

July 11, 2016

Mr. Steven D. Roetger, Lead Analyst
Georgia Public Service Commission
244 Washington Street, SW
Atlanta, GA 30334

Dear Mr. Roetger:

This letter is written in response to your emails, dated May 18, 2016, referenced below, wherein you have asked several questions regarding how the NRC Staff interprets / implements Tier 2*. The NRC Staff's response is set forth below.

First, as background information, there exists some discussion on Tier 2* and the rationale behind the rulemaking for the Amended Design Certification for the AP1000 design (Agencywide Documents Access and Management System (ADAMS), Accession No. ML113480014), published in the *Federal Register* on December 30, 2011. Page 33 of the document discusses the processes for changes to, and departures from, the AP1000 design control document (DCD), Revision 19. It discusses in detail the change processes for DCD information designated as Tier 1, Tier 2, and Tier 2* with and without expiration. The discussion does not address, however, the question of information, identified in figures in the AP1000 DCD, and what of those figures is or is not reasonably argued to be Tier 2*. It does, on Page 88 of the document, address the type of information in the DCD that would revert to Tier 2 following the unit achieving "full power." That information is in Title 10 of the *Code of Federal Regulations* (10 CFR) Part 52, Appendix D, Section VIII.B.6.c. Now, turning to your questions directly, you asked:

Did NRC Staff reviewing the AP1000 DCD ever intend there to be information contained in a figure designated as Tier 2 that should be considered 'beyond that that is considered Tier 2*' and therefore, would not require the COL holder to submit to NRC a License Amendment Request ("LAR")?*

Staff's Response:

Figures given in the DCD are not blueprints and therefore implementing detailed plans, detailed design drawings that actualize the figures in the DCD will contain information not given in the DCD figures. Information "downstream" of the DCD figures, such as detailed design drawings and blueprints implementing Tier 2* figures are not by themselves Tier 2*. Only the information given in the figures and text, designated within the brackets with the asterisk are considered to be Tier 2*.

In your email you stated:

...based on the history of NRC Staff's reviews of Southern Nuclear Company's ("SNC") LARs to their COL this flexibility is absent, i.e., any change to any item contained in the DCD that is designated as Tier2 must be approved by the NRC Staff prior to implementation of that change*

The requirement to submit changes to Tier 2* information for NRC staff review prior to implementation is a regulatory requirement and is not flexible.

You further questioned:

... did NRC Staff ever indicate by official documentation that interpretation flexibility existed in the Tier 2 information or did NRC Staff's position with regard to Tier 2* information adherence change between the AP1000 and the issuance of the SNC COL?*

You then provided the following example:

A good example is DCD Figure 3H.5-3 and the language that references that figure. Westinghouse changed the design from what is depicted in Figure 3H.5-3 (at the MSE wall) in order to mitigate potential rebar congestion. Westinghouse asserted at that time that the re-design met ACI 349 and therefore was consistent with the DCD design basis. Regardless of that figure's Tier 2 designation Westinghouse asserted that no License Amendment Request was necessary. NRC Staff disagreed with Westinghouse's interpretation of DCD design adherence and required a License Amendment Request to change the design. As a result of this event I believe NRC communicated to Southern Nuclear that strict adherence to the designs as shown in the DCD is required. Ultimately, the installed rebar was reconfigured to match the design as shown in the DCD. It's actually this event that is driving my questions.*

Essentially the arguments that are put forth for this event occurring is that first Westinghouse and Southern Nuclear were 'unsure of the rules' using the Part 52 DCD process and second, that due to the language I provided you below, some flexibility in the as built design existed. I would note that Appendix D to Part 52 clearly states the means by which tiered information may be changed in the DCD.

Staff's Response:

Let me respond to the first part of your question. The NRC staff believes that there is no flexibility to interpret what is and what is not Tier 2* information. It is the purpose of the brackets and asterisk to make that designation clear. Appendix D to Part 52 clearly states the means by which tiered information may be changed in the DCD. No change has occurred in interpretation of what is Tier 2* and what is not Tier 2* between issuance of the rulemaking and the issuance of any COL. If you have such information from NRC showing a difference of opinion, please bring the reference(s) to our attention.

