NRC FORM 757 NRC MD 10.158 (11-2016)	U. S. NUCLEAR REGULATORY COMMISSION	NCP TRACKING NUMBER
	NON-CONCURRENCE PROCESS	NCP-2018-008

SECTION B - TO BE COMPLETED BY NON-CONCURRING EMPLOYEE'S SUPERVISOR

TITLE OF SUBJECT DOCUMENT	ADAMS ACCESSION NO.
Safety Evaluation by NRO related to Amendment Nos. XXX and XXX	ML18207A262

NAME
Rebecca Karas

TITLE	TELEPHONE NUMBER
Branch Chief	415-7533

ORGANIZATION
Reactor Systems, Nuclear Performance & Code Review Branch, NRO/DSRA

COMMENTS FOR THE NCP REVIEWER TO CONSIDER (use continuation pages or attach Word document)

Christopher Van Wert, of my staff, joined in Section 2 of the subject non-concurrence (Policy and Generic Issues Need to be Presented for Commission Decisions). I reviewed the entire non-concurrence, and although my staff member only non-concurred relative to Section 2, my comments in Attachment 1 relate to both Section 2 and Section 4 (Chilling Effect Concerns), which I also have comments on. I appreciate the opportunity to comment, and commend each of the three staff members who raised these concerns under the NCP program, as I believe it to be an important part of our decisionmaking process.

<<See Attached>>

SIGNATURE	DATE
	9-12-18

NCP-2018-008

NRC Form 757, Section B

Attachment 1 - Continuation Pages for Rebecca Karas

Safety Evaluation Associated with License Amendment Request 17-037

Vogtle Electric Generating Plant Units 3 and 4

Docket Nos. 52-025 and 52-026

Combined License Numbers NPF-91 and NPF-92

Comments on Section 2 of NCP-2018-008:

The NCP states that the LAR "substantially deviates from the fundamental structure of a design certification rule" and "is a substantial deviation from the Commission-approved change process." It further cites an earlier submitted SNC amendment, LAR 14-008, which was withdrawn by SNC due to staff concerns that the proposed exemption of Tier 2* information from the Part 52 change process for Tier 2* information raised policy issues. The NCP states that these same concerns would apply in a similar manner to the current LAR. In particular, the NCP states:

> "For several Tier 2* topics, the LARs are equivalent, proposing to apply only the "50.59-like" change process to some Tier 2* items, which essentially converts a set of Tier 2* information into Tier 2. The screening criteria proposed for other topics do not obviate policy issues, as they still introduce a new change process beyond that approved by Commission, delegating review of Tier 2* information to the licensee instead of the NRC staff."

I see a key difference between the prior LAR/exemption request and the current LAR/exemption request. The prior LAR would have exempted all Tier 2* items across the board, and completely rely on the licensee's evaluation to determine the safety significance of changes to the Tier 2* information. While this is similar to the current LAR, I see a key difference. In evaluating the acceptability of the current LAR, NRC technical staff knowledgeable about each Tier 2* item looked at each item individually to determine whether the criteria proposed by SNC (which I agree for some items is merely the existing 50.59-like process) would be sufficient to prohibit licensee approval of any future changes to the item that should require prior NRC approval. Further, because of the staff's review, for some items (fuel burnup limit and small break loss of coolant accident methodology), any change will continue to require prior NRC approval. This careful staff review and different treatment for various Tier 2* items is reflected in the current version of the draft SER, which now states,

> "in reviewing LAR 17-037, the staff focused on whether the proposed criteria in License Condition 2.D.(13) are adequate to identify Tier 2* information of safety significance comparable to that of Tier 1 information."

This is further expanded upon in the revised Section 3.1 of the draft SER. While I agree that this has the same effect as the prior LAR of having specific changes approved by the licensee, it is different in that the staff has focused its review on the specific Tier 2* items individually, with a consideration for whether potential future changes to that information should require prior staff approval. I therefore believe the intent of prior NRC review of changes to these items was met through this LAR review, even though the specifics of any future changes is not known at this time. This is very different than a process-centered type of generic approach in the 2014 exemption request. This is also reflected in the current version of the draft SER in the responses to public comments where the staff states:

> "The original basis for the establishment of the Tier 2* category of information was to create departure requirements less burdensome than those applicable to Tier 1 information while still maintaining strict control over departures from information the safety significance of which was comparable to that Tier 1 information. (See SECY-17-0075 and 71 FR 4477.) The staff evaluation in this SE conforms to this policy by focusing on whether the safety significance of Tier 2* information is comparable to that of Tier 1 information, and therefore the Tier 2* departure requirements should be maintained for that information. If the Tier 2* information does not rise to a level of safety significance comparable to that of Tier 1 information, the original policy behind the Tier 2* designation would not have called for prior NRC approval of departures for that information. The NRC staff acknowledges that its evaluation relies on regulatory control in NRC regulations other than Part 52, Appendix D to govern departures from or changes to some Tier 2* information, but this too is consistent with the original policy behind the Tier 2* designation because those regulations also require prior NRC approval of changes."

