Professional Surveyors and will be certified by the surveyor to the Parties in a manner acceptable to OPCO;

(ii) execute, acknowledge and deliver such documentation reasonably satisfactory to the Parties, and their existing and prospective creditors and lenders (including the DOE), to effect the transfer by special warranty deed of only the relevant portion of San Antonio’s undivided tenant-in-common percentage interest in: (a) the Land and Improvements, and (b) the Common Station Facilities; and

(iii) Each Party agrees to grant easements identified by OPCO over any of the Land and Improvements and Common Station Facilities as necessary for the development and operation of STP 3 and STP 4 or any other generating unit at the South Texas Project.

2.1.3 *Abandonment.* Notwithstanding anything to the contrary set forth herein, upon the Abandonment of the Project, (a) San Antonio’s Unit Ownership Interest shall be adjusted as and to the extent described in the Owners Agreement, and (b) there shall be no right of rescission as to the conveyances described above, although there will be an obligation of re-conveyance as described in the Owners Agreement.

2.2 NINA Business Plan. It is the current business plan of NINA and the NINA Parties to develop, license, design and construct the Project as a two unit nuclear facility; provided, that NINA and the NINA Parties are under no obligation to develop, license, design and construct such facility and may abandon without liability to any other Owner, other than pursuant to any written agreement between the Parties, the development of such facility for any

reason, including without limitation for any change in the regulatory environment or force majeure event.

**ARTICLE III
CASH PAYMENTS; PROJECT FUNDING**

3.1 Cash Payment.

3.1.1 Subject to the delivery of the executed deeds and conveyance instruments required by Section 2.1.2 above, no later than the earlier of (i) two weeks following conditional approval from the DOE with respect to its loan guaranty term sheet or (ii) the Financial Closing (the “**Initial Cash Payment Date**”), NRG shall pay, by and for the benefit of the NINA Parties, \$40 million (the “**Initial Cash Payment**”) to San Antonio by wire transfer of immediately available funds to an account or accounts designated by San Antonio.

3.1.2 Subject to the delivery of the executed deeds and conveyance instruments required by Section 2.1.2 above, no later than the 6 month anniversary of the Initial Cash Payment Date (the “**Remaining Cash Payment Date**”), NRG shall pay, by and for the benefit of the NINA Parties, \$40 million (the “**Remaining Cash Payment**”) and, together with the Initial Cash Payment, the “**Cash Payment**”) to San Antonio by wire transfer of immediately available funds to an account or accounts designated by San Antonio.

3.1.3 With respect to any amounts due and payable to San Antonio under this Section 3.1 or Section 3.2 below, if such amounts are not paid when due, interest shall accrue on such unpaid amounts from the date on which such amounts are due through and including the date on which payment is actually made, at an annual interest rate of 15.00% (such interest, “**Default Interest**”). In addition, San Antonio shall be entitled to full reimbursement of any and all expenses (including attorneys’ fees and expenses) which are incurred by San Antonio in endeavoring to collect any amounts payable hereunder which are not paid when due or in otherwise enforcing any rights under the guarantee (the “**Enforcement Costs**”).

3.1.4 The Parties acknowledge and agree that the consideration paid to San Antonio hereunder constitutes all amounts required to be paid to San Antonio pursuant to Section 6.5.2 of the Participation Agreement. The Parties further acknowledge that San Antonio will not be liable to Austin, NINA 3 or NINA 4, or to NRG or its Affiliates for any payment pursuant to Section 6.5.2 of the Participation Agreement related to the determination of Unit Ownership Interest pursuant to Section 2.1.1 hereof or the transfer of the Land and Improvements and Common Station Facilities pursuant to Section 2.1.2 hereof and that NINA, NINA 3 or NINA 4, as applicable, will be liable for payment of any such amounts. For the avoidance of doubt, the Cash Payments made by NRG herein shall be deemed to have been made by and for the benefit of the NINA Parties and shall be included in the Abandonment calculations on behalf of the Owners under the Owners Agreement pursuant to Section 2.1(b)(i)(C) thereunder.

3.2 City Initiative Contribution. NRG shall make a contribution of \$10 million (the “**City Initiative Contribution**”) to an account or accounts for the sole benefit of REAP, Inc. The City Initiative Contribution shall be payable as follows (each a “**City Initiative Contribution Payment Date**”): (i) \$2.5 million within 10 Business Days following the Closing

Date and (ii) \$2.5 million dollars on each of the first, second and third anniversaries of the initial City Initiative Contribution Payment Date, or if such date is not a Business Day, the immediately preceding Business Day. For the avoidance of doubt, in no event will NRG, NINA, NINA 3, NINA 4 or any of their respective affiliates be permitted to exercise any right of set-off with respect to any amounts due and payable to San Antonio under this Agreement.

3.3 Project Funding Obligations. It is the intention of the Parties that the funding obligations of San Antonio for Development Costs incurred following the San Antonio Cease Funding Date (including all obligations of the Owners pursuant to the EPC Agreement) shall be as set forth in the Owners Agreement.

ARTICLE IV REPRESENTATIONS AND WARRANTIES

4.1 Representations and Warranties of each Party. Except for the representations and warranties in Section 4.1.10, which are made solely by San Antonio, each of the Parties hereby represents and warrants to the other Parties that, as of the date hereof that:

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

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

4.1.3 *Due Authorization*. The execution, delivery and performance by such Party of this Agreement and the Additional Agreements, as applicable, are within the scope of such Party's organizational powers and have been duly authorized by all necessary action on the part of such Party. This Agreement and the Additional Agreements to which such Party is a party constitute a valid and binding agreement of each such Party;

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

4.1.5 *Constitutional Authority*. Nothing in this Agreement constitutes an event of forfeiture, nor does any portion of this Agreement violate any provision of the Texas Constitution;

4.1.6 *Understanding of Settlement*. Such Party has read this Agreement and fully understands it to be a compromise and settlement; prior to entering into this Agreement, such Party was advised by its counsel, accountants, financial advisors and such other persons as it has deemed appropriate concerning this Agreement and the Additional Agreements, as applicable;

4.1.7 *No Other Representations*. Except for those representations and warranties expressly set forth in this Agreement, such 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;

4.1.8 *Voluntary Execution*. Such Party is executing this Agreement voluntarily and without coercion;

4.1.9 *No Assignment of Claims*. Such Party has not assigned, transferred or otherwise conveyed any portion of its claims being released pursuant to Section 6.2 or Section 6.3, as applicable; and

4.1.10 *No Liens*. San Antonio represents and warrants to the other Parties that San Antonio owns good, valid and transferable title to the Unit Ownership Interests conveyed pursuant to Section 2.1.1 and the real property and improvements to be conveyed pursuant to Section 2.1.2 free and clear of any Lien (as defined in the Owners Agreement), other than Liens or rights under the Principal Operative Agreements, the Additional Agreements and Applicable Law and Liens validly existing that also encumber the interest of NRG South Texas or NINA 3 and NINA 4 as to their Unit Ownership Interests. San Antonio represents and warrants to the other Parties with regard to the matters contemplated by the Assignment and Assumption Agreement that they have not assigned the EPC Contract or any other contracts or beneficial interest referenced or described therein. San Antonio makes no representations or warranties whatsoever to the other Parties with regard to the tangible personal property to be transferred pursuant to the agreement contemplated by Section 7.2.1(iii).

The representations and warranties contained in this Article IV shall survive the Closing Date. The representations and warranties set forth in Sections 4.1.1 through 4.1.3 and 4.1.10 shall be deemed to have been repeated by San Antonio on the Conveyance Date; provided, that at such time and for the purposes of such representations, the deeds and conveyance instruments contemplated by Section 2.1.2 shall be considered "Additional Agreements".

4.2 Representations and Warranties of NRG. NRG hereby makes the following representations and warranties for the benefit of San Antonio:

4.2.1. NRG is duly organized under its jurisdiction of formation and is validly existing and in good standing under the laws thereof and has all requisite power and authority to conduct its business as now being conducted;

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

4.2.3 The execution, delivery and performance by NRG of this Agreement are within the scope of NRG's organizational powers and have been duly authorized by all necessary action on the part of NRG. This Agreement constitutes a valid and binding agreement of NRG; and

4.2.4 The execution, delivery and performance by NRG of this Agreement shall not (i) violate the organizational or governing documents of NRG; (ii) violate any applicable Law; or (iii) violate any agreement to which NRG is a party or by which NRG is bound.

The representations and warranties contained in this Section 4.2 shall survive the Closing Date.

ARTICLE V
OTHER AGREEMENTS; COVENANTS

5.1 Project Development. NINA and the NINA Parties will pursue the development of STP 3 and STP 4 in good faith, subject to exercising its business judgment with respect to costs, financing, licensing, market conditions and other factors it deems reasonable in its good faith business judgment.

5.2 Supplemental Agreement. The Parties to the Supplemental Agreement agree that the Supplemental Agreement is hereby terminated and shall be of no further force and effect, except that the rights and obligations of San Antonio and NRG South Texas as to the rights of first refusal applicable to the Existing STP Units as described in Section 9 thereof shall survive; provided, however, such parties agree that any dispute resolution with respect thereto shall not be subject to Section 8.4 hereof.

5.3 Covenants.

5.3.1 *Further Assurances*. Each Party shall, at the expense of NINA, NINA 3 or NINA 4, 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.

5.3.2 *Expenses*. Unless otherwise expressly provided in this Agreement, each of the Parties hereto shall pay all of its own expenses relating to the preparation of, and transactions set forth in, this Agreement.

ARTICLE VI
PRIOR RULING; SETTLEMENT AND RELEASE

6.1 Prior Ruling. The Parties hereby acknowledge the ruling of Judge Noll of the 37th Judicial District Court of Bexar County, Texas, as issued on January 29, 2010, is set forth on Schedule 6.1 attached hereto.

6.2 Complete and General Release by NRG, NINA, NINA 3 and NINA 4. For valuable consideration, the receipt and adequacy of which is hereby acknowledged, and except for the obligations and exceptions set forth in this Agreement, NRG, NINA, NINA 3 and NINA 4 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 San Antonio and its 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 Closing Date and that are in any way related to the Project (“**Defendants’ 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. In addition, it is expressly understood and intended by the Parties that, except as set forth in this Section 6.2, each Party otherwise reserves any and all claims under the Principal Operative Agreements, the Additional Agreements or relating to or affecting the Existing STP Units, the Common Station Facilities or any other matters not expressly mentioned herein.

6.3 Complete and General Release by San Antonio. For valuable consideration, the receipt and adequacy of which is hereby acknowledged, and except for the obligations and exceptions set forth in this Agreement, San Antonio on its own behalf and on behalf of its successors, assigns, subsidiaries, divisions, officers, directors, employees, agents, and attorneys, does hereby release, acquit, and forever discharge NRG, and NINA, NINA 3, NINA 4, and, subject to Section 6.4 below, Toshiba and TANE, and their respective successors, assigns, parent companies, subsidiaries, divisions, officers, directors, employees, agents, subcontractors and attorneys (such parties, the “**Released Defendant Parties**”), 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 Closing Date and that are in any way related to the Project (“**San Antonio’s 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. In addition, it is expressly understood and intended by the Parties that, except as set forth in this Section 6.3, each Party otherwise reserves any and all claims under the Principal Operative Agreements, the Additional Agreements or relating to or affecting the Existing STP Units, the Common Station Facilities or any other matters not expressly mentioned herein.

6.4 Release of TANE and Toshiba. The complete and general release of San Antonio's Released Claims in Section 6.3 against Toshiba and TANE, and their respective successors, assigns, parent companies, subsidiaries, divisions, officers, directors, employees, agents, subcontractors and attorneys, shall be effective upon the receipt by the NINA Parties and San Antonio of consent to the assignment of San Antonio's right, liabilities and obligations in and under the EPC Agreement to the NINA Parties to the extent provided in the Assignment and Assumption Agreement.

6.5 Agreed Dismissal With Prejudice. The Parties hereby agree to file or cause to be filed on or near the Closing Date an agreed motion of dismissal with prejudice and an agreed order of dismissal with prejudice of their respective claims asserted in the Pending Action, which agreed order of dismissal shall be substantially in the form attached hereto as Exhibit A-1 (the "**Agreed Order of Dismissal**") and which joint motion of dismissal shall be substantially in the form attached hereto as Exhibit A-2 (the "**Joint Motion for Dismissal**").

6.6 Section 6.6 of the Participation Agreement. San Antonio hereby waives the application of Section 6.6 of the Participation Agreement with respect to the development and operation of the Project and hereby releases any past, present or future claim or cause of action of any kind associated therewith. Each Party covenants that it will not take a position for federal tax purposes inconsistent with the Parties being tenants in common or make any election with the Internal Revenue Service to cause the arrangement between the parties embodied by the Owners Agreement to be taxable as a corporation, and shall cooperate to make any necessary election with the Internal Revenue Service to cause such arrangement between the Parties to be excluded from the application of Subchapter K of Chapter 1 of the Internal Revenue Code of 1986.

ARTICLE VII
CLOSING

7.1 The Closing. The closing of the transactions contemplated hereby (the "**Closing**") are taking place on the Closing Date by exchange of signatures or at such other time as the Parties hereto shall agree in writing.

7.2 Deliverables of the Parties. On the Closing Date, each Party shall deliver the following, as applicable:

7.2.1 Additional Agreements and Amendments. On the Closing Date, the applicable Parties shall deliver executed counterparts to the following: (items (i) through (iv) below, the "**Additional Agreements**"):

- (i) the owners agreement, dated as of the Closing Date, among San Antonio, NINA, NINA 3 and NINA 4 (the "**Owners Agreement**"), in the form attached hereto as Exhibit B;
- (ii) an assignment and assumption agreement, in the form of Exhibit C attached hereto (the "**Assignment and Assumption Agreement**"); and
- (iii) a bill of sale in the form of Exhibit D attached hereto.

7.2.2. *DOE Loan Guaranty.* San Antonio shall execute a notice to the Department of Energy (the “DOE”) in the form of Exhibit E hereto, notifying the DOE that San Antonio shall withdraw its DOE loan guaranty application and clarifying San Antonio’s Unit Ownership Interest in the Project as of the Closing Date. If not submitted to the DOE by San Antonio on the Closing Date, NINA shall be permitted to submit a copy of such executed notice to the DOE immediately following the Closing Date.

