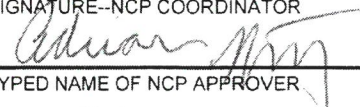
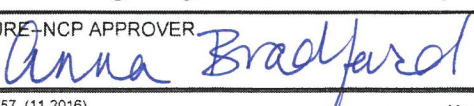


NRC FORM 757 <small>NRC MD 10.158 (11-2016)</small>		U. S. NUCLEAR REGULATORY COMMISSION		<small>NCP TRACKING NUMBER</small> NCP-2018-008	
NON-CONCURRENCE PROCESS					
SECTION C - TO BE COMPLETED BY NCP COORDINATOR					
<small>TITLE OF SUBJECT DOCUMENT</small> Safety Evaluation Related to Amendments -Tier 2* LAR for Vogtle 3 and 4				<small>ADAMS ACCESSION NO.</small>	
<small>NAME</small> Adrian Muñiz					
<small>TITLE</small> Project Manager				<small>TELEPHONE NUMBER</small> (301) 415-4093	
<small>ORGANIZATION</small> Division of Licensing, Siting, and Environmental Analysis					
<small>AGREED UPON SUMMARY OF ISSUES (use continuation pages or attach Word document)</small> See Attached. <i>This section was updated on September 20, 2018, to reflect the most up-to-date status of the non-concurrenrs. See attached.</i>					
<small>EVALUATION OF NON-CONCURRENCE AND RATIONALE FOR DECISION (use continuation pages or attach Word document)</small> See Attached. <i>This section was updated on September 20, 2018, to reflect the most up-to-date status of the safety evaluation. See attached.</i>					
<small>TYPED NAME OF NCP COORDINATOR</small> Adrian Muñiz			<small>TITLE</small> Project Manager		
<small>ORGANIZATION</small> Division of Licensing, Siting, and Environmental Analysis					
<small>SIGNATURE--NCP COORDINATOR</small> 				<small>DATE</small> 9/14/2018	
<small>TYPED NAME OF NCP APPROVER</small> Anna Bradford			<small>TITLE</small> Deputy Director		
<small>ORGANIZATION</small> Division of Licensing, Siting, and Environmental Analysis					
<small>SIGNATURE--NCP APPROVER</small> 				<small>DATE</small> 9/20/18	

SECTION C - VOGTLE TIER 2* LICENSE AMENDMENT AND EXEMPTION REQUEST

NON-CONCURRENCE

I appreciate the non-concurring employees (NCEs) using the non-concurrence process and engaging others, including senior management, to ensure an informed decision as it relates to this licensing action. I also value the thoughtful evaluations provided by the NCE's supervisors. My evaluation of NCP-2018-008, as documented below, is based on numerous interactions that I have had with the NCEs where their concerns were raised, as well as my review of NCP Sections A and B.

A. **SUMMARY OF ISSUES:**

The list below represents the summary of issues communicated in the non-concurrence associated with the draft safety evaluation (SE) pertaining to the license amendment request (LAR) 17-037 and exemption request for Vogtle Electric Generating Plant Units 3 and 4 (Vogtle). As of September 13, 2018, the non-concurring employees (NCEs) are Joseph Williams, Denise McGovern, and Christopher Van Wert. Mr. Williams endorses the entirety of the non-concurrence discussion in Section A of the NCP form. Mrs. McGovern endorses Sections 2.0, "Policy and Generic Issues Need to be Presented for Commission Decisions," and 4.6, "Impediments Encountered in Non-concurrence Process." Mr. Van Wert endorses Section 2.0.

1. The licensee's request is an unprecedented licensing action that is inconsistent with Commission policy.
2. The licensee's request has significant generic implications, and circumvents the rulemaking process, inappropriately reducing opportunities for public involvement.
3. The staff's safety evaluation is not based on a well-described and thoroughly vetted regulatory framework. The staff's conclusions do not align with the framework described in the safety evaluation.
4. Resistance to addressing the issues summarized above, has created a chilling effect that has inhibited addressing issues in a timely fashion and adversely affected the free and open discussion of possible issues and challenges associated with this first-of-a-kind LAR.