I believe this key difference between the 2014 and 2017 LARs leaves it open to interpretation and management discretion as to whether prior Commission approval is sought. While I believe the LAR clearly includes policy considerations at some level, I do not believe the LAR requires a Commission decision prior to approval, rather a management decision on what is prudent. I understand that office management discussed this issue informally with individual Commissioners, and that a CA Note will be provided to the Commission on this topic for their information. While I do not agree that informal discussions, or a CA Note could replace Commission approval if the LAR included significant policy issues, I believe that management had discretion in whether to seek Commission approval in the case of this LAR.

The NCP also states:

> "There is nothing about the somewhat different approach in LAR 17-037 that clearly limits its application to the Vogtle COLs," and
>
> "NRC would not have any obvious basis to deny an equivalent request from another AP1000 licensee."

I agree that although the approval is specific to the Vogtle COLs, it sets a precedent for any other design certification to follow, in the same manner that any LAR the agency approves can

set a precedent for a future applicant. In this case, I agree that the precedent it sets is much stronger than many other LARs. However, there have been other LARs that have set a strong precedent, such as the Vogtle condensate return (ML17024A317), which was nearly entirely related to non-site-specific matters within the AP1000 DCD, and which set a precedent that would have allowed for staff approvals of a similar LAR at another AP1000. Setting a precedent alone does not eliminate a review of a later licensing action, although it can make that review very minor or nearly entirely administrative.

For the staff to reach the same finding on a similar Tier 2* amendment for any future AP1000 licensee or a licensee with a different certified design, staff would need to follow the same process in looking at each individual Tier 2* item to determine if the proposed criteria ensure that changes that should receive prior staff approval would continue to do so. The fact that, for another AP1000, there would not be a material difference in any of the Tier 2* items, unless that AP1000 had any site-specific items or considerations, does not negate the fact that this review would need to take place to support a finding for another applicant, even if, in the case of AP1000, that review would potentially be covered by the prior Vogtle review in all technical respects. Because any future LARs would need to be individually considered by the staff, I do not agree with the non-concurring individuals that approval of this LAR requires generic policy considerations. As I stated above, I believe management had the discretion to treat it either way, given its precedent-setting nature, and in light of the prior Commission decisions cited in the non-concurrence. If the decision were mine, I may have determined prior Commission approval was prudent, however I do not believe that the decision by NRO office-level management to proceed without specific Commission approval violated any processes.

Regarding the concerns stated in the NCP on the LAR's approval circumventing the rulemaking process and reducing the scope of public participation, I agree with statements in the staff's draft SER (see response to public comment #6):

> "To the extent the comment asserts that the proposal in LAR 17-037 "goes beyond" or "circumvents" the Part 52 rules, the licensee requested exemptions from Part 52, Appendix D. NRC regulations in 10 CFR 52.7 and 50.12 provide for exemptions requests, and the NRC staff considers such requests under established legal standard and agency procedures. Such exemption requests are not unusual, and the NRC will grant such a request if, and only if, it satisfies the applicable legal standards."

Because the LAR includes an exemption and is for a specific licensee, I agree that the exemption approval process with the authority the Commission previously delegated to the NRO office director can be used in lieu of rulemaking.

Comments on Section 4 of NCP-2018-008:

Although Christopher Van Wert, of my staff, did not include Section 4 of Joe Williams' non-concurrence as part of his non-concurrence, I would like to provide the following comments on Section 4, specifically Section 4.4 regarding general working environment concerns, since two of my staff were also involved in evaluating this LAR, and I consider it important for me, as a supervisor, to comment on any working environment concerns that could have impacted them in performance of their duties, especially since I am concurring on their work product, produced in this environment.

I would note that the extent of my interactions with senior management on this LAR was significantly less than Mr. Williams' and as such my comments are based only on the interactions I personally experienced. My staff may have also had different interactions and may have perceived the working environment differently. As such, I join in Mr. Segala's recommendation that these NCP issues be referred to NRC's Office of the Inspector General (OIG) and Office of the Chief Human Capital Officer (OCHCO) in accordance with the Whistleblower Protection Act of 1989 and the Whistleblower Protection Enhancement Act of 2012.

My personal perception of the organization, communications and conduct of this LAR review should have been better coordinated and managed, given the scope and nature of the LAR, despite its high priority and urgency. In his writeup, Mr. Williams notes several comments he heard from other reviewers regarding their view of instructions provided for conduct of the review, time allocated for the review, and other related concerns. I believe that more thorough, consistent communication, better planning, clear direction, and more opportunities to involve staff in decisionmaking early on in the process could have significantly reduced or eliminated the environment concerns. Later in the review, I observed this coordination significantly improve, but that level of management should have existed many months earlier.

Despite the stated environment concerns of Mr. Williams, I believe that the staff technical work products my branch produced were not adversely impacted in terms of quality, although I believe the lack of coordination did increase the level of effort necessary to achieve this quality level. I agree with Mr. Williams that division-level managers within DSRA were very supportive. Specifically, they continually communicated to the staff the need to thoroughly technically evaluate the LAR, despite aggressive schedule targets. My staff's technical concerns were raised to SNC through Requests for Additional Information, and SNC made changes to its submittal as a result. As such, I have high confidence that the technical product produced by my staff was thorough and appropriately considered the technical issues in the area of nuclear fuels and accident analysis. Further my staff have communicated to me that they concur with the technical content in their assigned portions of the SER.