7.2.3. *Other Deliverables.*

- (i) the Agreed Order of Dismissal;
- (ii) the Joint Motion for Dismissal; and
- (iii) an officer’s certificate executed by an authorized officer of such Party, (A) evidencing the authorization by resolution of the execution and delivery of, and the performance of the Party’s obligations under, this Agreement and the Additional Agreements, in each case as may be amended on or prior to, and as in effect on, the Closing Date, and (B) certifying that (1) the attached copy of such board resolution is a true and complete copy thereof, (2) such resolutions have not been rescinded and are in full force and effect on and as of the Closing Date and (3) the officers authorized to execute and deliver such documents hold the offices and have the signatures indicated thereon.

ARTICLE VIII
MISCELLANEOUS

8.1 Headings. The headings contained herein are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

8.2 Waiver. Any failure of the Parties to comply with any obligation, covenant, agreement or condition contained herein may be waived only in writing by the other Parties hereto, but such waiver or failure to insist upon strict compliance with such obligation, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any other failure. The failure of any Party to assert any of its rights under this Agreement or otherwise shall not constitute a waiver of such rights.

8.3 Complete Agreement. Except as set forth in Section 5.2 hereof, this Agreement (together with the Exhibits hereto) and the Participation Agreement, the Owners Agreement, the STP Operating Agreement, the Agency Agreement and the EPC Agreement shall constitute the entire agreement of the Parties and supersede all prior agreements and undertakings, both written and oral, among the Parties or any of them, with respect to the subject matter hereof.

8.4 Governing Law; Dispute Resolution. THIS AGREEMENT AND ALL OF THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER ARISING FROM OR RELATING IN ANY WAY TO THE SUBJECT MATTER OF THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED HEREBY, SHALL BE GOVERNED

BY, CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO THE CHOICE OF LAW RULES THEREOF THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANY OTHER JURISDICTION.

EXCEPT WITH RESPECT TO DISPUTES EXCLUSIVELY RELATED TO THE EXISTING STP UNITS, THE PARTIES IRREVOCABLY CONSENT TO THE EXCLUSIVE JURISDICTION OF THE STATE DISTRICT COURTS OF TRAVIS COUNTY, TEXAS WITH RESPECT TO ANY MATTER ARISING FROM OR RELATING IN ANY WAY TO THE SUBJECT MATTER OF THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY OBJECTION, INCLUDING, WITHOUT LIMITATION, TO VENUE IN THE STATE DISTRICT COURTS OF TRAVIS COUNTY, TEXAS, OR BASED ON FORUM NON CONVENIENS, WHICH A PARTY MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY ACTION OR PROCEEDING IN SUCH JURISDICTION. SERVICE OF PROCESS MAY BE MADE IN ANY MANNER RECOGNIZED BY SUCH COURTS.

8.5 Binding Effect. The terms of this Agreement shall be binding upon, and inure to the benefit of, the Parties and their successors and permitted assigns.

8.6 Counterparts. This Agreement may be executed in counterparts, to include facsimile or emailed counterparts, each of which will be deemed an original, but both of which together will constitute one and the same instrument.

8.7 Severability. If any of the provisions of this Agreement should be deemed unenforceable, the remaining provisions shall remain in full force and effect.

8.8 Notices.

8.8.1 All notices and all other communications given or made pursuant to this Agreement must be in writing. Notices to a Party must be delivered to such Party at the address for such Party set forth below or at such other address as such Party shall designate by written notice to the other Parties hereto delivered in accordance with this Section 8.8. Notices may be (i) sent by registered or certified mail with return receipt requested, (ii) delivered personally (including delivery by private courier services with a signed confirmation of receipt) or (iii) sent by facsimile (with confirmation of such notice) to the Party entitled thereto and shall be deemed to have been given or made as of the date delivered, if delivered personally; three Business Days after being mailed by registered or certified mail (postage prepaid, return receipt requested); one Business Day after being sent by overnight courier (providing proof of delivery); or upon receipt of confirmation of transmission for a facsimile. Each Party hereto shall have the right at any time and from time to time to specify additional Persons to whom notice thereunder must be given, by delivering to the other Party five days notice thereof.

8.8.2 Notice Addresses.

- (a) if to San Antonio, to:

CPS Energy
Office of General Manager & CEO
Mail Drop 10107
145 Navarro
P.O. Box 1771
San Antonio, TX 78296
Attention: General Manager & CEO

with a copy (which shall not constitute notice) to:

CPS Energy Legal Department
Mail Drop 101010
145 Navarro
P.O. Box 1771
San Antonio, TX 78296
Attention: General Counsel

- (b) if to NINA, to:

Nuclear Innovation North America LLC
521 Fifth Avenue, 30th Floor
New York, New York
Attention: President & CEO
Facsimile No.: (212) 867-4941

with a copy (which shall not constitute notice) to:

Nuclear Innovation North America LLC
521 Fifth Avenue, 30th Floor
New York, New York
Attn: General Counsel
Facsimile No.: (212) 867-4941

- (c) if to NINA 3 or NINA 4, to:

NINA Texas 3 LLC or NINA Texas 4 LLC (as applicable)
c/o Nuclear Innovation North America LLC
521 Fifth Avenue, 30th Floor
New York, New York
Attention: President & CEO
Facsimile No.: (212) 867-4941

with a copy (which shall not constitute notice) to:

Nuclear Innovation North America LLC
521 Fifth Avenue, 30th Floor
New York, New York
Attn: General Counsel
Facsimile No.: (212) 867-4941

(d) if to NRG, to:

NRG Energy, Inc.
211 Carnegie Center
Princeton, New Jersey 08540-6213
Attn: President and CEO
Facsimile No.: (609) 524-4501

with a copy (which shall not constitute notice) to:

NRG Energy, Inc.
211 Carnegie Center
Princeton, New Jersey 08540-6213
Attn: General Counsel
Facsimile No.: (609) 524-4589

8.9 Amendments. This Agreement may not be modified or amended, nor may any provision hereof be waived, in any way except in writing signed by each of NRG, NINA, the NINA Parties and San Antonio.

8.10 Construction. References in this Agreement to any gender include references to all genders and references to the singular include references to the plural, and vice versa. The words “include”, “including” and “includes” when used in this Agreement shall be deemed to be followed by the words “without limitation.” Any agreement, instrument or Law defined or referred to above means such agreement or instrument or Law as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of Laws) by succession of comparable successor Laws and includes (in the case of agreements or instruments) references to all attachments thereto and instruments incorporated therein. Unless the context otherwise requires, references in this Agreement to Articles, Sections and Exhibits shall be deemed references to the Articles, Sections and Exhibits to this Agreement. Unless the context otherwise requires, the words “hereof”, “hereby” and “herein” and words of similar meaning when used in this Agreement refer to this Agreement in its entirety and not to any particular Article, Section or provision of this Agreement. Unless otherwise indicated, references in this Agreement to dollars are to U.S. dollars. This Agreement shall be construed without regard to any presumption or other rule requiring construction against the party causing the Agreement to be drafted.

8.11 Third Party Beneficiaries. This Agreement is not intended to and shall not confer upon any Person, other than the Parties and their respective successors and assigns (and Persons

specifically released pursuant to Section 6.2 and Section 6.3 hereunder) any rights or remedies with respect to the subject matter or any provision hereof.

8.12 Assignment.

8.12.1 Except as otherwise expressly set forth herein, any sale of a Unit Ownership Interest shall be subject to the terms and conditions of the Participation Agreement and nothing set forth herein shall be construed as a waiver of any rights of the parties under the Participation Agreement (including the ability of a party thereto to mortgage, pledge or create a security interest in its share of the Project pursuant to Section 16 of the Participation Agreement).

8.12.2 No Party may assign its rights or obligations hereunder to any other Person without the prior written consent of the other Parties hereto; provided, however, that this provision does not apply to the assignment or transfer of any Unit Ownership Interest or any rights under contracts entered into in connection with this Agreement.

8.13 Specific Performance. Each Party hereby acknowledges and agrees that the other Parties would be damaged irreparably in the event that any of the material provisions of this Agreement are not performed in accordance with their specific terms or are otherwise breached. Accordingly, each Party hereby agrees that the other Party shall be entitled to an injunction or injunctions to prevent breaches of the material provisions of this Agreement and to enforce specifically this Agreement and the terms and provisions hereof. Any such right shall be in addition to any other remedies to which they are entitled at equity or law.

8.14 No Admission of Liability. This Agreement is not intended to, nor shall it in any way, be construed as an admission that any of the Parties is in any way liable to any of the other Parties or that any of the Parties has engaged in any wrongdoing whatsoever. Indeed, the Parties deny any liability or wrongdoing. This Agreement is the result of a compromise of disputed claims and shall not at any time or for any purpose be considered an admission of liability or responsibility on the part of any of the Parties.

The Parties acknowledge and agree that this Agreement, the exhibits attached hereto, and all discussions and conduct related to the negotiation of this Agreement, constitute a compromise of, and offers to compromise, disputed claims that are subject to the protections of Rule 408 of the Texas Rules of Evidence and Rule 408 of the Federal Rules of Evidence (together, "**Rule 408**"). The Parties further agree that the protections of Rule 408 shall apply in any dispute among the Parties under this or any other agreement among the Parties.

8.15 Waiver of Sovereign Immunity. To the extent that any Party hereto (including assignees of any Party's rights or obligations under this Agreement) may be entitled, in any jurisdiction, to claim sovereign immunity from liability or from service of process, from suit, from the jurisdiction of any court, from attachment prior to judgment, from attachment in aid of execution of an arbitral award or judgment (interlocutory or final), or from any other legal process, and to the extent that, in any such jurisdiction there may be attributed such a sovereign immunity (whether claimed or not), each Party hereto hereby irrevocably agrees not to claim, and hereby irrevocably waives, such sovereign immunity with respect to any claim or suit by a

Party against any other Party or other exercise of remedies by a Party against any other Party arising pursuant to this Agreement or the agreements contemplated hereby.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed, effective as of the Closing Date.

CITY OF SAN ANTONIO,

acting through the City Public Service Board of San Antonio

By: /s/ Jelynn LeBlanc Burley

Name: Jelynn LeBlanc Burley

Title: Acting General Manager

[signatures continue on following page]

Signature Page to Project Agreement

NUCLEAR INNOVATION NORTH AMERICA LLC

By: /s/ Steve Winn

Name: Steve Winn

Title: Chief Executive Officer & President

NINA TEXAS 3 LLC

By: /s/ Steve Winn

Name: Steve Winn

Title: Chief Executive Officer & President

NINA TEXAS 4 LLC

By: /s/ Steve Winn

Name: Steve Winn

Title: Chief Executive Officer & President

[signatures continue on following page]

Signature Page to Project Agreement

NRG ENERGY, INC., solely for purposes set forth in
the preamble hereto

By: /s/ David Crane

Name: David Crane

Title: President and Chief Executive Officer

NRG SOUTH TEXAS LP, solely for purposes set forth in
the preamble hereto

By: Texas Genco GP, LLC, its General Partner

By: /s/ Kevin Howell

Name: Kevin Howell

Title: Management Committee Member

SCHEDULE 6.1
Ruling of Judge Noll of the 37th Judicial District Court of Bexar County, Texas
As issued on January 29, 2010

“The Court makes the following findings with regard to the dispute presented to the Court earlier this week, and I just give you a heads up. What I usually do is the notes that I have to prepare for the file for the next judge who picks up this case are available for copying after I finish. And I use the notes as an outline and I may expand from that, but what I tell my court reporter on the record is what counts. All right. The supplemental contract between the City and NRG contains a right for each party to cease participation in the activities contemplated by the agreement to perform engineering, design, contract preparation, purchasing, inspection, accounting, analyses, testing, management and eventual construction of Units 3 and 4 of the South Texas Nuclear Power Plant Project. Ceasing participation means eventual withdrawal from the agreement to perform the above activities. The supplemental agreement obligates each party to pay additional costs as set out in the contract to complete the cessation of participation in the activities previously mentioned. As of January 29th, 2010, the parties to this dispute are equity share owners and they are tenants in common as to said equity shares and each owns a 50 percent equity share ownership in the project. The contract is silent on the issue of forfeiture of any equity share ownership in the event a party decides to cease participation in the activities leading to the building and completion of Units 3 and 4 of the South Texas Nuclear Plant Project. Therefore, no forfeiture of interest exists. Unsuccessful attempts to claim otherwise are nothing more than tortured extrapolation. An equity share owner who chooses cessation of participation remains a tenant in common with regard to said equity shares with the non-ceasing owner on a 50/50 basis with the caveat expressed hereafter. The contract is silent as to when or how the ceasing-to-participate equity shareholder’s interest is dealt with if the non-ceasing-to-participate equity shareholder decides to proceed and pay for all future costs associated with completion of the project. Unless the parties agree on how to deal with that possibility through future negotiations in reaching a final agreement as referred to several times in the contract, principles of law that are equitable in nature will have to be applied through future court action to determine an equitable solution to compensate the non-ceasing equity shareholder for such continuation. Equity abhors a forfeiture, but by the same token, equity will not allow someone to profit at the expense of another. The supplemental agreement is silent as to any procedure for the City or NRG to recoup a portion or all of its costs invested to the date it decides to cease participation in the development of the project. The supplemental contract does not equate cessation of participation in the project as an event of default. As of 1-29-2010, there was no evidence presented that could allow the Court to declare either party in default under the supplemental agreement. Some words of caution to the City. If you want to be in the play,

you have to pay or you can't stay. You will eventually lose your equity share. I submit that the parties should go back to the negotiating table and reach a final agreement. It's mentioned several times in the supplemental agreement that there was to be a final agreement to work out some of these details with the provisions that I have ordered this morning. It's my hope that the negotiators and the lawyers who assist in this process will be at least equal to the caliber of the lawyers that have made the presentations in this courtroom. As I said, my notes are available for copying if you would like. I will give them to my clerk and he will make a copy for you."

EXHIBIT A-1
Form of Agreed Order of Dismissal with Prejudice

CAUSE NO. 2009-CI-19492

THE CITY OF SAN ANTONIO, TEXAS, acting by and through THE CITY PUBLIC SERVICE BOARD OF SAN ANTONIO, a Texas Municipal Utility,
Plaintiff,

v.