The NCEs agreed to the SOI above on September 11, 2018. The agreed upon items are each evaluated below. Subsequent to the agreement on the SOI, Mr. Pravin Patel, Mr. Thomas Scarbrough, and Mr. Clinton Ashley endorsed Section 2.0 of Section A of this non-concurrence. Section 2.0 is associated with Summary Items 1 and 2 and Section 4.6 supports Summary Item 4 above. (Note: On September 20, 2018, after the CA Note discussed below, Mr. Patel, Mr. Scarbrough, and Mr. Ashley withdrew their non-concurrences in their entirety.)

B. EVALUATION OF NON-CONCURRENCE AND RATIONALE FOR THE DECISION:

1. The licensee's request is an unprecedented licensing action that is inconsistent with Commission policy.

The non-concurrence cites SECY papers and associated SRMs developed during the early to mid-1990s that discuss, among other things, the history of development and implementation of the Tier 2* category of information. While that historical context is important, the most recent Commission paper on this subject was SECY-17-0075. In SECY-17-0075, which discusses some of the same historical references cited in the non-concurrence, the staff discusses its experience with Vogtle license amendments that requested changes to Tier 2* information. The paper states that "One specific lesson is that some information has been designated as Tier 2* when other regulatory tools could have been used instead to ensure a facility is safely designed, constructed, and operated." It further states that "This results in licensees submitting license amendment requests (LARs) on topics that may not involve safety significant facility changes." The LAR currently in front of the agency represents the first opportunity, since the development of SECY-17-0075, for the staff to apply any lessons-learned with respect to Tier 2* information for an AP1000 that is currently under construction. The purpose of this licensing action is to establish new criteria for Vogtle Units 3 and 4 to determine if changes to Tier 2* information require prior NRC approval. SECY-17-0075 does not discuss the specific type of approach that is being proposed by SNC (e.g., a criteria-based evaluation process). However, this approach seems consistent with the staff's stated intent to address Tier 2* information issues, as communicated to the Commission in the SECY paper.

I agree with statements made by Mr. Segala in Section B of this non-concurrence that there are no objective criteria for how to determine if a potential policy issue warrants Commission awareness or approval, and Ms. Karas' statements in Section B that management has discretion in whether to seek Commission approval for this LAR. Therefore, if the staff identifies a potential policy issue, the staff engages senior management to discuss these matters so a determination can be made as to whether it involves potential policy issues that need to be communicated to the Commission. The non-concurrence acknowledges that the NRO Office Director has indicated that he has discussed LAR 17-037 with the Commissioners during periodic meetings, and it was the Office Director's assessment that this LAR is not a policy issue and does not warrant prior Commission approval.

Therefore, the NRO Office Director, after consultation with OGC, decided that a SECY paper is not required in this case. Notwithstanding this decision, the NRO Office Director issued a Commissioner's Assistant (CA) Note on September 14, 2018, to notify the Commission of the staff's intent to approve the LAR and associated exemption request. The CA note included the staff's safety evaluation and Sections A, B, and C of

NCP-2018-008. The CA note informs the Commission of the staff's intent to issue the license amendment and exemption three days after issuance of the CA Note. It is important to note that the SE will not receive the final signature or be finalized until after the three days have passed. If the Commission determines that a policy matter exists, the Commission has procedures that would enable it to provide direction to the staff.

The NCEs assert that the proposed licensing action presents the same concerns that resulted in the withdrawal of LAR 14-008 by the licensee. Regarding this concern, I agree with Ms. Karas' views on this matter, as written in Section B of this non-concurrence.

Update as of September 20, 2018: As mentioned above, the CA Note, safety evaluation, and Sections A, B, and C of the non-concurrence were provided to the Commission on Friday, September 14, allowing for the Commission to have three days to review the staff's documents. The three days have passed and the Commission chose not to exercise its ability to act on this issue as a policy matter, to re-direct the staff, or to instruct the staff to delay issuance of the LAR and the exemption. Therefore, the contents of the safety evaluation will remain unchanged.

2. The licensee's request has significant generic implications, and circumvents the rulemaking process, inappropriately reducing opportunities for public involvement.