S. Roetger

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Next, let me address the example you provided. The NRC staff cannot verify the statements that you made with regard to staff positions, however, the AP1000 DCD Figure 3H.5-3, is clearly marked in a way that indicates that all of the information contained in the figure is Tier 2* information, and therefore, subject to the requirements of the rule regarding changes to Tier 2* information. There is additional text in the AP1000 DCD, Appendix H, Section 3H.5, that indicates that "typical wall reinforcement" is shown in Figure 3H.5-3 (enclosed) and is entirely Tier 2*.

In conclusion, the NRC staff takes the position that there is no flexibility to interpret what is and what is not Tier 2* information. It is the purpose of the brackets and asterisk to make that designation clear. Appendix D to Part 52 clearly states the means by which tiered information may be changed in the DCD. No change has occurred in interpretation of what is Tier 2* and what is not Tier 2* between issuance of the rulemaking and the issuance of any COL. If you have such information from NRC showing a difference of opinion, please bring the reference(s) to our attention.

If you have any questions, please contact the Project Manager, William (Billy) Gleaves at (301) 415-5848 or Bill.Gleaves@nrc.gov.

Enclosure: As stated

Sincerely,

/RA/

Jennifer Dixon-Herrity, Acting Chief
Licensing Branch 4
Division of New Reactor Licensing
Office of New Reactors

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Office of New Reactors

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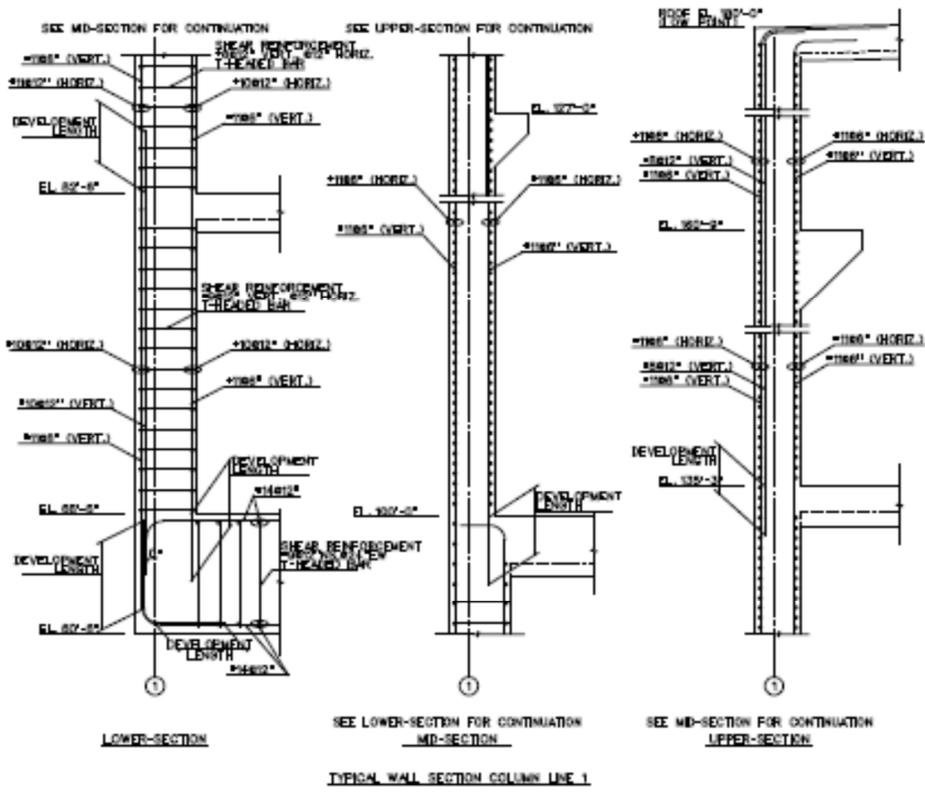


Figure 3H.5-3

[Typical Reinforcement in Wall on Column Line 1]*

*NRC Staff approval is required prior to implementing a change in this information; see DCD Introduction Section 3.5.

References:

1. Email from S. Roetger, May 18, 2016, "[External_Sender] Tier 2* DCD/COL information request," 1:13 p.m., ADAMS Accession No. ML16165A279
2. Email from S. Roetger, May 18, 2016, "[External_Sender] RE: Tier 2* DCD/COL information request," 4:29 p.m., ADAMS Accession No. ML16165A278