TOSHIBA CORPORATION; NRG ENERGY, INC.; NUCLEAR INNOVATION NORTH AMERICA, LLC; NINA TEXAS 3 LLC; and NINA TEXAS 4 LLC,

Defendants. §

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37TH JUDICIAL DISTRICT
BEXAR COUNTY, TEXAS

IN THE DISTRICT COURT

AGREED ORDER OF DISMISSAL WITH PREJUDICE

On February _____, 2010, this Court considered the parties' Joint Motion for Dismissal with Prejudice and, the Court, having considered the motion, is of the opinion that it should be in all things granted. It is, therefore,

ORDERED that Plaintiff's claims against Defendants are dismissed with prejudice;

ORDERED that Defendants' counterclaims against Plaintiff are dismissed with prejudice, and

ORDERED that this case is dismissed in its entirety with prejudice to refiling.

ORDERED that Costs of court shall be borne by the party incurring them.

SIGNED on February _____, 2010.

Honorable Larry Noll

APPROVED AS TO FORM AND SUBSTANCE:

HAYNES AND BOONE, LLP
112 East Pecan Street
Suite 1200
San Antonio, Texas 78205
(210) 978-7000
(210) 978-7450 (Fax)

By: _____
LAMONT A JEFFERSON
State Bar No. 10607800

ATTORNEYS FOR DEFENDANTS
NINA TEXAS 3 LLC, NINA TEXAS 4 LLC, and
NUCLEAR INNOVATION NORTH AMERICA, LLC.

YETTER, WARDEN & COLEMAN, L.L.P.
221 West 6th Street, Suite 750
Austin, Texas 78701
(512) 533-0150
(512) 533-0120 (Fax)

By: _____
GREGORY S. COLEMAN
State Bar No. 00783855

ATTORNEY FOR DEFENDANT NRG ENERGY, INC.

SONNENSCHN NATH & ROSENTHAL, LLP
C. Michael Moore
State Bar No. 14323600
Matthew D. Orwig
State Bar No. 15325300
Karen C. Corallo
State Bar No. 04811490
Gene R. Besen
State Bar No. 2404549
2000 McKinney Ave., Suite 1900
Dallas, TX 75201
(214) 259-0900 — telephone
(214) 259-0910 — facsimile

and

DAVIS, CEDILLO & MENDOZA, INC.
McCombs Plaza, Suite 500
755 E. Mulberry Avenue
San Antonio, Texas 78212
Telephone: (210) 822-6666
Telecopier: (210) 822-1151

By: _____
RICARDO G. CEDILLO
State Bar No. 4043600
LES J. STRIEBER III
State Bar No. 19398000
TROY A. GLANDER
State Bar No. 00796634

ATTORNEYS FOR PLAINTIFF
THE CITY OF SAN ANTONIO, TEXAS,
ACTING BY AND THROUGH THE
CITY PUBLIC SERVICE BOARD OF
SAN ANTONIO, A TEXAS MUNICIPAL UTILITY

EXHIBIT A-2
Form of Joint Motion for Dismissal with Prejudice

JOINT MOTION FOR DISMISSAL WITH PREJUDICE

Plaintiff the City of San Antonio, Texas, acting by and through The City Public Service Board of San Antonio, a Texas Municipal Utility (“CPS “), and Defendants NRG Energy, Inc., Nuclear Innovation North America, LLC, NINA Texas 3 LLC, and NINA Texas 4 LLC (“Defendants”) (collectively, the “Parties”) jointly request that this Court enter an order dismissing this action in its entirety with prejudice to refiling in that all matters in controversy between the parties raised in this litigation have been settled. Each party agrees to pay its own costs and attorney’s fees.

Respectfully submitted,
SONNENSCHN NATH & ROSENTHAL, LLP

By: _____

C. Michael Moore
State Bar No. 14323600
Matthew D. Orwig
State Bar No. 15325300
Karen C. Corallo
State Bar No. 04811490
Gene R. Besen
State Bar No. 24045491
2000 McKinney Ave., Suite 1900
Dallas, Texas 75201
(214) 259-0900
(214) 259-0910 (telecopier)

and

DAVIS, CEDILLO & MENDOZA, INC.

Ricardo G. Cedillo
State Bar No. 04043600
Les J. Strieber III
State Bar No. 19398000
Troy A. Glander
State Bar No. 00796634
McCombs Plaza, Suite 500
755 East Mulberry Avenue
San Antonio, Texas 78212
(210) 822-6666
(210) 822-1151 (telecopier)

ATTORNEYS FOR PLAINTIFF
THE CITY OF SAN ANTONIO, TEXAS, ACTING BY AND
THROUGH THE CITY PUBLIC SERVICE BOARD OF SAN ANTONIO,
A TEXAS MUNICIPAL UTILITY

HAYNES AND BOONE, LLP

By: _____
LAMONT A JEFFERSON
State Bar No. 10607800
112 East Pecan Street
Suite 1200
San Antonio, Texas 78205
(210) 978-7000
(210) 978-7450 (Fax)

ATTORNEYS FOR DEFENDANTS
NINA TEXAS 3 LLC, NINA TEXAS 4 LLC, and
NUCLEAR INNOVATION NORTH AMERICA, LLC.

YETTER, WARDEN & COLEMAN, L.L.P.

By: _____
GREGORY S. COLEMAN
State Bar No. 00783855
221 West 6th Street, Suite 750
Austin, Texas 78701
(512) 533-0150
(512) 533-0120 (Fax)

ATTORNEY FOR DEFENDANT, NRG ENERGY, INC.

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of this Joint Motion For Dismissal With Prejudice was delivered to the following on February _____, 2010:

Lamont A. Jefferson
Haynes and Boone, LLP
112 East Pecan Street, Suite 1200
San Antonio, Texas 78205

Gregory S. Coleman
Edward C. Dawson
Yetter, Warden & Coleman, L.L.P.
221 West 6th Street, Suite 750
Austin, Texas 78701

Gene R. Besen

EXHIBIT B
Form of Owners Agreement
(Filed Separately)

EXHIBIT C
Form of Assignment and Assumption Agreement

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this “*Agreement*”), dated as of March 1, 2010 is made and entered into by and between the City of San Antonio, acting by and through the City Public Service Board of San Antonio, a Texas municipal utility (“*Assignor*”), NINA Texas 3 LLC, a Delaware limited liability company, (“*Nina 3*”), and NINA Texas 4 LLC, a Delaware limited liability company (“*Nina 4*” and, together with Nina 3, “*Assignees*”).

WHEREAS, Assignor has certain rights and obligations under the agreements described in Exhibit A attached hereto (the “*Contracts*”).

WHEREAS, pursuant to the Project Agreement, Settlement Agreement and Mutual Release, dated March 1, 2010 (the “*Project Agreement*”), by and among Assignor, Assignees, and Nuclear Innovation North America LLC (“*NINA*”) (with joinders therein by NRG Energy Inc. and NRG South Texas, LP for limited purposes), Assignor desires to assign the Contracts, to Assignees.

WHEREAS, pursuant to the STP 3 & 4 Owners Agreement by and among Assignor, NINA and Assignees, dated March 1, 2010 (the “*Owners Agreement*”), the parties agreed, among other things, to reallocate ownership interest in the Project (as such term is defined in the Owners Agreement) among the Assignor and Assignees and that, notwithstanding the expected assignment by Assignor and assumption by Assignees of all rights, obligations and liabilities under the Master Engineering, Procurement and Construction Agreement by STP Nuclear Operating Company (“*OPCO*”), as Agent for Assignees and San Antonio, and Toshiba America Nuclear Energy Corporation (“*TANE*”), dated as of February 24, 2009 (“*EPC Agreement*”) pursuant to this Agreement, Assignor would retain certain rights pursuant to the Owners Agreement as an owner under the EPC Agreement, in proportion to its ownership interest in the Project.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each party hereto, the parties hereto agree as follows:

1. Assignment of Contracts. Subject to Section 11 hereof, the terms and conditions of the Owners Agreement and any consent or other requirements under the EPC Agreement, Assignor hereby transfers, assigns, conveys, grants and delivers to Assignees all of its right, title and interest in and to the Contracts.

2. Assumption of Contracts. Subject to Section 11 hereof, Assignees hereby accept such transfer, assignment, conveyance and grant and assume all of the liabilities and obligations of whatever nature related to the Contracts to the extent related to STP 3 and STP 4.

TO HAVE AND TO HOLD, the Contracts, together with all and singular the rights and appurtenances thereto belonging unto Assignees, and their successors and assigns, forever.

3. Project Agreement. This Agreement is delivered pursuant to the terms and provisions of the Project Agreement. The delivery of this Agreement shall not affect, enlarge, diminish or otherwise impair any of the representations, warranties, covenants, conditions, terms and provisions of the Project Agreement, and all of such representations, warranties, covenants, conditions, terms and provisions shall survive the delivery of this Agreement to the extent, and in the manner, set forth in the Project Agreement. This Agreement is subject to, in all respects, the terms and conditions of the Project Agreement, and to the extent there is a conflict between this Agreement and the Project Agreement, the terms and conditions of the Project Agreement shall control.

4. Further Assurances. Subject to the Project Agreement, each of the Assignor and Assignees agrees that it will, at the expense of Assignees, promptly do, execute, acknowledge and deliver, and cause to be done, executed, acknowledged and delivered, all such further acts, deeds, certificates, assignments, transfers, conveyances, powers of attorney, assurances and other documents as may be reasonably requested further to give effect to the assignment, transfer, and conveyance to Assignees of all right, title and interest in the Contracts identified in Exhibit A hereof, the assignment of which is deemed reasonably necessary by the Assignees in order to effect the transactions set forth in the Project Agreement and to the assumption by Assignees of the obligations described in Sections 1 and 2.

5. Successors and Assigns. The terms and conditions of this Assignment shall be binding upon, and shall inure to the benefit of, the parties and their respective heirs, successors, legal representatives and assigns.

6. Defined Terms. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Project Agreement.

7. Governing Law; Dispute Resolution. THIS AGREEMENT, AND ALL OF THE RIGHTS AND DUTIES OF THE PARTIES HERETO ARISING FROM OR RELATING IN ANY WAY TO THE SUBJECT MATTER OF THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED HEREBY, SHALL BE GOVERNED BY, CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO THE CHOICE OF LAW RULES THEREOF THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANY OTHER JURISDICTION.

THE PARTIES IRREVOCABLY CONSENT TO THE EXCLUSIVE JURISDICTION OF THE STATE DISTRICT COURTS OF TRAVIS COUNTY, TEXAS WITH RESPECT TO ANY MATTER ARISING FROM OR RELATING IN ANY WAY TO THE SUBJECT MATTER OF THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY OBJECTION, INCLUDING, WITHOUT LIMITATION, TO VENUE IN THE STATE DISTRICT COURTS OF TRAVIS COUNTY, TEXAS, OR BASED ON FORUM NON CONVENIENS, WHICH A PARTY MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY ACTION OR PROCEEDING IN SUCH JURISDICTION. NOTHING HEREIN SHALL PRECLUDE A

PARTY FROM CONSENTING TO REMOVAL TO FEDERAL COURT. SERVICE OF PROCESS MAY BE MADE IN ANY MANNER RECOGNIZED BY SUCH COURTS.

8. Counterparts. This Agreement may be executed in any number of counterparts (including by facsimile), each of which together shall constitute one and the same instrument.

9. Third Party Beneficiaries. There are no third party beneficiaries to this Agreement, and the provisions of this Agreement shall not impart any legal or equitable right, remedy or claim enforceable by any person, firm or organization other than the Assignor and Assignees (and their permitted successors and permitted assigns).

10. Severability. In the event that any provision of this Agreement is held to be unenforceable or invalid by any court of competent jurisdiction, the Assignor and Assignees shall negotiate an equitable adjustment to the provisions of this Agreement with the view to effecting, to the extent possible, the original purpose and intent of this Agreement, and the validity and enforceability of the remaining provisions shall not be affected thereby.

11. Effectiveness. The assignment of the rights, title and interest under the Contracts and the provisions of this Agreement related thereto shall be effective (a) with respect to the assignment and assumption of the rights, title and interest under the Contracts listed as items (1) through (11) on Exhibit A, as of the date that written consent to the assignment hereunder is received from TANE and (b) with respect to the assignment and assumption of the rights under the Contracts listed as items (12) and (13) on Exhibit A, as of the date that OPCO executes and delivers to Assignor and Assignees a copy of the acknowledgement and agreement attached to this Agreement. The Assignment and Assumption effectuated by this Agreement is pursuant to and subject to the limitations in the Project Agreement and nothing herein shall alter the rights and obligations of the Parties as are necessary for this Agreement to be and remain effective. Notwithstanding the assignment and assumption of the rights, title, interest, obligations and liabilities under the EPC Agreement pursuant to this Agreement, Assignor shall remain an indemnified party with respect to matters arising under Article 16 of the EPC Agreement.

12. Effective Document. The assignment and assumption made herein shall constitute a full assumption by Assignees of Assignor's rights and obligations under the EPC Agreement such that Assignor, pursuant to Section 20.1.3 of the EPC Agreement, shall be deemed released as contemplated by such section of the EPC Agreement.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

ASSIGNOR:

CITY OF SAN ANTONIO,
acting through the City Public Service Board of San Antonio

By: _____
Name: Jelynne LeBlanc Burley
Title: Acting General Manager

Assignment and Assumption Agreement
Acknowledgement



ASSIGNEES:

NINA TEXAS 3 LLC

By: _____
Name: Steve Winn
Title: Chief Executive Officer & President

NINA TEXAS 4 LLC

By: _____
Name: Steve Winn
Title: Chief Executive Officer & President

EXHIBIT A

Contracts

1. Master Engineering, Procurement and Construction Agreement dated as of February 24, 2009, by and between STP Nuclear Operator Company and Toshiba America Nuclear Energy Corporation.
2. South Texas Projects Units 3 & 4 TANE Work Task Request and Authorization Form (Blanket Contract No. B03974), dated as of June 26, 2009, by and between STP Nuclear Operator Company and Toshiba America Nuclear Energy Corporation.
3. Equipment Purchase Approval (Equipment Purchase Approval No. EPA-2009-09-2 FMCRD 9-3-09) dated as of September 11, 2009, by and among STP Nuclear Operator Company and Toshiba America Nuclear Energy Corporation.
4. Equipment Purchase Approval (Equipment Purchase Approval No. EPA-2009-09-3 FMHCU 9-3-09) dated as of September 11, 2009, by and among STP Nuclear Operator Company and Toshiba America Nuclear Energy Corporation.
5. Equipment Purchase Approval (Equipment Purchase Approval No. EPA-2009-09-4 RIN 9-3-09) dated as of September 11, 2009, by and among STP Nuclear Operator Company and Toshiba America Nuclear Energy Corporation.
6. Equipment Purchase Approval (Equipment Purchase Approval No. EPA-2009-09-1 RPV Unit 3) dated as of September 11, 2009, by and among STP Nuclear Operator Company and Toshiba America Nuclear Energy Corporation.
7. Special Addendum to Certain Equipment Purchase Approvals dated as of September 11, 2009, by and among STP Nuclear Operator Company and Toshiba America Nuclear Energy Corporation.
8. Letter Re: Purchase Approvals of September 11, 2009 with Toshiba Corporation, dated as of September 11, 2009 by Toshiba America Nuclear Energy Corporation.
9. Guaranty dated as of March 2, 2009, given by Toshiba Corporation in favor of NINA Texas 3 LLC, NINA Texas 4 LLC and the City of San Antonio, Texas, acting by and through the City Public Service Board.
10. South Texas Project Units 3 & 4 Owner's Engineer & Technical Services — Agreement B03771 Task Order dated December 14, 2009 between STP Nuclear Operating Company and Bechtel Power Corporation, to the extent relating to STP 3 and STP 4.
11. Equipment Purchase Approval (Equipment Purchase Approval No. 20100111) dated as of January 20, 2010, by and among STP Nuclear Operator Company and Toshiba America Nuclear Energy Corporation.
12. Agency Agreement dated as of October 30, 2007, by and among the City of San Antonio, Texas, acting by and through the City Public Service Board, NRG South Texas LP and STP Nuclear Operating Company.
13. Any other contract or agreement entered into by STP Nuclear Operating Company on behalf of Assignor to the extent relating to STP 3 and STP 4.