The licensing action currently in front of the agency is specific to Vogtle Units 3 and 4, resulting in a change to the combined license only for these units. I agree with Ms. Karas' statement in Section B of this non-concurrence regarding the steps that would need to be taken before a similar LAR could be approved for another licensee. The approval of this LAR may be of interest to other combined license holders, and those license holders may, in the future, request a similar approval. However, this is not unique to this licensing action, as other LARs can and have resulted in establishing precedents that other licensees followed when presenting their specific requests for staff's review. If another licensee decides to pursue a similar approach, then that specific proposal would have to be reviewed and approved by the staff to determine whether it is protective of public health and safety.

With respect to the need for rulemaking, in general, the agency has some discretion on whether to act by exemption or rulemaking. If an issue is generic in nature and affects a large number of entities, the agency would initiate rulemaking to address the issue, if needed. In this case, however, there is only one licensee that is constructing an AP1000 and would currently be affected by changes to the Tier 2* departure process. Therefore, it is appropriate and efficient that such a change be handled in the LAR and exemption process. Therefore, since both rulemaking and exemption requests are acceptable ways to document agency approval, and only one licensee is currently affected by this proposal, I do not agree that the rulemaking process has been circumvented.

Regarding opportunities for public involvement, as required by 10 CFR 50.91, the staff published in the Federal Register a "Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination [NSHC], and Opportunity for Hearing" on February 13, 2018. It should be noted that, in accordance with 10 CFR 50.91, the notice provided a 30-day period for public comment on the proposed NSHC determination. However, public comments were also received regarding the proposed amendment. The staff addressed these comments in the Public Comments section of the draft SE. The responses to these comments were circulated amongst the staff to ensure that they were appropriately addressed. A request for hearing was not submitted for this LAR.

3. The staff's safety evaluation is not based on a well-described and thoroughly vetted regulatory framework. The staff's conclusions do not align with the framework described in the safety evaluation.

In general, the agency's "regulatory framework" includes regulations and guidance (e.g., the Standard Review Plan, Regulatory Guides, and other existing documents) that establish the agency's approach to protecting public health and safety. The NCE's are correct in stating that there is no existing written regulatory framework (e.g., no Standard Review Plan sections or Regulatory Guides) that directly applied to the type of review that needed to be performed for this LAR. However, for first-of-a-kind reviews such as this safety evaluation, NRC management and staff must leverage other sources of information to make a timely regulatory decision, including adaptations of existing guidance, subject matter expertise, and lessons learned from previous reviews and other agency activities. This tailored approach has been applied in other reviews (e.g., non-light-water reactor reviews) and is not unique to this LAR. However, I agree that there could have been improved coordination at the beginning of the LAR evaluation to ensure a common understanding of the review approach by the team.

The NCE's comments regarding the SE contents are based on the version at the beginning of the concurrence process. Revisions to draft documents, even revisions that are substantive, can be part of the normal concurrence process. As described by Mr. Segala, the staff engaged in discussions (i.e., Chapter Days) to address comments received during the concurrence process, which included comments provided by Mr. Williams. In addition, Mr. Williams actively participated in these Chapter Day discussions and provided suggestions that supported resolution of issues regarding inconsistent language in the SE. This has resulted in a revised SE that, I believe, addresses many of the concerns raised in the non-concurrence associated with Summary Item 3 with respect to the SE conclusions not aligning with the staff's approach. I also believe that the revised SE adequately describes the approach used by the staff in its review. However, as noted above, establishment of a clear review approach at the beginning the LAR evaluation may have minimized some of the need for revisions.

4. Resistance to addressing the issues summarized above, has created a chilling effect that has inhibited addressing issues in a timely fashion and adversely affected the free and open discussion of possible issues and challenges associated with this first-of-a-kind LAR.

As noted above, Mr. Van Wert, Mr. Patel, Mr. Scarbrough, and Mr. Ashley did not endorse this part of the non-concurrence (Note: On September 20, 2018, after the CA Note discussed above, Mr. Patel, Mr. Scarbrough, and Mr. Ashley withdrew their non-concurrences in their entirety) and Ms. McGovern endorsed only the part related to the non-concurrence process itself. Therefore, the discussion below focuses on Mr. Williams' concerns.