ACKNOWLEDGEMENT

STP Nuclear Operating Company, a Texas non-profit corporation ("**OPCO**") executes this Acknowledgement in the space provided below and (a) acknowledges the assignment of the Agency Agreement, dated as of October 30, 2007 (the "**Agency Agreement**"), by and among the City of San Antonio, Texas, acting by and through the City Public Service Board of San Antonio ("**San Antonio**"), NRG South Texas LP and OPCO occurring pursuant to the Assignment and Assumption Agreement, dated March 1, 2010 (the "**Assignment and Assumption Agreement**"), by and between San Antonio, as Assignor, and NINA Texas 3 LLC ("**Nina 3**") and NINA Texas 4 LLC ("**Nina 4**"), as Assignees, and as successors to the interests of NRG South Texas LP in the Agency Agreement and other South Texas Project agreements and (b) subject to the payment by San Antonio to OPCO pursuant to the terms and conditions of the Owners Agreement of 50% of the costs set forth on Schedule A attached hereto, acknowledges and agrees (i) that, notwithstanding the terms and conditions of Section 2 of the Agency Agreement, San Antonio shall have no further obligation to pay for costs of development or construction of the Project or further obligations or liabilities under the Agency Agreement with respect to the Project and (ii) that OPCO remains the agent of Nina 3 and Nina 4 under the terms of the Agency Agreement and OPCO shall receive instruction and direction under the Agency Agreement exclusively from Nina 3 and Nina 4.

Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Assignment and Assumption Agreement.

STP NUCLEAR OPERATING COMPANY

By: _____
Name: Edward D. Halpin
Title: Chief Executive Officer & President

Date: March 1, 2010

SCHEDULE A

Project Costs Accrued Through January 31, 2010

Assignment and Assumption Agreement
Acknowledgement — Schedule A

RATIFICATION AGREEMENT

NINA Texas 3 LLC (“*NINA 3*”) hereby represents and warrants to STP Nuclear Operating Company (“**OPCO**”) that as a result of certain Contribution and Assignment Agreements dated March 28, 2008, NINA 3 is the successor to the interests of NRG South Texas LP (“**NRG South Texas**”) in the Development Rights for South Texas Project Unit 3 (“**Unit 3**”) under the applicable agreements (the “**Unit 3 Agreements**”), including but not limited to the rights and obligations of NRG South Texas with respect to Unit 3 pursuant to: (i) the Amended and Restated South Texas Project Participation Agreement, effective November 17, 1997; (ii) the South Texas Project Operating Agreement effective November 17, 1997; and (iii) the Agency Agreement, dated as of October 30, 2007. NINA 3 hereby agrees, for the benefit of OPCO, that it has assumed and is liable for the obligations of NRG South Texas under the Unit 3 Agreements and is a party thereto for all purposes.

NINA TEXAS 3 LLC
(formerly known as, NRG South Texas 3 LLC)

By: _____
Name: Steve Winn
Title: Chief Executive Officer & President

Date: _____

Ratification agreement

RATIFICATION AGREEMENT

NINA Texas 4 LLC (“*NINA 4*”) hereby represents and warrants to STP Nuclear Operating Company (“**OPCO**”) that as a result of certain Contribution and Assignment Agreements dated March 28, 2008, NINA 4 is the successor to the interests of NRG South Texas LP (“**NRG South Texas**”) in the Development Rights for South Texas Project Unit 4 (“**Unit 4**”) under the applicable agreements (the “**Unit 4 Agreements**”), including but not limited to the rights and obligations of NRG South Texas with respect to Unit 4 pursuant to: (i) the Amended and Restated South Texas Project Participation Agreement, effective November 17, 1997; (ii) the South Texas Project Operating Agreement effective November 17, 1997; and (iii) the Agency Agreement, dated as of October 30, 2007. NINA 4 hereby agrees, for the benefit of OPCO, that it has assumed and is liable for the obligations of NRG South Texas under the Unit 4 Agreements and is a party thereto for all purposes.

NINA TEXAS 4 LLC
(formerly known as, NRG South Texas 4 LLC)

By: _____
Name: Steve Winn
Title: Chief Executive Officer & President

Date: _____

EXHIBIT D
Form of Bill of Sale

BILL OF SALE

THIS BILL OF SALE (this "**Agreement**"), dated effective as of March 1, 2010 is made and entered into by and between the City of San Antonio acting by and through the City Public Service Board of San Antonio, a Texas municipal utility ("**Assignor**"), NINA Texas 3 LLC, a Delaware limited liability company, ("**Nina 3**"), and NINA Texas 4 LLC, a Delaware limited liability company ("**Nina 4**" and, together with Nina 3, the "**Assignees**").

WHEREAS, pursuant to the Project Agreement, Settlement Agreement and Mutual Release, dated March 1, 2010 (the "**Project Agreement**"), by and among Assignor, Assignees, and Nuclear Innovation North America LLC (with joinders therein by NRG Energy Inc. and NRG South Texas, LP for limited purposes), Assignor desires to assign its right, title and interest in and to 42.375% of the right, title and interest in and to all tangible personal property associated with STP 3 and STP 4 (as such terms are defined in the Project Agreement) to Assignees (the "**Assets**") such that from and after the foregoing conveyance, Assignor shall hold a 7.625% interest in and to the Assets.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each party hereto, the parties hereto agree as follows:

1. Assignment of Assets. Assignor hereby grants, bargains, sells and conveys to Nina 3 21.1875% of the right, title and interest in and to the Assets. Assignor hereby transfers, assigns, conveys, grants and delivers to Nina 4 21.1875% of the right, title and interest in and to the Assets.

TO HAVE AND TO HOLD, the Assets, together with all and singular the rights and appurtenances thereto belonging unto Assignees, and their successors and assigns, forever.

2. Project Agreement. This Agreement is delivered pursuant to the terms and provisions of the Project Agreement. The delivery of this Agreement shall not affect, enlarge, diminish or otherwise impair any of the representations, warranties, covenants, conditions, terms and provisions of the Project Agreement, and all of such representations, warranties, covenants, conditions, terms and provisions shall survive the delivery of this Agreement to the extent, and in the manner, set forth in the Project Agreement. This Agreement is subject to, in all respects, the terms and conditions of the Project Agreement, and to the extent there is a conflict between this Agreement and the Project Agreement, the terms and conditions of the Project Agreement shall control.

3. Further Assurances. Subject to the Project Agreement, each of the Assignor and Assignees agrees that it will, at the expense of the Assignees, promptly do, execute, acknowledge and deliver, and cause to be done, executed, acknowledged and delivered, all such further acts, deeds, certificates, assignments, transfers, conveyances, powers of attorney, assurances and other documents as may be reasonably requested further to give effect to the assignment, transfer, and conveyance to Assignees of all the relevant portion of Assignor's right, title and interest in (a) the Assets and (b) all other tangible personal property existing on the date hereof associated with STP 3 and STP 4.

4. Successors and Assigns. The terms and conditions of this Assignment shall be binding upon, and shall inure to the benefit of, the parties and their respective heirs, successors, legal representatives and assigns.

5. Defined Terms. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Project Agreement.

6. Governing Law; Dispute Resolution. THIS AGREEMENT, AND ALL OF THE RIGHTS AND DUTIES OF THE PARTIES HERETO ARISING FROM OR RELATING IN ANY WAY TO THE SUBJECT MATTER OF THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED HEREBY, SHALL BE GOVERNED BY, CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO THE CHOICE OF LAW RULES THEREOF THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANY OTHER JURISDICTION.

THE PARTIES IRREVOCABLY CONSENT TO THE EXCLUSIVE JURISDICTION OF THE STATE DISTRICT COURTS OF TRAVIS COUNTY, TEXAS WITH RESPECT TO ANY MATTER ARISING FROM OR RELATING IN ANY WAY TO THE SUBJECT MATTER OF THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY OBJECTION, INCLUDING, WITHOUT LIMITATION, TO VENUE IN THE STATE DISTRICT COURTS OF TRAVIS COUNTY, TEXAS, OR BASED ON FORUM NON CONVENIENS, WHICH A PARTY MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY ACTION OR PROCEEDING IN SUCH JURISDICTION. NOTHING HEREIN SHALL PRECLUDE A PARTY FROM CONSENTING TO REMOVAL TO FEDERAL COURT. SERVICE OF PROCESS MAY BE MADE IN ANY MANNER RECOGNIZED BY SUCH COURTS.

7. Counterparts. This Agreement may be executed in any number of counterparts (including by facsimile), each of which together shall constitute one and the same instrument.

8. Third Party Beneficiaries. There are no third party beneficiaries to this Agreement, and the provisions of this Agreement shall not impart any legal or equitable right, remedy or claim enforceable by any person, firm or organization other than the Assignor and Assignees (and their permitted successors and permitted assigns).

9. Severability. In the event that any provision of this Agreement is held to be unenforceable or invalid by any court of competent jurisdiction, subject to the Purchase Agreement, the Assignor and Assignees shall negotiate an equitable adjustment to the provisions of this Agreement with the view to effecting, to the extent possible, the original purpose and intent of this Agreement, and the validity and enforceability of the remaining provisions shall not be affected thereby.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

SELLERS:

ASSIGNOR:

CITY OF SAN ANTONIO,

acting through the City Public Service Board of San Antonio

By: _____

Name: Jelynn LeBlanc Burley

Title: Acting General Manager

ASSIGNEE:

NINA TEXAS 3 LLC

By: _____
Name: Steve Winn
Title: Chief Executive Officer & President

NINA TEXAS 4 LLC

By: _____
Name: Steve Winn
Title: Chief Executive Officer & President

EXHIBIT E
Notice to DOE

FORM OF DOE NOTICE

[CPS Energy Letterhead]

Director
U.S. DOE Loan Guarantee Program Office CF 1.3
1000 Independence Ave., SW
Washington, DC 20585-0121

Re: Withdrawal of Application for a Loan Guarantee

Dear Director,

This letter is being sent to you on behalf of CPS Energy in regards to the following listed DOE loan guarantee applications and related updates:

Part I Application dated 9-26-08

Part II Application dated 12-16-08

Part II Application updates dated 3-18-09, 6-17-09, 9-15-09, and 12-14-09

These applications were sent to you by the City of San Antonio acting by and through the City Public Service Board of San Antonio (“**CPS Energy**”) in response to the DOE Loan Guarantee Solicitation Announcement “Federal Loan Guarantees for Nuclear Power Facilities”, Solicitation Serial no. DE-PS01-08LG00002, dated June 30, 2008 (as amended by Amendment # 1, Reference no. DE-FOA-0000006, dated July 11, 2008). With this letter and attached Project Agreement (described below), CPS Energy formally informs the DOE of CPS Energy’s immediate withdrawal from the DOE’s consideration of providing a loan guarantee to CPS Energy as requested in the various applications and updates from CPS Energy to the DOE.

As described in the Project Agreement, Settlement Agreement and Mutual Release, dated March 1, 2010 (the “**Project Agreement**”), among CPS Energy, Nuclear Innovation North America, LLC (“**NINA**”), NINA Texas 3 LLC, NINA Texas 4 LLC, NRG Energy, Inc., and NRG South Texas LP, CPS Energy immediately agreed to not pursue a loan guarantee from the DOE. In addition, CPS Energy confirms that it has no continuing obligations under the EPC Contract and that it owns an undivided 7.625% interest in STP Units 3 & 4.

Should the DOE have any comments, concerns, or questions regarding the Project Agreement, attached hereto, this Withdrawal Letter, or CPS Energy’s 7.625% undivided interest in STP Units 3 & 4, please send such correspondence via email or in writing to the following attention at CPS Energy:

Also, for ordinary course communications and due diligence activities, feel free to call _____ at or _____ at _____.

Best regards,

Name:
Title:

CPS Energy

STP 3 & 4 OWNERS AGREEMENT

by and among

CITY OF SAN ANTONIO,

NUCLEAR INNOVATION NORTH AMERICA LLC,

NINA TEXAS 3 LLC

and

NINA TEXAS 4 LLC

* The confidential content of this Exhibit 10.2 has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I DEFINITIONS	2
Section 1.1 Definitions and Usage	2
Section 1.2 Rules as to Usage	5
ARTICLE II OWNERS	5
Section 2.1 Ownership Interests	5
Section 2.2 Additional Owners	7
Section 2.3 Term	7
Section 2.4 Related Agreements	7
ARTICLE III VOTING	8
Section 3.1 Decisions Relating to STP 3 and STP4	8
Section 3.2 San Antonio Cooperation	11
Section 3.3 Access to Information	12
Section 3.4 Allocation of Costs and Obligations to Pay Costs	12
Section 3.5 Power Production Prior to Final Completion Date	12
Section 3.6 Cooperation Among Owners	13
Section 3.7 Indemnification	13
ARTICLE IV TRANSFERS	13
Section 4.1 Transfers	13
ARTICLE V GENERAL PROVISIONS	14
Section 5.1 Notices	14
Section 5.2 Governing Law; Forum Selection	14
Section 5.3 Relationship Of Owners	14
Section 5.4 Third Party Beneficiaries	15
Section 5.5 Further Assurances	15
Section 5.6 Binding Effect	15
Section 5.7 Amendment	15
Section 5.8 Headings; Table Of Contents	15
Section 5.9 Interpretation And Reliance	15
Section 5.10 Severability	15
Section 5.11 Complete Agreement	15
Section 5.12 Counterparts	16
Section 5.13 Waiver of Sovereign Immunity	16

APPENDICES

APPENDIX A — Addresses for Notices

Schedule 2.1(b)(ii) Abandonment Calculation Example

Schedule 3.4(a) Project Costs Accrued Through January 31, 2010

OWNERS AGREEMENT

THIS STP 3 & 4 OWNERS AGREEMENT is made and entered into effective as of the 1st day of March, 2010 (the "Effective Date"), by and among THE CITY OF SAN ANTONIO, acting by and through the City Public Service Board of San Antonio, a Texas municipal utility ("San Antonio"), NUCLEAR INNOVATION NORTH AMERICA LLC, a limited liability company formed under the laws of the State of Delaware ("NINA"), NINA TEXAS 3 LLC, a limited liability company formed under the laws of the State of Delaware, indirectly wholly owned by NINA ("NINA 3"), and NINA TEXAS 4 LLC, a limited liability company formed under the laws of the State of Delaware, indirectly wholly owned by NINA ("NINA 4") and together with NINA and NINA 3, the "NINA Parties"). San Antonio, NINA 3 and NINA 4, and any permitted transferee are also each referred to herein as an "Initial Owner" and collectively as the "Initial Owners."

RECITALS

A. San Antonio and NRG South Texas LP ("NRG South Texas") are parties to the Amended and Restated South Texas Project Participation Agreement dated effective as of November 17, 1997, by and among The City of Austin, San Antonio and NRG South Texas (as successor in interest to Houston Lighting & Power Company and Central Power and Light Company) (the "Participation Agreement");

B. Each Participant in the electric generating units operating at the South Texas Project site as of the Effective Date ("STP 1" and "STP 2" or collectively, the "Existing STP Units") and the Owners under this Agreement have the rights and obligations due each of them under the Participation Agreement;

C. San Antonio and NRG South Texas are parties to the South Texas Project Supplemental Agreement, dated effective as of October 29, 2007, and one or more Addenda or Amendments thereto (the "Supplemental Agreement"), which set forth mutual understandings for the development of two additional Generating Units at the South Texas Project, STP 3 and STP 4 (as defined below);

D. Each of San Antonio and NRG South Texas exercised their respective rights pursuant to Article 6 of the Participation Agreement to pursue development of STP 3 and STP 4;

E. NRG South Texas subsequently assigned to NINA 3 and NINA 4 its right under the Participation Agreement to develop STP 3 and STP 4, respectively, without assigning rights and obligations retained by the owners of STP 1 and STP 2;

F. By its letter dated February 20, 2009, Austin Energy has acknowledged that it has elected not to participate in the Project in response to valid notice from the participating owners;

G. On the date hereof, San Antonio entered into a Project Agreement, Settlement Agreement and Mutual Release (the "Project Agreement"), by and among San Antonio, NINA, NINA 3 and NINA 4, (with joinders therein by NRG South Texas and NRG Energy Inc. ("NRG") for limited purposes), in order to, among other things, more fully set forth certain rights and obligations of each of the Initial Owners with respect to the licensing, development, construction, ownership and operation of STP 3 and STP 4 and to address and settle a pending legal action among the Parties; and

H. The Parties desire to enter into this Agreement in order to more fully set forth certain rights and obligations of each of the Owners (as defined below) with respect to the licensing, development, construction, ownership and operation of STP 3 and STP 4 and to evidence their agreement

with regard to the Parties' respective Unit Ownership Interests in the Project pursuant to Section 6.5.1 of the Participation Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the Initial Owners 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 by the Parties, the Parties, intending to be legally bound, do hereby agree as follows:

ARTICLE I DEFINITIONS

Section 1.1 Definitions and Usage. Unless the context shall otherwise require, capitalized terms used in this Agreement shall have the meanings assigned to them in this Section 1.1. In addition, unless expressly provided otherwise by the terms of this Agreement, each capitalized term used and not defined herein, shall have the meaning given to it in the following agreement (and, if there is a conflict among such agreements, in the following order of preference): the (i) Participation Agreement, (ii) Operating Agreement, and (iii) EPC Contract, each as may be amended from time to time.

"Abandon" or *"Abandonment"* means, with respect to a Unit, (i) the announcement by any NINA Party (or by any successor to the NINA Parties' role under this Agreement) that it is no longer pursuing development of such Unit; (ii) any NINA Party (or any successor to the NINA Parties' role under this Agreement) ceasing to be actively engaged in pursuing the development of the Project for a period of one year in the absence of the exercise of a suspension right under the EPC Contract or for a period of one year after the expiration of any suspension period under the EPC Contract; or (iii) the termination of the EPC Contract other than due to a default by TANE.

"Additional Owner" means each Owner that is not an Initial Owner.

"Affiliate" means with respect to an entity, any other entity controlling, controlled by or under common control with such entity. As used in this definition, the term "control," including the correlative terms "controlling," "controlled by" and "under common control with," shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of an entity, whether through ownership of voting securities, by contract or otherwise.

"Agency Agreement" means the Agency Agreement dated as of October 30, 2007 among San Antonio, NRG South Texas and OPCO, as assigned pursuant to the Project Agreement.

"Agreement" means this Owners Agreement, including all Appendices, Exhibits and Schedules hereto.

"COL Application" means the Combined Operating License Application (Docket no. PROJO749) for the Project filed with the U.S. Nuclear Regulatory Commission by OPCO dated September 20, 2007, as amended or supplemented.

"Distribution" has the meaning given to it in Section 2.4(c)(i).

"DOE" means the U.S. Department of Energy.

"Effective Date" has the meaning given to it in the first paragraph of this Agreement.

“*EPC Contract*” means the agreement dated February 24, 2009, by and among OPCO as agent for the Owners and TANE, pursuant to which TANE shall perform the engineering, procurement and construction services necessary to develop and construct, employing ABWR technology, STP 3 and/or STP 4 (and any successor agreements).

“*Existing STP Units*” has the meaning given to it in the Recitals.

“*Final Completion Date*” has the meaning set forth in the EPC Contract.

“*FNTP*” means the full notice to proceed issued by the Owners to TANE pursuant to the EPC Contract with respect to STP 3 and STP 4, as applicable.

“*Funding Recommencement Date*” means, with respect to each Unit, the date the Unit reaches the Substantial Completion Date under the EPC Contract.

“*Governmental Authority*” means any federal, state or local governmental entity, authority or agency, court, tribunal, regulatory commission or other body, whether legislative, judicial or executive (or a combination or permutation thereof), including the Nuclear Regulatory Commission.

“*Initial Owner*” has the meaning given to it in the first paragraph of this Agreement.

“*Law*” means any statute, law, treaty, rule, code, ordinance, requirement, regulation, permit or certificate of any Governmental Authority, any interpretation of any of the foregoing by any Governmental Authority, or any binding judgment, decision, decree, injunction, writ, order or like action of any court, arbitrator or other Governmental Authority.

“*Lien*” means any mortgage, deed of trust, pledge, security interest, assignment as collateral, deposit arrangement, charge or encumbrance, lien (statutory or other), right of first refusal, right to acquire, restrictions or other preferential arrangement in the nature of a security interest (including any conditional sale or other title retention agreement or any financing lease having substantially the same economic effect as any of the foregoing).

“*NINA*” has the meaning given to it in the first paragraph of this Agreement.

“*NINA 3*” has the meaning given to it in the first paragraph of this Agreement.

“*NINA 4*” has the meaning given to it in the first paragraph of this Agreement.

“*NINA Parties*” has the meaning given to it in the first paragraph of this Agreement.

“*NRG*” has the meaning given to it in the Recitals to this Agreement.

“*NRG South Texas*” has the meaning given to it in the Recitals to this Agreement.

“*OPCO*” means STP Nuclear Operating Company and its successors and assigns under the Operating Agreement.

“*Operating Agreement*” means the South Texas Project Operating Agreement originally by and among The City of Austin, Texas, Houston Lighting & Power Company (predecessor to NRG South Texas), San Antonio and Central Power and Light Company, and OPCO, dated as of November 17, 1997.

“*Owner*” means each Initial Owner and each Additional Owner.

“Party” and “Parties” means the parties to this Agreement.

“Participation Agreement” has the meaning given to it in the Recitals to this Agreement.

“Person” means any individual, corporation, partnership, joint venture, association, joint stock company, trust, limited liability company, unincorporated organization, Governmental Authority or any other form of entity.

“Project” means the development, licensing and construction of two additional electric Generating Units, STP 3 and STP 4, which are currently contemplated to be constructed by TANE, employing ABWR technology, at the Site, pursuant to the COL Application.

“Project Costs” means “Project Costs” as such term is defined in the Participation Agreement, as they relate to the Project.

“Repurchase Notice” has the meaning given to it in Section 2.1(b)(ii).

“San Antonio” has the meaning given to it in the first paragraph of this Agreement.

“San Antonio Restoration Costs Share” has the meaning given to it in Section 2.1(b).

“Site” means the land on which STP 3 and STP 4 are to be located, as described in the COL Application.

“STP 3” means the electric generating unit, described as the third unit to be constructed at the South Texas Project in the COL Application, and, prior to its construction, the right to develop such electric generating unit.

“STP 3 & 4 Common Facilities” means facilities intended for common use by both STP 3 and STP 4 from and after the STP 4 Commercial Operation Date, but excludes any undivided interest in the Common Station Facilities that the Owners of STP 3 and STP 4 may acquire pursuant to the provisions of the Participation Agreement.

“STP 4” means the electric generating unit, described as the fourth unit to be constructed at the South Texas Project in the COL Application, and, prior to its construction, the right to develop such electric generating unit.

“STP 4 Commercial Operation Date” means the date that STP 4 achieves commercial operation.

“Supplemental Agreement” has the meaning given to it in the Recitals of this Agreement.

“TANE” means Toshiba America Nuclear Energy Corporation.

“Total Project Costs” means all costs, obligations and liabilities to develop, license, design, construct, finance, repair, replace, reconstruct, and start-up STP 3, STP 4, and the STP 3 & 4 Common Facilities (including a proportionate share of any Project Costs relating to the Common Station Facilities, including costs relating to the acquisition thereof, which are for the common use of the Units and the Existing STP Units), including, the cost of all related environmental studies, safety analyses, site evaluation, licensing, engineering, design, contract preparation, purchasing, supervision, expediting, erection, financing (including interest during construction and other related costs for any financing), common facility upgrades (including the costs of Capital Additions and Capital Betterments to the

previously existing Common Station Facilities as provided in Section 6.5.2 of the Participation Agreement), inspection, accounting, testing, management and security, and any liability of any Party for any losses, liabilities, deficiencies, penalties, fines, costs, damages and expenses (including legal fees and costs) incurred by anyone other than a Party which arises out of developing, licensing, designing, financing or construction of STP 3 and STP 4 and is not solely and separately attributable to the Existing STP Units.

“*Ultimate Parent*” has the meaning given to it in Section 4.1(a).

“*Unit*” means, as applicable, STP 3 or STP 4.

“*Unit Ownership Interest*” has the meaning given to it in Section 2.1(a).

Section 1.2 Rules as to Usage.

(a) The terms defined above have the meanings set forth above for all purposes, and such meanings are equally applicable to both the singular and plural forms of the terms defined.

(b) “Include,” “includes” and “including” shall be deemed to be followed by “without limitation” whether or not they are in fact followed by such words or words of like import.

(c) Any agreement, instrument or Law defined or referred to above means such agreement or instrument or Law as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of Laws) by succession of comparable successor Laws and includes (in the case of agreements or instruments) references to all attachments thereto and instruments incorporated therein.

(d) References to a Person include its successors and permitted assigns.

(e) Any term defined above by reference to any agreement, instrument or Law has such meaning whether or not such agreement, instrument or Law is in effect.

(f) “Hereof,” “herein,” “hereunder” and comparable terms refer, unless otherwise expressly indicated, to the entire agreement or instrument in which such terms are used and not to any particular article, Section or other subdivision thereof or attachment thereto.

(g) References to any gender include, unless the context otherwise requires, references to all genders.

(h) “Shall” and “will” have equal force and effect.

(i) References to “\$” or to “dollars” shall mean the lawful currency of the United States of America.

**ARTICLE II
OWNERS**

Section 2.1 Ownership Interests.

(a) As of the Effective Date, subject to adjustments as provided herein, the Owners own all rights relating to STP 3, STP 4 and the STP 3 & 4 Common Facilities, in undivided interests as

tenants in common as follows (such interests being, with respect to each of STP 3 and STP 4, an Owner's "Unit Ownership Interest"):

STP 3 and STP 3 & 4 Common Facilities

San Antonio	7.625%
NINA 3	92.375%

STP 4

San Antonio	7.625%
NINA 4	92.375%

(b) The Parties recognize and acknowledge that at any time prior to the Funding Recommencement Date for each Unit, NINA 3 and/or NINA 4 may choose to abandon the development of the Project without liability to any Owner, other than pursuant to any written agreements among the Parties; provided, however, that the NINA Parties hereby agree that they will not pursue a "downsized Project" (i.e., Unit 3 alone). In the case of Abandonment, in no event will San Antonio's Unit Ownership Interest ever fall below 7.625%.

(i) If STP 3 or the Project is Abandoned at any time prior to conditional approval from the DOE with respect to the loan guaranty term sheet, then, at San Antonio's option in its sole and absolute discretion exercised upon delivery of written notice to NINA within 90 days after the date San Antonio becomes aware of such Abandonment, the Owner's Unit Ownership Interest will automatically revert to 50% without any further action of the Parties.