Mr. Williams has indicated that he has "a reasonable perception that the issues he has raised in the course of this review have been suppressed and discouraged." I agree with Mr. Segala's statement that "...the perception of whether a chilling effect exists is an individual experience. This is because it is tied to the perspectives and feelings of the individual involved..." As such, I believe that an equally reasonable perception of the interactions that have occurred would be that Mr. Williams has been included and involved throughout this review. Mr. Williams' input during the review helped to ensure that management and staff addressed challenging issues and resulted in a better product. Although Mr. Williams has a different perspective on how the review should have been managed, that seems more representative of a professional disagreement as to the best way to proceed with a challenging technical review rather than suppression and discouragement of his views.

Mr. Williams, as a member of the review team, was included in numerous meetings regarding the review of this LAR. This included, among others, such critical meetings as a pre-application meeting with the licensee (12/14/17), a pre-acceptance internal alignment meeting to discuss whether the LAR should be accepted for review (1/16/18), meetings with the applicant to discuss Mr. Williams questions regarding the LAR (5/31/18, 6/21/18), and chapter day meetings to finalize the language in the Safety Evaluation Report (9/10/18, 9/11/18). In each case, he communicated his concerns about the proposal in the LAR. In addition, as indicated in his non-concurrence and specifically in Attachment 2, he met with Division management, the Office Director, and the DEDO on multiple occasions to express his concerns in detail. He also provided multiple written comments and inputs via email to the project manager and to his own management chain during the entire course of the review.

In several cases, suggestions provided by Mr. Williams were implemented. For example, early in the review, he suggested that the technical reviewers be sent a list of questions to consider while conducting their review (e.g., "Would the proposal in the LAR, if correctly applied by the licensee, properly protect the information that you believe is Tier 1 equivalent in your review area?"). He and the project manager worked to refine the specific questions and they were used to discuss the review approach with the

review team and with management. Mr. Williams also provided useful comments on the draft Safety Evaluation Report and those comments were incorporated, resulting in a better product. Additionally, his concern that the Commission should be informed of the staff's activities was one factor that led to the decision to send the Safety Evaluation Report to the Commission three days prior to issuance.

I agree that this was a first-of-a-kind LAR that required increased communications and planning. Often for first-of-a-kind reviews, the NRC management and staff must adapt existing guidance or develop new guidance to facilitate its review. That was true for this LAR. As stated previously, Mr. Williams input was critical in developing guidance that aided the staff's review. As a best practice learned from this review, the NRO licensing division is collaborating with the technical divisions to develop the review approach on other first-of-a-kind LARs that may prove challenging. Additionally, the staff is forming more structured review teams for complex or novel LARs to facilitate routine collaborative engagement throughout the reviews to ensure that potential generic concerns are quickly elevated for general awareness and resolution.

I do not agree that there was undue schedule pressure on this LAR review. The LAR was submitted in December 2017 and has been under review for nine months. This is longer than the duration of a typical LAR review in NRO, and is reflective of the fact that the issues were being carefully discussed, considered, and evaluated. As documented in the staff SER, thorough consideration was given to the technical, safety, regulatory and potential policy issues that this LAR presented. The comprehensiveness of the staff's review is reflected in how the issues were evaluated and documented in the SER. As with any project, setting and implementing project schedules, requesting timely input from staff, and scheduling prompt meetings are all typical project management approaches and are reflective of the agency principles of Efficiency and Reliability.

In summary, it is my assessment that Mr. Williams was thoroughly involved in the evaluation of this LAR and that his concerns were heard and considered throughout the process. He participated in multiple meetings, document revisions, verbal conversations, and email discussions in which he raised his concerns with management both inside and outside of NRO. In my view, his concerns were listened to and, in several cases, implemented, adding significant value to the process and to the final product. Recognizing the importance of maintaining a strong open, collaborative work environment, this non-concurrence has been forwarded to the OIG and to OCHCO for evaluation and follow-up actions, if needed.