(ii) If STP 3 or the Project is Abandoned at any time after conditional approval from the DOE with respect to the loan guaranty term sheet, but prior to FNTP, then, at San Antonio's option in its sole and absolute discretion exercised upon delivery of written notice (the "Repurchase Notice") to NINA within 90 days after the date San Antonio becomes aware of such Abandonment, (A) each Owner's respective Unit Ownership Interest will automatically revert to the proportion that the Total Project Costs actually paid by such Owner prior to the Abandonment date bears to the Total Project Costs paid by all Owners through such date, without any further action of the Parties, and (B) San Antonio shall have the right to increase its Unit Ownership Interest to any percentage between the percentage in clause (A) and 50% upon payment to the NINA Parties of an amount equal to the difference between (1)(x) Total Project Costs actually paid by all Parties prior to the Abandonment date, times (y) the percentage that San Antonio wants to own, minus (2) the Total Project Costs actually paid by San Antonio prior to such date. The closing of the repurchase described in clause (B) shall occur no later than 12 months after the date of receipt by the NINA Parties of the Repurchase Notice. For purposes of the formulas contained in paragraph (ii), the Owners hereby agree that (I) they shall count only the out-of-pocket Total Project Costs relating to the development, licensing, design, construction and starting-up of the Project, and not any Total Project Costs relating to the financing of the Project or relating to an Owner's internal matters, such as financing costs, interest, commitment fees, investment banking fees, over-head costs or personnel costs, (II) San Antonio, on the one hand, and the NINA Parties, on the other hand, have paid an equal amount of Total Project Costs through the date of this Agreement, and (III) any payments made to San Antonio by NRG (by and for the benefit of the NINA Parties) under Sections 3.1.1 and 3.1.2 of the Project Agreement (i.e., the Initial Cash Payment and Remaining Cash Payment thereunder), as and when paid, shall increase or decrease, as applicable, an Owner's share of the Total Project Costs. For the

avoidance of doubt, with respect to the “City Initiative Contribution” under the Project Agreement, no portion of such contribution shall be included in the calculation of Total Project Costs under this Section 2.1(b)(ii). An example of the foregoing formula is set forth on Schedule 2.1(b)(ii).

(iii) If STP 3 or the Project is Abandoned at any time after FNTF and San Antonio has not acquired any additional Ownership Interest or exercised its rights pursuant to this Section 2.1, then the Unit Ownership Interests shall remain as provided in Section 2.1(a).

Promptly after San Antonio’s exercise of its right to increase its Unit Ownership Interest, NINA, NINA 3 and NINA 4, as applicable, shall execute, acknowledge and deliver all documents and shall take all other actions reasonably necessary to convey the applicable Unit Ownership Interest to San Antonio, free and clear of all Liens (other than those to which the conveyances under Section 2.1.2 of the Project Agreement are subject, those arising under applicable Law or the Participation Agreement, those which are customary title encumbrances of a non-lien nature that arise during the ordinary course of development of a nuclear facility and that are granted pursuant to the NINA Parties’ authority under Section 3.1 hereof or granted by San Antonio, or those of the type described in clause (y) of Section 3.1(b)(vi) hereof) including such documentation reasonably satisfactory to San Antonio, its creditors and lenders (including the DOE, if applicable), to effect the transfer of the relevant portion of the NINA Parties’ undivided tenant-in-common percentage interest in: (a) the land on which the Project (comprising only STP 3 and STP 4) is located and in all improvements located thereon, and (b) the Common Station Facilities. San Antonio, on behalf of itself and its creditors and lenders, agrees that the deeds and conveyance instruments that shall be used by the Parties pursuant to Section 2.1.2 of the Project Agreement are acceptable forms to effect the conveyances contemplated by this Section 2.1(b).

Following Abandonment, the NINA Parties and San Antonio shall be responsible, in proportion to their Abandonment Restoration Costs Share, for all costs of Abandonment, including restoring the Site (to the extent not occupied by the Existing STP Units) to the condition (including completing all landscaping and other restoration work to the extent) set forth in the ETS and in accordance with all Applicable Laws and Applicable Permits. “Abandonment Restoration Costs Share” shall mean (a) as to the NINA Parties, 100% *minus* the amount of percentage increase in Unit Ownership Interest acquired by San Antonio pursuant to San Antonio’s exercise of its right pursuant to Section 2.1(b)(ii)(B) (the “San Antonio Restoration Costs Share”), and (b) as to San Antonio, the San Antonio Restoration Costs Share. San Antonio shall reimburse the NINA Parties for the San Antonio Restoration Costs Share of any costs of Abandonment paid by the NINA Parties between the Abandonment date and the date when San Antonio exercises its right pursuant to Section 2.1(b)(ii)(B).

Section 2.2 Additional Owners. Any Person to which a Unit Ownership Interest in STP 3 and/or STP 4 is transferred in accordance with this Agreement or the Participation Agreement must assume the obligations of the transferring Owner and become an Owner under this Agreement and must execute an assignment and assumption agreement as evidence thereof.

Section 2.3 Term. The term of this Agreement shall commence as of the Effective Date and shall remain in force and effect until the expiration of the Participation Agreement.

Section 2.4 Related Agreements.

(a) The terms of the Participation Agreement shall govern the rights and obligations of the Owners except to the extent of the agreements among the Owners set out in this Agreement relating to STP 3 and/or STP 4, which agreements shall, as among the Owners, control in the event of a conflict between this Agreement and the Participation Agreement. For the avoidance of doubt, any failure to

make reference in this Agreement to any specific provision of the Participation Agreement shall not be interpreted to mean that such provision is inapplicable to the Owners.

(b) The Owners acknowledge and agree that OPCO shall, pursuant to the terms of the Operating Agreement, license, operate, construct, maintain and decommission STP 3 and STP 4. Upon assignment of its rights, obligations and liabilities under the Agency Agreement from San Antonio to NINA 3 and NINA 4, the relationship between OPCO and the Owners regarding oversight of the Project construction, including during the development, licensing and construction phases of STP 3 and/or STP 4, as applicable, shall be governed by this Agreement.

(c) As to the EPC Contract and other Project documents entered into by OPCO under the Agency Agreement or by the Owners directly (whether before or after the date hereof, including documents entered into after the date hereof by the NINA Parties), even though all or a portion of the beneficial interest in such agreements have been assigned to the NINA Parties, each Owner shall continue to own its Unit Ownership Interest share of the following rights: (i) any work product, intellectual property rights or tangible property as it relates to the Project to which the owner under the EPC Contract obtains title pursuant to the terms thereof and (ii) cash proceeds paid to the owners under the EPC Contract by or on behalf of TANE pursuant to the EPC Contract (including liquidated damages, warranty or casualty proceeds) to the extent not used to repair or reconstruct the Project (such cash proceeds, a “Distribution”).

(d) In furtherance of the foregoing, the NINA Parties agree as follows:

(i) If the NINA Parties receive a Distribution, the NINA Parties shall (A) accept and hold San Antonio’s Unit Ownership Interest share of such Distribution for the account and sole benefit of San Antonio, (B) have no equitable or beneficial interest in San Antonio’s Unit Ownership Interest share of such Distribution, and (C) deliver San Antonio’s Unit Ownership Interest share of such Distribution (free of any withholding, setoff, recoupment, or deduction of any kind) promptly to San Antonio. In addition, the NINA Parties shall do all acts and shall execute and deliver such further written instruments as may be reasonably required to vest in San Antonio the rights described in Section 2.4(c)(i) above.

(ii) The NINA Parties (A) shall maintain records of all payments made to the NINA Parties with respect to the EPC Contract or such other Project documents, and (B) shall cause OPCO, in the ordinary course of its business and consistent with its past practices, to maintain records relating to the work product, intellectual property rights and tangible property as it relates to the Project to which the owner under the EPC Contract obtains title pursuant to the terms thereof. Such records shall be available for inspection by San Antonio from time to time upon reasonable prior notice to the NINA Parties during regular business hours.

ARTICLE III VOTING

Section 3.1 Decisions Relating to STP 3 and STP 4.

(a) As to decisions of the Owners Committee affecting only one or more of the Units, then each of NINA 3 and NINA 4, with respect to the Project and from and after the San Antonio Cease Funding Date (as defined in the Project Agreement), shall have full discretion and control for the operation, maintenance, planning, development, construction (including being the party to the EPC Contract), construction and development scheduling, financing and other aspects of management of such Unit, including decisions with respect to (i) management of the EPC Contract and development or

cancellation of the Project; (ii) day-to-day operations, including relationship with OPCO and direction as to interface between OPCO, as licensee, and the NRC; (iii) government relations, including interface with the NRC; (iv) insurance as to the Project (as long as such insurance (A) meets the requirements in the Participation Agreement and the EPC Contract, and (B) names San Antonio as an additional insured), but nothing shall prevent San Antonio from maintaining at its own cost, additional insurance it deems necessary; (v) decommissioning and the timing thereof; (vi) budgets; (vii) maintenance, repairs and casualty restoration; (viii) Project litigation (unless San Antonio is a party to such suit or there exists an actual or potential conflict of interest between the NINA Parties or their counsel and San Antonio, in which case San Antonio may participate in such litigation at its own cost and expense); *provided, however*, that in making its decisions relating to Project litigation, NINA 3 and NINA 4 may not agree, without San Antonio's prior written consent, to any settlement or compromise of such litigation (A) that involves any non-ministerial non-monetary obligations to be performed by San Antonio, or (B) that involves monetary obligations on San Antonio that are in excess of its proportionate Unit Ownership Interest; (ix) NRC license extensions; (x) the right to sell, lease, make a sale-leaseback, exchange, convey or dispose of assets of the Project the ownership of which are not necessary for the operation of the Project; (xi) the right to license intellectual property rights of the type described in Section 2.4(c)(i), but each Owner shall have the right to its Unit Ownership Interest in the net proceeds thereof; and (xii) upratings and improvements, in each case, whether such decision is made prior to or after the Funding Commencement Date for each Unit. To effect the foregoing, the NINA Parties shall be permitted to enter into any agreement or arrangement for the Project on behalf of the Owners as long as such agreements or arrangements (x) are entered into by OPCO as agent on behalf of Owners and (y) do not impose (i) any non-ministerial non-monetary obligations to be performed by San Antonio, (ii) any monetary obligations on San Antonio during the period prior to the Funding Commencement Date, or (iii) any monetary obligations on San Antonio during the period after to the Funding Commencement Date that are disproportionate to San Antonio's Unit Ownership Interests. Nothing herein shall prevent the NINA Parties from entering into agreements or arrangements on their own behalf and for their own account for the Project.

(b) Notwithstanding anything to the contrary in this Agreement, the Participation Agreement, the Operating Agreement, the organizational documents of OPCO, the EPC Contract, or the Agency Agreement (and any amendments and successor agreements thereto), the NINA Parties each hereby agree that they will not, directly or indirectly, take or approve any of the following actions without the prior written consent of San Antonio:

(i) Any change to use a nuclear reactor technology for the Project other than ABWR nuclear reactor technology for the Units;

(ii) Any action which would affect or limit San Antonio's right to its proportionate allocation of power output from the Project after the Funding Commencement Date;

(iii) Any material change in the location of a Unit;

(iv) To the extent relating to the Project, any agreement or amendment to an agreement requiring material payments or transfer of rights to, or for the benefit of, NRG or the NINA Parties or any Person which beneficially owns or holds 10% or more of the equity of NRG or the NINA Parties or any Affiliate thereof, except for (i) those entered into in the ordinary course of development or operation of the Project that are upon fair and reasonable terms not less favorable to the Project than would be obtained in a comparable arm's length transaction with an unrelated third party or (ii) those where all material payments or transfer of rights, as applicable, under such agreement or amendment are to be paid or made by the NINA Parties, including as part of Total Project Costs in connection with the development and construction of the Project;

(v) Any material agreement or amendment to an agreement requiring payments or transfer of rights to, or for the benefit of, any party that is providing goods or services to NRG or the NINA Parties or any Person which beneficially owns or holds 10% or more of the equity of NRG or the NINA Parties or any director, officer, employee or Affiliate thereof in connection with other projects that would impose material Project Costs on the Project after the Funding Recommencement Date for which San Antonio would be liable in exchange for lower costs or other benefits on such other project;

(vi) The granting, creation or incurrence of a Lien on any assets of or relating to the Project or the Site, other than (x) Liens imposed solely on the NINA Parties' Unit Ownership Interest, and (y) Liens imposed by Law, such as carriers', warehousemen's, landlords' and mechanics' liens, in each case, incurred in the ordinary course of development and operation of the Project;

(vii) Causing or allowing the Site or Project to carry on, or to be used for, any business other than the business relating to the licensing, development, ownership, construction and operation of STP 3, STP 4 and/or the STP 3 & 4 Common Facilities, except in the case of Abandonment; or

(viii) Committing to do any of the foregoing or authorizing any representative or agent to do any of the foregoing.

(c) San Antonio and the NINA Parties shall vote their respective Unit Ownership Interests in the manner consistent with this Section 3.1 and shall cause their Ultimate Parents and Affiliates and their agents and representatives not to take or approve any actions inconsistent with this Section 3.1. The Owners acknowledge and agree that the NINA Parties shall have the right to direct OPCO on behalf of all Owners pursuant to the terms of this Agreement and the Agency Agreement (as assigned) with respect to the operation, maintenance, planning, development, construction, construction and development scheduling and financing of the Project as set forth more fully in and subject to the terms and conditions of this Section 3.1.

(d) *Indemnity.*

(i) If San Antonio becomes a party to any third-party or governmental proceeding, lawsuit, arbitration or investigation (in any case brought by a Person not affiliated with San Antonio) arising from or relating to events, occurrences or circumstances that occur, arise or exist prior to the Funding Recommencement Date of a Unit and are related to the development or construction activities under the EPC Contract (or any replacement thereof), any agreement entered into or action taken or omitted to be taken in connection therewith or under any other agreement entered into by the NINA Parties or, at the NINA Parties' direction, OPCO relating to the development or construction of the Project, then, in accordance with the right to manage such proceeding, lawsuit, arbitration or investigation pursuant to Section 3.1(a)(viii) (but without the ability to impose monetary obligations on San Antonio pursuant to subsection (B) of the proviso thereof), the NINA Parties shall defend, protect and hold harmless San Antonio and its Affiliates and their successors and assigns from and against such third-party or governmental proceedings, lawsuits, arbitrations or investigations and shall indemnify San Antonio and its Affiliates and their successors and assigns against any damages, penalties, fines, liabilities, costs, expenses and monetary obligations arising out of, relating to or resulting from such third-party or governmental proceedings, lawsuits, arbitrations, or investigations; provided, that the NINA Parties' liability under this Section 3.1(d) shall not apply to the extent caused by the Willful Action (as defined in the Participation Agreement) by San Antonio, its Affiliates and successors and assigns.

(ii) The NINA Parties' obligations in this Section 3.1(d) shall terminate upon the expiration of the relevant statute of limitations, except that such obligations shall survive as to any proceeding, lawsuit, arbitration or investigation covered by this paragraph that is not barred by the relevant statute of limitations.

(iii) Each Party, on behalf of itself and its Affiliates, successors and assigns, will use commercially reasonable efforts (which shall not include any requirement to threaten or initiate litigation) to look to available insurance for the Project, if any, to cover the matters that are the subject of this indemnity and, to the extent such insurance coverage is obtained, each Party hereby waives on behalf of its insurers all right to subrogation. Notwithstanding the previous sentence, the NINA Parties shall perform their obligations under Section 3.1(d)(i) (A) until the applicable insurance carrier for the Project affirmatively agrees to assume the defense (at its costs) of the matters that are the subject of this indemnity, and (B) to the extent that such insurance does not fully cover the matters that are the subject of this indemnity. If San Antonio (or its Affiliates and their successors and assigns) receives any insurance proceeds with respect to a matter for which such Person has previously been indemnified hereunder, then such Person shall promptly refund to the NINA Parties a portion of such proceeds (net of direct collection expenses and less any adjustments to past, present and future insurance premiums) equal to the amount paid by the NINA Parties hereunder.

(iv) Except as provided in this Section 3.1(d), this Section 3.1 is not intended to grant an Owner any additional rights to make any direct claims against another Owner, or to increase the liabilities of an Owner towards another Owner, beyond the limitations set forth in the Participation Agreement. The provisions of Section 20.3 of the Participation Agreement shall apply to this Agreement

(e) Nothing in this Agreement will modify or limit San Antonio's rights with respect to decisions involving the Existing STP Units or involving both the Units and the Existing STP Units or involving the Common Station Facilities which are for the common use of the Units and the Existing STP Units.

Section 3.2 San Antonio Cooperation. San Antonio shall cooperate with and assist the NINA Parties promptly, as and when reasonably requested by the NINA Parties and at the NINA Parties' expense, to the extent necessary for the NINA Parties to perform their duties, responsibilities and obligations under this Agreement, the EPC Contract and other agreements related to the financing, construction and operation of the Project, including:

(a) executing and delivering documents, certificates or instruments requested by the NINA Parties that are necessary in connection with the financing of the Project and the NINA Parties' performance of such duties, responsibilities and obligations; and

(b) supporting the NINA Parties' efforts to receive a United States Department of Energy loan guaranty for the Project (including by providing clarity to the DOE on San Antonio's ownership position in the Project); provided, that unless requested by the NINA Parties or the DOE, or unless required in order to comply with applicable Law, San Antonio shall not attend any meetings with the DOE or request additional data from the DOE regarding such loan guaranty.

San Antonio will be deemed to comply with this Section 3.2 if it acts in good faith in response to a request from the NINA Parties that is consistent with the terms on this Section 3.2. The NINA Parties' sole remedy for a breach of this Section 3.2 by San Antonio will be an action for specific performance, and in no event will San Antonio be liable for monetary damages to the NINA Parties or to any other Person for a breach or alleged breach of this Section 3.2.

Section 3.3 Access to Information. With respect to STP 3, STP 4 and/or the STP 3 & 4 Common Facilities, San Antonio shall have such rights of access and audit as are described in the Participation Agreement and Operating Agreement. If requested by San Antonio, the NINA Parties shall provide reasonable assistance to San Antonio in gaining access to all of OPCO's books and records and to all of its material correspondence with Government Authorities relating to STP 3, STP 4 and/or the STP 3 & 4 Common Facilities. In addition, the NINA Parties will provide San Antonio with reasonable access to, and the right to inspect and audit, the books and records of the Owners Committee. The foregoing rights in this Section 3.3 represent all of San Antonio's rights to access information or participate in meetings relating to the development and construction of the Project.

Section 3.4 Allocation of Costs and Obligations to Pay Costs.

(a) From and after February 1, 2010 and except as set forth in Section 3.4(b) below, NINA 3 and NINA 4 (and their permitted transferees) will be solely responsible for and shall pay the Project Costs and Total Project Costs (including all liabilities and obligations of the Owners under the EPC Contract), and San Antonio will have no liability or obligation for any Total Project Costs; *provided, however*, that San Antonio agrees to pay when due, in the ordinary course of business consistent with OPCO's customary historical practices, its 50% of the costs set forth on Schedule 3.4(a) attached hereto relating to the portion of services rendered and materials delivered on or prior to January 31, 2010. For the avoidance of doubt, (i) San Antonio shall not be responsible for any Total Project Costs other than those expressly set forth on Schedule 3.4(a), regardless of whether such amounts were approved by San Antonio on or before January 31, 2010, (ii) the costs set forth on Schedule 3.4(a) are estimated amounts, and San Antonio shall not be obligated to pay such costs until the actual amounts are determined and invoiced by OPCO, and (iii) for the line item on Schedule 3.4(a) titled "TANE Long Lead Material", San Antonio shall pay 50% of \$[*], or \$ [*], with payments up to these amounts made when due after invoices are received. If San Antonio has paid or in the future pays any amounts relating to services rendered or to be rendered or materials delivered or to be delivered after January 31, 2010 (as reasonably determined by OPCO), then such payments shall reduce the amounts payable by San Antonio under this Section 3.4(a). San Antonio shall have the right to review the invoices, work papers, worksheets and other documents relating to the costs on Schedule 3.4(a) in order to independently verify the estimated and actual amounts to be paid by San Antonio under this Section 3.4(a). If San Antonio disputes the determination by OPCO, then San Antonio will notify NINA and OPCO. If San Antonio, NINA and OPCO are unable to resolve the dispute within 30 days after San Antonio's notice, then San Antonio and NINA shall submit the dispute for determination to a nationally recognized accounting firm mutually acceptable to San Antonio and NINA (which firm may not be a firm that has been engaged by the Parties during the prior two years). The determination of the accounting firm shall be final and binding on the Parties. NINA and San Antonio shall each pay half of the fees and costs of such accounting firm's review and determination.

(b) From and after the Funding Recommencement Date of each Unit, each Owner shall be obligated to fund its Unit Ownership Interest share of the Project Costs incurred after such date with respect to such Unit as provided under the Participation Agreement and the Operating Agreement (and any successor agreements thereto); *provided, however*, that NINA 3 and NINA 4 (and their permitted transferees) will continue to be solely responsible for and shall pay all liabilities and obligations under the EPC Contract and all other Project Costs relating to development and construction of the Project (whether incurred before or after the Funding Recommencement Date) that are necessary to achieve Final Completion of the Project.

Section 3.5 Power Production Prior to Final Completion Date.

(a) Prior to the Funding Recommencement Date, the NINA Parties shall designate a Qualified Scheduling Entity pursuant to the ERCOT regulations who will be responsible for scheduling

power for such Unit. Any revenues generated by a Unit during such period shall be paid to and for the benefit of the NINA Parties in proportion to their ownership of such Unit.

(b) Following the Funding Recommencement Date, each Owner with a Unit Ownership Interest in such Unit shall designate a Qualified Scheduling Entity pursuant to the ERCOT regulations, who will be responsible for scheduling power allocable to such Owner until the Unit reaches its Final Completion Date.

(c) From and after the Final Completion Date, each Owner of such Unit have the obligation to take its Generation Entitlement Share (as defined in the Participation Agreement) of power and energy produced from such Unit during such period, which shall be equal to its Unit Ownership Interest in such Unit.

Section 3.6 Cooperation Among Owners. Upon the reasonable request of any Party, and at the requesting Party's expense, the other Parties shall furnish such information and documentation regarding such Party as reasonably requested by the requesting Party and necessary for the requesting Party's performance of its duties, responsibilities and obligations under this Agreement, the EPC Contract and other agreements related to the financing, construction and operation of the Project.

Section 3.7 Indemnification. The Owners' rights and obligations with respect to indemnification shall be as provided in the Participation Agreement and nothing set forth herein shall be construed as a waiver of any such rights of the parties under the Participation Agreement.

ARTICLE IV TRANSFERS

Section 4.1 Transfers.

(a) *Restriction.* NINA, NINA 3 and NINA 4 will not, and will not permit its Ultimate Parent or a subsidiary of its Ultimate Parent to, sell, assign, transfer or otherwise dispose of, except pursuant to (b) below, an equity interest in (or issue equity interests in) any direct or indirect subsidiary of the Ultimate Parent owning directly or indirectly a Unit Ownership Interest in STP 3 and/or 4, where all or substantially all of such subsidiary's assets are directly (or indirectly through one or more subsidiaries) the Unit Ownership Interest in STP 3 and/or 4.

"Ultimate Parent" means, as applicable with respect to NINA 3 and NINA 4, NRG as well as any Person that is a transferee or purchaser of an equity interest in a transaction after the date hereof as to which the restriction in (a) above would apply, but for the application of (b)(i) or (b)(iii) below. For the avoidance of doubt, as to the Person that is the transferee or purchaser in the preceding sentence, such Person shall be an Ultimate Parent, but not any parent entity of such Person.

(b) *Permitted Transfers.* The foregoing restriction shall not apply to any of the following:

(i) a sale, disposition or issuance to an Affiliate;

(ii) a transfer or disposition as collateral security or pursuant to hypothecation, pledge, or mortgage or similar lien granted in good faith pursuant to a bona fide financing transaction, or with respect to the foreclosure, transfer or disposition thereof by a collateral agent;

(iii) a bona fide sale, disposition or issuance made prior to the Funding Recommencement Date of both Units 3 and 4; or

(iv) an issuance of equity in an entity (A) to the existing holders of equity in such entity pro rata in accordance with their ownership interests, (B) in connection with an initial or subsequent public offering, or (C) in connection with a private placement or similar transaction where the existing holders of equity in such entity are diluted pro-rata as to their ownership in such entity and where such issuance is not part of an arrangement that specifically includes distributions to the existing equity holders of the issuing entity or any purchases or redemptions of equity interests of the existing equity holders in the issuing entity and therefore would have the effect of transferring an existing equity holder's direct or indirect interest in STP 3 and/or 4 to the new equity holder(s) beyond such pro-rata dilution arising from such issuance.

(c) The NINA Parties agree that if within ten years after the Funding Recommencement Date of both Units 3 and 4 they become aware that a holder of an equity interest in any of the NINA Parties desires to sell some or all of that interest, the NINA Parties will use commercially reasonable efforts to request such holder of an equity interest to enter in discussions with San Antonio about a possible sale of a portion of that interest to San Antonio.

ARTICLE V GENERAL PROVISIONS

Section 5.1 Notices. All notices, consents, approvals, requests, invoices or statements provided for or permitted to be given under this Agreement must be in writing. Notices to an Owner must be delivered to such Owner at the address for such Owner set forth in Appendix A to this Agreement or at such other address as such Owner shall designate by written notice to the other Owner delivered in accordance with this Section 5.1. Notices may be (i) sent by registered or certified mail with return receipt requested, (ii) delivered personally (including delivery by private courier services and with a signed confirmation of receipt) or (iii) sent by facsimile (with confirmation of such notice) to the Owner entitled thereto. Each Owner hereto shall have the right at any time and from time to time to specify additional Persons to whom notice thereunder must be given, by delivering to the other Owner five (5) days notice thereof.

Section 5.2 Governing Law; Forum Selection. THIS AGREEMENT AND ALL OF THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER ARISING FROM OR RELATING IN ANY WAY TO THE SUBJECT MATTER OF THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED HEREBY, SHALL BE GOVERNED BY, CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO THE CHOICE OF LAWS RULES THEREOF THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANY OTHER JURISDICTION.

THE PARTIES IRREVOCABLY CONSENT TO THE EXCLUSIVE JURISDICTION OF THE STATE DISTRICT COURTS OF TRAVIS COUNTY, TEXAS WITH RESPECT TO ANY MATTER ARISING FROM OR RELATING IN ANY WAY TO THE SUBJECT MATTER OF THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY OBJECTION, INCLUDING, WITHOUT LIMITATION, TO VENUE IN THE STATE DISTRICT COURTS OF TRAVIS COUNTY, TEXAS, OR BASED ON FORUM NON CONVENIENS, WHICH A PARTY MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY ACTION OR PROCEEDING IN SUCH JURISDICTION. SERVICE OF PROCESS MAY BE MADE IN ANY MANNER RECOGNIZED BY SUCH COURTS.

Section 5.3 Relationship Of Owners. Neither the execution nor delivery of this Agreement, nor the consummation of the transactions contemplated hereunder, shall create or constitute a partnership (including for federal income tax purposes), joint venture, or any other form of business organization or

arrangement between the Owners, except for the contractual arrangements specifically set forth in this Agreement and the other documents referred to herein if and when executed. No Owner (or any of its agents, officers or employees) shall be an agent, fiduciary or employee of any other Owner or any of its Affiliates, nor, except as is expressly agreed to in writing in this Agreement, shall an Owner (or any of its agents, officers or employees) have any power to assume or create any obligation on behalf of any other Owners or any of its Affiliates.

Section 5.4 Third Party Beneficiaries. There are no third party beneficiaries to this Agreement, and the provisions of this Agreement shall not impart any legal or equitable right, remedy or claim enforceable by any Person, firm or organization other than the Owners (and their permitted successors and permitted assigns).

Section 5.5 Further Assurances. Each Owner agrees to do all acts and things and to execute and deliver such further written instruments, as may be from time to time reasonably required to carry out the terms and provisions of this Agreement.

Section 5.6 Binding Effect. The terms of this Agreement shall be binding upon, and inure to the benefit of, the Owners and their successors and permitted assigns.

Section 5.7 Amendment. This Agreement may not be modified or amended except by an instrument in writing signed by authorized representatives of each of the Owners. An Owner's waiver of any provision under this Agreement shall not be deemed to be an amendment or modification to this Agreement.

Section 5.8 Headings; Table Of Contents. The headings of the Articles and Sections of this Agreement are included for convenience only and shall not be deemed to constitute a part of this Agreement.

Section 5.9 Interpretation And Reliance. No presumption will apply in favor of any Owner in the interpretation of this Agreement in the resolution of any ambiguity of any provisions thereof.

Section 5.10 Severability. In the event that any provision of this Agreement is held to be unenforceable or invalid by any court of competent jurisdiction, the Owners shall negotiate an equitable adjustment to the provisions of this Agreement with the view to effecting, to the extent possible, the original purpose and intent of this Agreement, and the validity and enforceability of the remaining provisions shall not be affected thereby.

Section 5.11 Complete Agreement. Except for the Project Agreement, the Participation Agreement, the Operating Agreement, the Agency Agreement, the EPC Contract and the portion of the Supplemental Agreement described below, this Agreement, in conjunction with all Exhibits, Schedules and Appendices attached hereto and thereto, constitutes the entire agreement of the Owners relating to the subject matter of this Agreement and supersedes all prior contracts, agreements or understandings with respect to the subject matter hereof and thereof, both oral or written. Each Party agrees that: (i) as among the Parties hereto, the Supplemental Agreement be and hereby is terminated and of no further force and effect (and all parties thereunder are fully and unconditionally released of all obligations thereunder), except that the rights and obligations of San Antonio and NRG South Texas as to the rights of first refusal applicable to the Existing STP Units as described in Section 9 thereof shall survive; (ii) the other Parties and their Affiliates (and their respective agents and representatives) have not made any representation, warranty, covenant or agreement to or with such Party relating to the subject matter hereof and thereof other than as reduced to writing in this Agreement, the Project Agreement or any of the agreements

contemplated thereby; and (iii) such Party has not relied upon any representation, warranty, covenant or agreement to or with the other Party or its Affiliates relating to the subject matter hereof and thereof, other than those reduced to writing in this Agreement. The Parties acknowledge and agree that, except as set forth in clause (i) above, this Agreement supersedes the Supplemental Agreement in its entirety.

Section 5.12 Counterparts. This Agreement may be executed by the Owners in any number of separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts shall together constitute one and the same agreement. All signatures need not be on the same counterpart.

Section 5.13 Waiver of Sovereign Immunity. To the extent that any Party hereto (including assignees of any Party's rights or obligations under this Agreement) may be entitled, in any jurisdiction, to claim sovereign immunity from any liability or from service of process, from suit, from the jurisdiction of any court, from attachment prior to judgment, from attachment in aid of execution of an arbitral award or judgment (interlocutory or final), or from any other legal process, and to the extent that, in any such jurisdiction there may be attributed such a sovereign immunity (whether claimed or not), each Party hereto hereby irrevocably agrees not to claim, and hereby irrevocably waives, such sovereign immunity with respect to any claim or suit by a Party against any other Party or other exercise of remedies by a Party against any other Party arising pursuant to this Agreement or the agreements contemplated hereby.

[Remainder of page intentionally left blank; signature page follows]

IN WITNESS WHEREOF, this Agreement has been executed by the Owners as of the Effective Date.

CITY OF SAN ANTONIO, acting through the City
Public Service Board of San Antonio

By: /s/ Jelynn LeBlanc Burley
Name: Jelynn LeBlanc Burley
Title: Acting General Manager

Appendix A-1

NUCLEAR INNOVATION NORTH AMERICA LLC

By: /s/ Steve Winn
Name: Steve Winn
Title: Chief Executive Officer & President

NINA TEXAS 3 LLC

By: /s/ Steve Winn
Name: Steve Winn
Title: Chief Executive Officer & President

NINA TEXAS 4 LLC

By: /s/ Steve Winn
Name: Steve Winn
Title: Chief Executive Officer & President

APPENDIX A
ADDRESSES FOR NOTICES

San Antonio

City Public Service Board
145 Navarro
Mail Drop 101007
P.O. Box 1771
San Antonio, Texas 78296
Attn: Acting General Manager

with a copy (which shall not constitute notice) to:

CPS Energy Legal Dept
Mail Drop 101010
P.O. Box 1771
San Antonio, Texas 78296
Attn: General Counsel

NINA Texas 4 LLC

NINA Texas 4 LLC
c/o Nuclear Innovation North America LLC
521 Fifth Ave., 30th Floor
New York, New York
Attn: President & CEO
Telephone: 212.210.6578
Facsimile: 212.867.4941

with a copy (which shall not constitute notice) to:

Nuclear Innovation North America LLC
521 Fifth Ave., 30th Floor
New York, New York
Attn: General Counsel
Telephone: 212.210.6572
Facsimile: 212.867.4941

NINA Texas 3 LLC

NINA Texas 3 LLC
c/o Nuclear Innovation North America LLC
521 Fifth Ave., 30th Floor
New York, New York
Attn: President & CEO
Telephone: 212.210.6578
Facsimile: 212.867.4941

with a copy (which shall not constitute notice) to:

Nuclear Innovation North America LLC
521 Fifth Ave., 30th Floor
New York, New York
Attn: General Counsel
Telephone: 212.210.6572
Facsimile: 212.867.4941

Nuclear Innovation North America LLC

Nuclear Innovation North America LLC
521 Fifth Ave., 30th Floor
New York, New York
Attn: President & CEO
Telephone: 212.210.6578
Facsimile: 212.867.4941

with a copy (which shall not constitute notice) to:

Nuclear Innovation North America LLC
521 Fifth Ave., 30th Floor
New York, New York
Attn: General Counsel
Telephone: 212.210.6572
Facsimile: 212.867.4941

SCHEDULE 2.1(b)(ii)

Abandonment Calculation Example

Data Points:

- (a) Abandonment occurs after payment of Initial Cash Payment and Remaining Cash Payment: \$80 million total
- (b) Total Project Costs expended by NINA Parties and San Antonio through date of Agreement: \$300 million each (\$600 million total)
- (c) Out-of-pocket Total Project Costs (including Initial Cash Payment and Remaining Cash Payment) expended by NINA Parties at time of Abandonment: \$580 million
- (d) Costs of Abandonment expended by NINA Parties between Abandonment date and closing of repurchase by San Antonio: \$200 million

Calculation:

- (a) Automatic reversion pursuant to Section 2.1(b)(ii)(A):

NINA Parties: 72.5% Unit Ownership Interest
(i.e., \$580 million / \$800 million)

San Antonio: 27.5% Unit Ownership Interest
(i.e., \$220 million / \$800 million)

- (b) San Antonio Unit Ownership Interest increase pursuant to Section 2.1(b)(ii)(B):

San Antonio decides to repurchase up to 50% Unit Ownership Interest (i.e., 22.5% San Antonio Restoration Costs Share).

Payment for Unit Ownership Interest:

\$180 million (i.e., $(\$800 \text{ million} * 50\%) - \220 million)

Reimbursement payment for Abandonment costs:

\$45 million (i.e., $22.5\% * \$200 \text{ million}$)

SCHEDULE 3.4(a)

Project Costs Accrued Through January 31, 2010

<u>Line #</u>	<u>Description</u>	<u>Original Liability Updated with Actual Invoice Amount, if received</u>	<u>Invoiced or Estimate @ 1/31</u>
1	00473370_TOSHIBA AM-002	[*]	Invoice
2	00473370_TOSHIBA AM-002	[*]	Invoice
3	TANE JAN STP.3.EN	[*]	Estimate
4	TANE JAN STP.5.EN	[*]	Estimate
5	TANE JAN STP.6.EN	[*]	Estimate
6	TANE JAN STP HO QUALITY ASSUR	[*]	Estimate
7	TANE JAN STP HO LIC/REG AFFAI	[*]	Estimate
8	TANE JAN STP HO PROJ MGT	[*]	Estimate
9	TANE JAN STP HO RM/DOC CONTRL	[*]	Estimate
10	TANE JAN STP HO COST/SCHED/FI	[*]	Estimate
11	TANE JAN STP HO INFORMATION T	[*]	Estimate
12	TANE JAN STP HO PROCURE SUPT	[*]	Estimate
13	TANE JAN STP HO TRAINING	[*]	Estimate
14	TANE JAN STP HO ENG MGT	[*]	Estimate
15	TANE JAN STP HO CONST PLANNIN	[*]	Estimate
16	TANE JAN STP HO SU/TEST SUPT	[*]	Estimate
17	TANE JAN STP HO TRAVEL	[*]	Estimate
18	TANE JAN STP HO ADMINISTRATIV	[*]	Estimate
19	TANE JAN STP FI CONST PLANNIN	[*]	Estimate
20	TANE JAN STP FI PROCUREMENT S	[*]	Estimate
21	TANE JAN STP.6.CN	[*]	Estimate
22	TANE JAN FI COST/SCHED/FIN	[*]	Estimate
23	TANE Long Lead Material Accrual	[*]	Estimate
24	Altran Audit Fee	[*]	Estimate
25	Bechtel-Owner's Engineer (January) Est Review	[*]	Estimate
26	00475972_BO-MAC CON-001	[*]	Invoice
27	Coats Rose (January)	[*]	Estimate
28	Cox, Smith, Matthews (January)	[*]	Estimate
29	Credit Card Accruals @ EOM	[*]	Estimate
30	EPRI (January)	[*]	Estimate
31	Enercon Services January (James Cook)	[*]	Estimate
32	Erin Engineering (January)	[*]	Estimate
33	Erin Engineering (December)	[*]	Estimate
34	Exponent (January)	[*]	Estimate
35	Hitachi (Short Pay GE Nov Inv)	[*]	Estimate
36	Hurst Technologies (J. Marek) January	[*]	Estimate
37	Hurst Technologies (January 17-31)	[*]	Estimate
38	00475684_HURST TECHNOLO	[*]	Invoice
39	Hurst Technologies (January 17-31) I&C Staff Support	[*]	Estimate
40	00475571_INOTEK SAF-001	[*]	Invoice
41	00475873_INOTEK SAF-001	[*]	Invoice
42	MPR January (B.Coward)	[*]	Estimate
43	McKinsey (December)	[*]	Estimate
44	Morgan Lewis (COLA) January	[*]	Estimate
45	Morgan Lewis (EPC) January	[*]	Estimate
46	NRC (January)	[*]	Estimate
47	Sequoia (January)	[*]	Estimate

<u>Line #</u>	<u>Description</u>	<u>Original Liability Updated with Actual Invoice Amount, if received</u>	<u>Invoiced or Estimate @ 1/31</u>
48	Sun Tech period January EXPENSES	[*]	Estimate
49	Sun Tech period January EXPENSES	[*]	Estimate
50	Sun Tech period January EXPENSES	[*]	Estimate
51	Sun Tech period January EXPENSES	[*]	Estimate
52	Sun Tech period January EXPENSES	[*]	Estimate
53	Sun Tech period January EXPENSES	[*]	Estimate
54	Sun Tech Per Diem January	[*]	Estimate
55	Sun Tech Per Diem January	[*]	Estimate
56	Sun Tech Per Diem January	[*]	Estimate
57	Sun Tech Per Diem January	[*]	Estimate
58	Sun Tech Per Diem January	[*]	Estimate
59	Sun Tech Per Diem January	[*]	Estimate
60	Sun Tech Per Diem January	[*]	Estimate
61	Sun Tech Per Diem January	[*]	Estimate
62	Sun Tech period January	[*]	Estimate
63	Sun Tech period January	[*]	Estimate
64	Sun Tech period January	[*]	Estimate
65	Sun Tech period January	[*]	Estimate
66	Sun Tech period January	[*]	Estimate
67	Sun Tech period January	[*]	Estimate
68	Sun Tech period January	[*]	Estimate
69	Sun Tech period January	[*]	Estimate
70	Sun Tech period 01/24-01/31	[*]	Estimate
71	Sun Tech period 01/24-01/31	[*]	Estimate
72	Sun Tech period 01/24-01/31	[*]	Estimate
73	Sun Tech period 01/24-01/31	[*]	Estimate
74	Sun Tech period 01/24-01/31	[*]	Estimate
75	Sun Tech period 01/24-01/31	[*]	Estimate
76	Sun Tech period 01/24-01/31	[*]	Estimate
77	Sun Tech period 01/24-01/31	[*]	Estimate
78	Sun Tech Reconciliation January	[*]	Estimate
79	Sun Tech Reconciliation January	[*]	Estimate
80	Sun Tech Reconciliation January	[*]	Estimate
81	00475974 SUN TECHNICAL	[*]	Invoice
82	Sun Tech Reconciliation December	[*]	Estimate
83	Sun Tech Reconciliation December	[*]	Estimate
84	Sun Tech Reconciliation December	[*]	Estimate
85	Sun Tech Reconciliation December	[*]	Estimate
86	Sun Tech various invoice adjustments	[*]	Estimate
87	Sun Tech period December EXPENSES	[*]	Estimate
88	Sun Tech period December (R.Gibson)	[*]	Estimate
89	Sun Tech period December (L. Arnold)	[*]	Estimate
90	TEPCO Accrual January	[*]	Estimate
91	TEPCO Accrual December	[*]	Estimate
92	Tetra Tech (January)	[*]	Estimate
	Accrual & AP Liabilities		
1	U34 Outstanding Checks @ EOM	[*]	Checks
2	U34 AP @ EOM	[*]	Actual
3	U34 Paid time off @ EOM	[*]	Actual

<u>Line #</u>	<u>Description</u>	<u>Original Liability Updated with Actual Invoice Amount, if received</u>	<u>Invoiced or Estimate @ 1/31</u>
4	Costs Incurred but Not Accrued as of Jan. 31, 2010, and Funded after Jan. 31, 2010: 2/5 EFT funding s/b in 1/31 liab — Empl exp. 2/10 wire funding to Willis of TX s/b in liab @ 1/31 Empl ot exp in Jan. s/b in 1/31 liab, funded 2/12 Verizon Conf services 2/19 s/b in liab @ 1/31 ACH 2/19 for Jan exp (mileage) s/b in liab @ 1/31 Jan invoice adjustment Bechtel, decr 1/31 liab Jan Sun invoice, not accrued @ 1/31 2/4 ACH paymt of \$263 for Jan UPS services, s/b in liab @ 1/31 TANE 2/26 pymt Equipment Purchase Approval Software, s/b in 1/31 liab 2/26 ACH pymts for 1/31 liab, Not in 1/31 GL	[*] [*] [*] [*] [*] [*] [*] [*] [*] [*] [*]	[*] [*] [*] [*] [*] [*] [*] [*] [*] [*] [*]
	Other Amounts Due @ EOM		[*]
	<u>Total AP & Accruals @ February 26, 2010</u>		[*]
1	Less Funding since Jan. 31, 2010 For Costs Incurred Since Jan. 31, 2010		[*]
2	Less Funding after Jan. 31, 2010 For Costs Incurred But Not Accrued as of Jan. 31, 2010		____[*]
	<u>Total AP & Accruals @ February 26, 2010</u>		____[*]